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Tuesday
November 27, 1984

Selected Subjects

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 491; Lemon Reg. 490 Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to the fresh market at 260,000 cartons during the period November 25–December 1, 1984, and increases the quantity of lemons that may be shipped to 220,000 cartons during the period November 18–24, 1984. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (Lemon Regulation 491) becomes effective November 25, 1984, and the amendment (Lemon Regulation 490) is effective for the period November 18–24,1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on November 20, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. Section 910.791 is added to read as follows:

§910.791 Lemon Regulation 491.

The quantity of lemons grown in California and Arizona which may be handled during the period November 25, 1984, through December 1, 1984, is established at 260,000 cartons.

2. Section 910.790 Lemon Regulation 490 is revised to read as follows:

§ 910.790 Lemon Regulation 490.

The quantity of lemons grown in California and Arizona which may be handled during the period November 18, 1984, through November 24, 1984, is established at 220,000 cartons.

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

Dated: November 21, 1984.

Thomas R. Clark,

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

[FR Doc. 84-31142 Filed 11-23-84; 1:04 pm]

BILLING CODE 3410-02-M

Packers and Stockyards Administration

9 CFR Part 204

Organization and Functions

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This document amends Part 204, Chapter II of 9 CFR to update and clarify the organization and functions of the Packers and Stockyards Administration and to change the delegations of authority.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Smith, Deputy Administrator (202) 447–7063.

SUPPLEMENTARY INFORMATION: Changes in language have been made to provide a clearer, more concise explanation of the Agency's organization and functions. Section 204.2, Organization, is amended to reflect the closing of the Springfield, Illinois, regional office and reassignment of the States in that region to the Indianapolis, Indiana, and South St. Paul, Minnesota, regional offices.

Section 204.3, Delegation of Authority, is amended to remove the special delegations of authority to the branches. The Division Directors continue to have full authority to administer the provisions of the Packers and Stockyards Act pertaining to their respective functional areas and responsibilities (including the power of redelegation) except certain specific reservations contained in paragraph (g) of § 204.3. Further, the delegation to the Regional Supervisors is expanded to include specific authority to determine

when a bond is inadequate under § 201.30(f) of this chapter and to require the appropriate bond.

List of Subjects in 9 CFR Part 204

Organization and functions (Government agencies), Delegation of authority (Government agencies), Requests for records and information.

Authority: 5 U.S.C. 552.

Done at Washington, D.C. the 21st day of November, 1984.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

Accordingly, Part 204, Chapter II, Title 9 of the Code of Federal Regulations is revised as set forth below:

PART 204—ORGANIZATION AND FUNCTIONS

Public Information

Sec.

Authority: 5 U.S.C. 552.

Public Information

§ 204.1 Introduction.

The Packers and Stockyards Administration hereby describes its central and field organization; indicates the established places at which, and methods whereby, the public may secure information; directs attention to the general course and method by which its functions are channeled; and sets forth the procedures governing the availability of opinions, orders, and other records in the files of said Administration.

§ 204.2 Organization.

(a) The Packers and Stockyards Administration consists of a headquarters office located in the South Building of the U.S. Department of Agriculture in Washington, D.C., and 12 regional offices. The Washington headquarters office is organized to include the Office of the Administrator and two Divisions, the Packer and Poultry Division and the Livestock Marketing Division.

(b) *Office of the Administrator.* This office has overall responsibility for administering the provisions of the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*), for enforcement of the Truth-in-Lending Act (15 U.S.C. 1601–1665) with respect to any activities subject to the Packers and Stockyards Act and for executing assigned civil defense and defense mobilization activities. These responsibilities include formulation of current and long-range programs relating to assigned functions; execution of the policies and programs administered by the Packers and Stockyards Administration; review and evaluation of program operations for uniform, effective, and efficient administration of the Packers and Stockyards Act; and maintenance of relations and communications with producer and industry groups.

(1) *Administrator.* The Secretary of Agriculture has delegated responsibility for administration of the Packers and Stockyards Act to the Administrator who is responsible for the general direction and supervision of programs and activities assigned to the Packers and Stockyards Administration except such activities as are reserved to the Judicial Officer (32 FR 7468). The Administrator reports to the Assistant Secretary for Marketing and Inspection Services.

(2) *Deputy Administrator.* The Deputy Administrator assists the Administrator in the overall responsibility for the general direction and supervision of programs and activities assigned to the Packers and Stockyards Administration.

(3) *Assistant to the Administrator.* The Assistant to the Administrator participates with the Administrator and Deputy Administrator in the development and analysis of policies and programs, and directs the management support services and related activities of the Packers and Stockyards Administration.

(4) *Director, Industry Analysis Staff.* The Director of the Industry Analysis Staff participates with the Administrator and Deputy Administrator in the development and analysis of policies and programs and directs economic studies of structure and performance of the livestock, meat, and poultry marketing, processing, and wholesaling industries. The results of these studies are used to provide economic advice to the Administrator in developing overall policy on antitrust matters and effects of practices or impediments in the marketing system. The Director works closely with the Directors of the Packer and Poultry and the Livestock Marketing Divisions in connection with investigations to provide economic advice and expert testimony in trials and administrative hearings. The Director also coordinates activities and works closely with the Federal Trade Commission and Justice Department in studying the effects of mergers and antitrust matters in the livestock, meat packing and poultry industries.

(c) *Packer and Poultry Division.* This Division carries out the enforcement of the provisions of the Packers and Stockyards Act relating to packers and live poultry dealers and handlers. The responsibilities and functions include: Determination of applicability of the provisions of the Act to individual packer and poultry operations; surveillance of these operations; investigation of complaints; initiation of formal proceedings, when warranted, to correct illegal practices; and maintenance of working relationships with the meat packer and poultry industries. These responsibilities and functions are accomplished with programs and activities directed through the Livestock Procurement Branch, Meat Merchandising Branch, and Poultry Branch. The Division Director participates with the Administrator and Deputy Administrator in the development and evaluation of policies and programs to fulfill the Agency's responsibilities and functions. The Director implements and directs the policies and programs pertaining to the Packer and Poultry Division through the three branches.

(d) *Livestock Marketing Division.* This Division enforces those provisions of the Packers and Stockyards Act relating to stockyard owners, market agencies, and dealers. The responsibilities and functions include: determination of the applicability of the jurisdiction, bonding, financial and trade practice provisions of the Act to individual operations; supervision of the installation, maintenance, and testing of scales; surveillance and investigations of stockyards, market agencies, and dealers; initiation of formal proceedings, when warranted, to correct illegal practices; and maintenance of working relationships with producer and industry groups. These responsibilities and functions are accomplished with programs and activities directed through the Financial Protection Branch, Marketing Practices Branch, and Scales and Weighing Branch. The Division Director participates with the Administrator and Deputy Administrator in the development and evaluation of policies and programs to fulfill the Agency's responsibilities and functions. The Director implements and directs the policies and programs pertaining to the Livestock Marketing Division through the three branches.

(e) *Field Services.* (1) The field services of the Packers and Stockyards Administration is divided into 12 regional offices. These offices are responsible for supervision of operations of stockyard companies,

market agencies, dealers, packers and live poultry dealers and handlers to assure compliance with the Act. They formulate recommendations relating to the enforcement of the Act; receive and investigate complaints, including reparation complaints; audit books, records, and reports of persons subject to the Act; conduct investigations to determine the existence of and develop evidence of unfair, deceptive, and discriminatory trade practices; prepare investigative reports and recommend corrective action; assist in the prosecution of cases; review applications for registration and rate changes for accuracy and compliance; and maintain relationships with producers, the trade, States and other groups interested in the welfare of the livestock, meat packing, and poultry industries concerning enforcement of the Act.

(2) The addresses and the States covered by these offices, which are under regional supervisors, are as follows:

Atlanta—Room 338, 1720 Peachtree Street, NW., Atlanta, Georgia 30309 (Alabama, Florida, Georgia, South Carolina)
Bedford—Turnpike Road, Box 101E, Bedford, Virginia 25423 (District of Columbia, Delaware, Maryland, North Carolina, Virginia, West Virginia)
Denver—208 Livestock Exchange Building, Denver, Colorado 80216 (Colorado, Montana, New Mexico, Utah, Wyoming)
Fort Worth—Room 6A36, Federal Building, 819 Taylor Street, Fort Worth, Texas 76102 (Oklahoma, Texas)
Indianapolis—Room 434 Federal Building and U.S. Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204 (Illinois, Indiana, Kentucky, Michigan, Ohio)
Kansas City—828 Livestock Exchange Building, Kansas City, Missouri 64102 (Kansas, Missouri)
Lawndale—15000 Aviation Boulevard, Room 2W6, P.O. Box 6102, Lawndale, California 90261 (Arizona, California, Hawaii, Nevada)
Memphis—Room 459, Federal Building, 167 Main Street, Memphis, Tennessee 38103 (Arkansas, Louisiana, Mississippi, Tennessee)
North Brunswick—825 Georges Road, Room 303, North Brunswick, New Jersey 08902 (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont)
Omaha—909 Livestock Exchange Building, Omaha, Nebraska 68107 (Iowa, Nebraska)
Portland—9370 S.W. Greenburg Road, Suite E, Portland, Oregon 97223 (Alaska, Idaho, Oregon, Washington)
South St. Paul—208 Post Office Building, Box 8, South St. Paul, Minnesota 55075 (Minnesota, North Dakota, South Dakota, Wisconsin)

§ 204.3 Delegation of Authority.

(a) *Deputy Administrator.* Under the direction of the Administrator, the Deputy Administrator is hereby delegated authority to perform all the duties and exercise all the functions and powers which are now or which may hereafter be, vested in the Administrator (including the power of redelegation).

(b) *Division Directors.* The Directors of the Industry Analysis Staff, the Livestock Marketing Division, and the Packer and Poultry Division, under administrative and technical direction of the Administrator and the Deputy Administrator, are hereby individually delegated authority, in connection with the respective functions assigned to each of said organizational units in § 204.2 to perform all the duties and to exercise all the functions and powers which are now, or which may hereafter be, vested in the Administrator (including the power of redelegation) except such authority as is reserved to the Administrator and Deputy Administrator under paragraph (g) of this section.

(c) *Regional Supervisors.* (1) The Regional Supervisors of the Packers and Stockyards Administration are hereby individually delegated authority under the provisions of section 402 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 222), to issue special orders pursuant to the provisions of section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)), and, with respect thereto, to issue notices of default provided for in section 10 of the Federal Trade Commission Act (15 U.S.C. 50); to notify persons deemed to be subject to the bonding requirements in 7 U.S.C. 204 of their obligations to file bonds or trust fund agreements in conformity with regulations issued under this chapter including authority to determine that a bond is inadequate under § 201.30(f) of this chapter and to give notice to the person of the amount of bond required; to notify persons deemed to be subject to the reporting requirements in § 201.97 of this chapter of their obligations to file annual reports; and to grant reasonable requests for extensions of 30 days or less for the filing of such annual reports.

(2) The Regional Supervisors are hereby individually delegated authority, when there is reason to believe that there is a question as to the true ownership of livestock sold by any person, to disclose information relating to such questionable ownership to any interested person.

(d) *Investigative employees.* All employees of the Packers and Stockyards Administration assigned to or responsible for investigations in the enforcement of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), or the enforcement of the Truth-in-Lending Act (15 U.S.C. 1601–1665), with respect to any activities subject to the Packers and Stockyards Act, are hereby individually delegated authority under the Act of January 31, 1925, 43 Stat. 803, 7 U.S.C. 2217, to administer to or take from any person an oath, affirmation, or affidavit whenever such oath, affirmation, or affidavit is for use in any prosecution or proceeding under or in the enforcement of the aforementioned Acts. This authority may not be redelegated and will automatically expire upon the termination of the employment of such employees with the Packers and Stockyards Administration.

(e) *Concurrent authority.* No delegation prescribed herein shall preclude the Administrator or Deputy Administrator from exercising any of the powers or functions or from performing any of the duties conferred upon them, and any such delegation is subject at all times to withdrawal or amendment by the Administrator or Deputy Administrator or the Division Director responsible for the function involved.

(f) *Prior delegations.* All prior delegations and redelegations of authority relating to any function or activity covered by these delegations of authority shall remain in effect except as they are inconsistent herewith or are hereafter amended or revoked. Nothing herein shall affect the validity of any action heretofore taken under prior delegations or redelegations of authority or assignment of functions.

(g) *Reservations of authority.* It is hereby reserved to the Administrator and Deputy Administrator authority with respect to proposed rulemaking and final action for the issuance of regulations (§ 201.1 of this chapter *et seq.*), rules of practice governing proceedings (§ 202.1 of this chapter *et seq.*), and statements of general policy (§ 203.1 of this chapter *et seq.*), and the issuance of moving papers as prescribed in the rules of practice governing formal adjudicatory administrative proceedings instituted by the Secretary (7 CFR Part 1, Subpart H, § 1.133); and the authority to make final determinations in accordance with the provisions of 7 CFR Part 1, Subpart A, as to the availability of official records and information made or obtained in connection with the administration of the Packers and Stockyards Act which are considered exempt from disclosure under § 204.7 of this part. Further, authority to issue subpenas (7 U.S.C. 222 and 15 U.S.C. 49) is reserved to the Administrator and Deputy Administrator.

§ 204.4 Public inspection and copying.

(a) Facilities for public inspection and copying of the indexes and materials required to be made available under 7 CFR 1.2(a) will be provided by the Packers and Stockyards Administration during normal hours of operation. Requests for this information should be made to the Freedom of Information Act Officer, Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250.

(b) Copies of such materials may be obtained in person or by mail. Applicable fees for copies will be charged in accordance with the regulations prescribed by the Director of Information, Office of Governmental and Public Affairs, USDA.

§ 204.5 Indexes.

Pursuant to the regulations in 7 CFR 1.4(b), the Packers and Stockyards Administration will maintain and make available for public inspection and copying current indexes of all material required to be made available in 7 CFR 1.2(a). Notice is hereby given that publication of these indexes is unnecessary and impractical, since the material is voluminous and does not change often enough to justify the expense of publication.

§ 204.6 Requests for records.

(a) Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a). Authority to make determinations regarding initial requests in accordance with 7 CFR 1.4(c) is delegated to the Freedom of Information Act Officer of the Packers and Stockyards Administration. Requests should be submitted to the FOIA Officer at the following address: Freedom of Information Act Officer (FOIA Request), Packers and Stockyards Administration, United States Department of Agriculture, Washington, D.C. 20250.

(b) The request shall identify each record with reasonable specificity as prescribed in 7 CFR 1.3.

(c) The FOIA Officer is authorized to receive requests and to exercise the authority to (1) make determination to grant requests or deny initial requests; (2) extend the administrative deadline; (3) make discretionary release of exempt records; and (4) make determinations regarding charges pursuant to the fee schedule.

§ 204.7 Appeals.

Any person whose request under § 204.6 of this part is denied shall have the right to appeal such denial in accordance with 7 CFR 1.3(e). Appeals shall be addressed to the Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

[FR Doc. 84-31020 Filed 11-26-84; 8:45 am]
BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 318 and 319

[Docket No. 81-035F]

Cooked Italian Sausage and Curing Agents in Italian Sausage

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the standard of identity and composition for Italian sausage by allowing the addition of curing agents to Italian sausage and requiring that such product be prominently labeled as "cured." It also allows Italian sausage to be smoked and requires that the terms "smoked" and "cooked" be prominently displayed in the product name. This rule clarifies the definition of cooked Italian sausage to reflect the amount of water content allowed in that product. It also clarifies the restriction that antioxidants are only permitted for use in "fresh" (uncured) Italian sausage. This amendment is necessary because many producers of Italian sausage have found the current definition of cooked Italian sausage to be confusing.

EFFECTIVE DATE: January 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Hibbert, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION: .

Executive Order 12291

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 milion or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of Unites States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the promulgation of this final rule will result in no additional costs to the Government or to any segment of the public. This rule merely clarifies the existing regulation and amends the standard to conform with present industry practice; it formalizes the practices of 65 plants producing cooked Italian sausage, 13 plants producing cured Italian sausage, and 23 plants producing both cooked and cured Italian sausage. The limitation of antioxidants to "fresh" Italian sausage will not adversely affect the industry due to the fact that antioxidants are now being used only in "fresh" Italian sausages. Permitting the preparation of a "smoked" Italian sausage simply allows processors the option of producing such a product.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). There will be no economic impact on small entities since the effect of this rule will be limited to clarification of the existing regulation and amendment of the standard to conform with present industry practice. There are 797 plants which produce Italian sausage products, 65 of which produce cooked Italian sausage, 13 which produce cured Italian sausage products, and 23 which produce both cooked and cured Italian sausages. Antioxidants are used in "fresh" Italian sausage only and not in cured Italian sausages. Allowing the preparation of a "smoked" Italian sausage gives processors the option of producing such a product; it imposes no new regulatory requirement on industry.

Background

On July 14, 1972, the Department published a proposal in the **Federal Register** (37 FR 13803) to establish standards of identity and composition for Italian sausage. After consideration of the comments received in response to the proposed standards, and upon a review of products labeled "Italian Style Sausage" and "Italian Brand Sausage," a final rule establishing a standard of composition for Italian sausage products was published in the **Federal Register** on January 19, 1976 (41 FR 2629).

In developing the standard for Italian sausage, primary consideration was given to: (1) Species of meat used, (2) fat content of the meat, (3) spices and flavorings normally used, and (4) trichinae control.

While the use of curing agents in this type product was mentioned in the comments on the proposed standard, no information was received indicating the relative significance of cured Italian sausage as compared to uncured Italian sausage. It appeared that cured Italian sausage was produced only in very small amounts and was not a common type of Italian sausage. Thus, no provision was made in the standard for cured Italian sausage. Since the standard was published, the Food Safety and Inspection Service (FSIS) has learned from a variety of sources, that the use of sodium nitrite and potassium nitrite in "Italian Sausage" is a common and longstanding practice of domestic producers, some as long as 50 or 60 years. It was also learned that these two substances are traditional ingredients of this product as made in Northern Italy and Sicily.

The Federal meat inspection regulations currently permit the use of antioxidants in Italian sausage, but antioxidants are not used in cured Italian sausages and are not permitted in most other cured sausage products. This rule will amend the chart in 9 CFR 318.7(c)(4) under the class of substance "Antioxidants and oxygen interceptors" to clarify that antioxidants are permitted only in "fresh" (uncured) Italian sausage.

Many firms have long produced a precooked Italian sausage. This type of product was provided for in the standards for Italian sausages at 9 CFR 319.145 (a), (b), and (c). Cooked Italian sausage is specifically addressed in 9 CFR 319.145(c), which states generally that if Italian sausage products are cooked by the producer, determination of compliance with the standards of composition found in paragraphs (a) and (b) of § 319.145 shall be based upon the uncooked product. This means that the product before cooking must comply with all requirements for Italian sausage contained in 9 CFR 319.145 (a) and (b). Producers of Italian sausage apparently have not understood whether the limit on water content contained in 9 CFR 319.145(b)(2) applied to the cooked or the uncooked product.

It is intended that all requirements contained in 9 CFR 319.145 (a) and (b), including the limit on water content contained in § 319.145(b)(2), be met prior to the product being cooked. To clarify this intent, the Agency is amending 9 CFR 319.145(c) to specifically state that all the requirements of § 319.145 (a) and (b), including the water content limits of § 319.145(b)(2), are to be complied with prior to the product being cooked.

FSIS published a proposal in the Federal Register on September 20, 1982 (47 FR 41397), to amend 9 CFR 319.145 to permit addition of the curing agents of sodium nitrite and potassium nitrite to Italian sausage. The amount of curing agent allowed would be regulated by the requirements in 9 CFR 318.7(c)(4).

Those products containing the curing agent will be required to prominently display on the label the term "cured" in the product name in the same size and style of lettering as the other words in the product name.

The proposed regulation also requires that cooked Italian sausage products be prominently labeled with the term "cooked" in the product label in the same size and style of lettering as the other words in the product name. FSIS also proposed to amend the Italian sausage standard to allow for "smoked" Italian sausages, giving processors the option of producing such sausages. The word "unsmoked" was therefore proposed to be deleted from the definition of Italian sausage in 9 CFR 319.145(a), and 319.145(c) was proposed to be amended to state that the requirements of § 319.145 (a) and (b), including the water content of § 319.145(b)(2), are to be met prior to the product being smoked.

The comment period closed on November 19, 1982; the Agency received 41 comments on the proposal to allow curing agents in Italian sausage. In addition to those 41 comments, the October 1982 edition of "Nutrition Intelligence" (published by Manning, Selvage, and Lee, Inc., 1750 Pennsylvania Ave., NW., Washington, DC 20006) contained comments on the proposal.

The majority of comments addressed 4 major issues:

1. The addition of curing agents to Italian sausage.
2. The addition of antioxidants to Italian sausage.
3. The amount of added water in cooked Italian sausage.
4. Labeling of cooked, cured, or smoked Italian sausage.

1. Cured Italian Sausage

Thirty comments were received addressing the addition of curing agents to Italian sausage.

Twenty comments were from consumers who oppose the addition of cures or any additives to Italian sausage. Four of these were from California, and they discussed the possible threat of nitrosamine formation in cured Italian sausage. The group consisted of one M.D., a Public Health Nutritionist, and two Registered Dietitians. The doctor and one dietitian included a list of references.

The Agency is aware of concerns regarding nitrosamine formation in cured products. On October 18, 1977, the Department published in the Federal Register (42 FR 55626) a notice requesting data on whether nitrates and/or nitrites used in the production of cured products result in the formation of carcinogenic nitrosamines during ordinary processing and/or preparation of products intended for human consumption. The notice stated that "The administrator has determined that nitrates and nitrites as currently used in manufacturing cured meat products have the potential of interacting with components of the meat to form carcinogenic nitrosamines. As a result, he has established a program for obtaining from the industry information required to resolve definitive questions about the safety of the continued use of nitrites and nitrates in such products." This notice established a deadline of October 18, 1978, for submission of data pertaining to cooked sausages.

The Department received and reviewed data on the occurrence of nitrosamines in cured sausages and concluded that nitrosamines were not found in cooked, cured sausages. Because "Cured Italian Sausage" is not heated to the degree that bacon is before eating, the formation of nitrosamines was not expected. Data reviewed by the Department substantiates the belief that "Cured Italian Sausage" presents no danger to the consumer of nitrosamine ingestion. When cures are added to Italian sausage, the product will be labeled "Cured Italian Sausage." This will highlight the difference between cured and uncured sausage so that the consumer may choose between them.

2. Antioxidants

Twelve comments were received relating to the use of antioxidants in Italian sausage.

One comment from a manufacturer supported the proposed limitation of antioxidants to fresh Italian sausage only. Two trade associations supported the use of antioxidants in cooked Italian sausage. The proposal intended to clarify that antioxidants would be allowed only in "fresh" Italian sausage. The use of the word "fresh" in this case means "uncured" and not "uncooked." Italian sausages made without curing agents must comply with the standard before cooking. The standard allows use of antioxidants in the uncured ("fresh") product; uncured Italian sausage (cooked or uncooked) may contain antioxidants.

3. Added Water

Thirteen comments were received relating to the water limitation in Italian sausage. Nine comments from industry requested 10 percent added water in cooked Italian sausage; two trade associations supported this request. One company proposed a standard of 3 percent added water in Italian sausage instead of 3 percent water at formulation. The industry comments favoring 10 percent added water based their comments on the standard for some cooked sausage which allows 10 percent added water.

The Department notes that cooked sausages prepared under the standard (9 CFR 319.180) are always sold in the cooked form. The product by nature is a fully cooked, ready-to-eat product; these are not marketed to the consumer in an uncooked state. Fresh sausages, on the other hand, are commonly offered uncooked and the consumer must fully cook the product. Precooked sausages of this variety have been offered to the consumer as a "convenience food" needing only to be browned or warmed before serving. The addition of 10 percent water to cooked Italian sausage products would greatly alter their physical characteristics as compared to the product cooked at home. The requirement that the cooked product meet the standard for the uncooked product assures consumers of a similar consistency in the finished sausage no matter whether it is cooked at home or at the plant.

The term "Italian sausage" traditionally refers to an uncooked, uncured sausage. The intent of the original "Italian Sausage" regulation in 1976 was to preserve the "fresh" identity of the product. Current meat inspection regulations and labeling policy require that cooked cured sausage with up to 10 percent added water be labeled "Cooked Sausage with Italian Seasoning." Cooked, uncured sausages containing up to 10 percent added water may be labeled with descriptive names such as "Cooked Sausage made with Pork," "Cooked Sausage made with Beef," "Smoked Sausage made with Pork," or "Cooked Sausage made with Beef and Pork." This policy sets a distinction in the marketplace whereby the consumer is able to distinguish between the traditional product and a water added product. This is the same procedure followed for all precooked sausages normally sold uncooked and limited to 3 percent water on formulation; the regulation is consistent with previous regulations and policies.

4. Labeling

Ten comments were received from industry and trade associations regarding the labeling of Italian sausage. They proposed that the terms "Cooked," "Cured," and "Smoked" be reduced to ½ the type size of the primary type because the name "Cured Smoked Hot Italian Sausage" could become too long. They also proposed that the terms be used as qualifiers placed before, behind, above, or below the name "Italian sausage."

The Department believes that the terms "Cooked," "Cured," and "Smoked" should be in the same type size as the primary product label to adequately inform the consumer that a product so treated is different from "Italian Sausage." If these terms were reduced in size, the consumer might not notice the difference when comparing several items in a display counter. These terms must be of the same size and style as "Italian Sausage," but they need not appear on the same line. The product name may be spread over two or three lines so long as the terms in the name are still contiguous, such as "Cooked, Cured Hot Italian Sausage."

5. Miscellaneous

A flavor manufacturer commented that liquid smoke should be allowed in Italian sausage in accordance with Standards and Labeling Policy Memo #040, and that the product be labeled as "smoked." Policy memo #040 allows products to be labeled as "smoked" which have been exposed to a vapor of natural liquid smoke. The transformation of liquid smoke into a vapor by mechanical means (mist, fog, or gas) results in products that, after analyses of processing procedures and product sampling, possess the same smoke characteristics as products resulting from the traditional smoking process. The Department agrees that Policy Memo #040 would apply to Italian Sausage as well as to other products.

A sausage manufacturer commented that the words "Italian" and "Sausage" should be allowed to be separated such as in "Italian Smoked Sausage" instead of "Smoked Italian Sausage."

The Department observes that the standard name of the product is "Italian sausage." Processes which are applied to Italian sausage modify it but do not change it. It still remains an Italian sausage which has been smoked, cooked, or cured, not a smoked sausage which has been made "Italian," or a cooked sausage which has been made "Italian," or a cured sausage which has been made "Italian." Therefore, the words "Italian" and "Sausage" remains together in the final rule as proposed.

Additional comments were made in "Nutritional Intelligence," a monthly newsletter. They questioned why the Agency was proposing to allow the addition of nitrites to a product before releasing a position paper on two National Academy of Sciences nitrite documents.

This rulemaking is primarily a housekeeping matter related to existing industry practices. It is separate from more general considerations of the safety aspects of nitrites.

After careful consideration of the available data and the comments received, the Department has determined that the proposal should be published as a final rule.

For the reasons set out in the preamble, Part 318 and Part 319 (Subpart E) of Title 9, Code of Federal Regulations, are amended as set forth below.

Indexing Terms: As required by 1 CFR 18.20, following are the index terms for this regulation:

List of Subjects

9 CFR Part 318

Food additives, Meat inspection, Preparation of Products, Meat and poultry products.

9 CFR Part 319

Standards of identity, Meat and meat food products, Meat inspection, Food labeling.

1. The authority citation for Parts 318 and 319 are to read to follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended, (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended, (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise stated.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

§ 318.7 [Amended]

2. The chart following § 318.7(c)(4) is amended under the class of substance "Antioxidants and oxygen interceptors" for the products "Fresh pork sausage, brown and serve sausages, Italian sausage products, pregrilled beef patties, and fresh sausage made from beef or beef and pork," by adding the word "fresh" before "Italian sausage products" to read: "Fresh pork sausage, brown and serve sausages, fresh Italian sausage products, pregrilled beef patties, and fresh sausage made from beef or beef and pork."

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

3. Section 319.145 is amended by removing the words "uncured" and "unsmoked" from the first sentence of paragraph (a); by adding a new paragraph (a)(4); and by revising all of paragraph (c). The amended and revised portions of § 319.145 read as follows:

§ 319.145 Italian sausage products.

(a) Italian sausage products are cured or uncured sausages containing at least 85 percent meat, or combination of meat and fat, with the total fat content constituting not more than 35 percent of the finished product. * * *

* * * * *

(4) Italian sausage products made in conformance with the provisions of paragraphs (a) (1), (2), and (3) of this section, and with paragraphs (b) and (c) of this section, may contain sodium nitrite or potassium nitrite in amounts not to exceed those allowed in the chart following § 318.7(c)(4), provided that such products are labeled with the word "cured" in the product name, such as "Cured Italian Sausage." The word "cured" shall be displayed on the product label in the same size and style of lettering as other words in the product name.

* * * * *

(c) If Italian sausage products are cooked or smoked, determination of compliance with the provisions of paragraphs (a) and (b) of this section shall be based on the uncooked or unsmoked product. The product before cooking or smoking shall contain no more than 3 percent water as specified in paragraph (b)(2) of this section. Product which is cooked shall be labeled with the word "cooked" in the product name, such as "Cooked Italian Sausage" or "Cooked Cured Italian Sausage." Product which is smoked shall be labeled with the word "smoked" in the product name, such as "Smoked Italian Sausage" or "Smoked Cured Italian Sausage." The words "cooked" and "smoked" shall be displayed on the product label in the same size and style of lettering as other words in the product name.

Done at Washington, D.C. on September 26, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 84-31021 Filed 11-26-84; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CE-RM-82-130]

Energy Conservation Program for Consumer Products; Test Procedures for Dishwashers

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends its test procedures for dishwashers by revising the definition of water heating dishwashers, and by making a few other related changes. Test procedures are one part of the energy conservation program for consumer products established pursuant to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act. Among other program elements, the legislation requires that standard methods of testing be prescribed for covered products.

EFFECTIVE DATE: December 27, 1984.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE-113.1, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127; or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC-12, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION:

A. Background

On October 1, 1977, Section 301 of the Department of Energy Organization Act (DOE Act) (Pub. L. 95-91) transferred the functions of the Federal Energy Administration (FEA) concerning the energy conservation program for consumer products to the Department of Energy (DOE). The energy conservation program for consumer products was established by the FEA pursuant to Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163). Subsequently, EPCA was amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619). Among other program elements, section 323 of EPCA, as amended, requires that standard methods of testing be prescribed for covered products, including dishwashers. Test procedures for dishwashers appear at Appendix C to Subpart B of 10 CFR Part 430.

Test procedures for dishwashers were first published on August 8, 1977. [42 FR 39964, August 8, 1977). Subsequently, three manufacturers of dishwashers that use 120 °F inlet water requested DOE to exclude their dishwashers from the prescribed test procedures.

The Hobart Corporation (Hobart) filed an application for exception with the DOE Office of Hearings and Appeals (OHA) on September 5, 1979, for its Model KD-19 dishwasher. OHA granted an exception to Hobart on February 26, 1980. Norris Industries (Norris) applied to the Assistant Secretary for Conservation and Renewable Energy for a test waiver on November 5, 1980. The Secretary granted the waiver for Norris' LER series dishwashers [46 FR 35719, July 10, 1981). The General Electric Company (GE) applied for a test waiver for its "T" series dishwasher on November 6, 1981. The Secretary granted a waiver to GE for its "T" series dishwasher on May 28, 1982. [47 FR 33543, May 28, 1982). As required by § 430.27(h) on March 3, 1983, DOE amended the dishwasher test procedures so as to eliminate the need for continuation of the test procedure waivers. [48 FR 9202, March 3, 1983).

After the publication of the March 1983 rule, two dishwasher manufacturers, GE and Hobart, commented to DOE that their dishwashers which are designed to operate with 120 °F inlet water would not comply with the definition of water heating dishwashers because they do not provide internal water heating in the rinse phase of the normal cycle. Subsequently, DOE proposed to amend the water heating dishwasher definition. [49 FR 23142, June 4, 1984). A public hearing was held on June 21, 1984.

B. Discussion

1. *Heated Rinse Cycle.* The June 1984 notice proposed amendments to the definition of a water heating dishwasher to delete the requirement for internal water heating in "at least one rinse phase of the normal cycle." DOE included this requirement in the March 1983 final rule based on comments received on the May 1982 proposed rule. In commenting on the May 1982 proposed rule, Design and Manufacturing Corporation (D&M), Sears Roebuck and Co. (Sears) and Whirlpool Corporation (Whirlpool) stated that at least one rinse phase must be thermostatically controlled. As discussed above, the test procedures for

dishwashers were amended to include test procedures for water heating dishwashers in order to eliminate the need for continuation of the test procedure waivers.[1] After publication of the March 1983 final rule, both GE and Hobart commented to DOE that their water heating dishwashers do not comply with the definition.

GE and Hobart agreed with the June 1984 proposal (GE, No. 12, at 2; and Hobart, No. 15, at 1).[2]

Whirlpool and Thermador/WasteKing (WasteKing) recommended that the requirement for a heated rinse not be changed in order to assure satisfactory dishwashing performance. (Whirlpool, No. 14, at 1; and WasteKing, No. 16, at 1). Whirlpool found in testing dishwashers with 120 °F water, which was theromostatically heated to 140 °F in only one wash phase, that the drying performance had degraded in comparison to dishwashers with 140 °F water in all fill phases. (Whirlpool, 5–21/1). WasteKing stated that its test results support Whirlpool's.

In responding to these comments by Whirlpool and WasteKing, GE cited the March 1983 final rule in which the Department concluded that manufacturers should be allowed to determine, for themselves, whether the dishwashing performance for water heating dishwashers is acceptable. (March 3, 1983, 48 FR 9204). *See* GE, No. 12, at 2.

Hobart also stated that the manufacturer should be allowed to design a dishwasher which it believes will satisfy to performance requirements of its customers. Hobart illustrated manufacturer responsiveness by citing how an earlier design of its KitchenAid dishwasher had been redesigned in order to meet consumer demands for a quicker drying period. *See* Hobart, No. 15, at 1, 2. Based on all the relevant information, including review of these comments, DOE continues to believe that manufacturers should be free as much as possible to design products to satisfy their customers' requirements. Accordingly, today's final rule does not include a requirement for a heated rinse. This position is further supported by the two waivers which have been granted in this regard.

2. *Inlet Water Temperature.* GE and Maytag proposed that the definition of water heating dishwasher be changed to include language stating that the manufacturer recommends a nominal inlet water temperature of 120 °F. (GE, 6–21/2; and Maytag, No. 13, at 2). Maytag recommended the change so as to assure that energy consumption claims would accurately reflect the energy use of the dishwasher as recommended by the manufacturer and used by the consumer. GE also recommended that a water heating dishwasher is one "that the manufacturer recommends is able to operate at a nominal inlet water temperature of 120 °F * * * " *See* GE, 6–21/2.

Hobart also commented that while the definition may be adequate for dishwashers currently distributed in the United States, it may need to be modified for an inlet water supply of less than 120 °F as future designs change. (Hobart, No. 15, at 2). Specifically, Hobart cited European dishwashers "which are designed to be plumbed to cold water and * * * employ thermostatic internal water heating but with a 230 VAC power source." Subsequent to the close of the comment period of this rulemaking, DOE received a petition for test procedure waiver for this type of dishwasher.[3]

DOE has reviewed these comments and agrees with each. Today's final rule amends the definition of water heating dishwasher to include the language that the manufacturer directs that nominal inlet water temperature of 120 °F should be used. However, Hobart's comments regarding dishwashers designed to be plumbed to cold water will be addressed in a separate rulemaking action since it is an issue outside of this rulemaking.

3. *Wash Water Temperature.* Whirlpool (Whirlpool 6–18/1, No. 14 at 1, and No. 14a, at 1, 2) proposed that the test procedure require the temperature of the circulating water to reach 140 °F in the thermostatically controlled phases. Whirlpool contends that this is necessary to ensure adequate performance, and as a safeguard against inadequate water heating. Whirlpool recommended "that the water temperature be measured in the lower rack at a height of six inches above the bottom of this rack within a 12 inch diameter, centered in the lower dishrack". To support this proposal Whirlpool cited its test results where a competitor's water heating dishwasher was only able to attain 135 °F in the wash cycle, and several dishwasher detergent manufacturers, recommendations that the water temperature be at least 140 °F. Based upon dishwasher detergent manufacturers' recommendations for 140 °F water temperature, Whirlpool believes the test procedure should include a temperature requirement for the circulating water. In addition, Whirlpool believes this requirement is necessary since its test results of a competitor's dishwasher show that the competitor's dishwasher is not able to provide the recommended 140 °F water temperature.

GE, WasteKing and Hobart each rejected Whirlpool's proposal. (GE, No. 12, at 2; Hobart, No. 15, at 2; and WasteKing, No. 16, at 2). GE states that this is a performance issue which, in the March 1983 final rule, DOE left to manufacturers to determine. Hobart also took the position that the level to which a dishwasher heats the water should be left to the manufacturer. WasteKing rejected Whirlpool's proposal, commenting that its dishwasher design does not heat the main body of water directly and does not control water temperature. Rather, the dishwasher generates steam to heat the dishes and indirectly heats the water. WasteKing's heating control mechanism does not guarantee the exact temperature of the water during circulation. Furthermore, this proposal was raised in response to DOE's May 1982 notice and rejected by DOE in the March 1983 final rule. *See* 48 FR 9203, March 3, 1983. In addition, DOE raised the WasteKing design as possibly not meeting the Whirlpool proposal at the June 1984 public hearing and requested that Whirlpool comment on the WasteKing design vis-a-vis its proposal for measuring the temperature of the heated circulating water. Whirlpool agreed to this request. (*See* Whirlpool 6–21/1). However, in its written response Whirlpool did not respond to this request.

DOE continues to believe, as in the March 1983 final rule, that a requirement to heat water to a specified minimum temperature is unnecessarily restrictive in the test procedure and could exclude steam dishwashers from the water heating dishwasher category. Therefore, today's final rule does not include a requirement of a rise to a specified temperature for water heated by a water heating dishwasher.

[1] OHA granted an exception to Hobart on February 26, 1980, for its KD–19 dishwasher. The Secretary granted a waiver to GE for its "T" series dishwasher on May 28, 1982. Neither the KD–19 dishwasher or the "T" series dishwasher provide internal water heating in the rinse phase of the normal cycle.

[2] Comments on the rulemaking were given docket numbers. Citations to the comments provide the docket numbers, unless the comment was submitted as part of an oral presentation, in which case the citation is to the date and the numerical order of the presentation.

[3] On August 20, 1984, DOE received a petition for a test procedure waiver from ANDI Co. for its Favorit Model 263 and 265 dishwashers. These dishwashers are manufactured in Germany and operate on an electrical supply of 240 volts and are intended to use cold water input only.

4. *Test Load.* Whirlpool and Hobart recommended that a minimum number of eight place settings be specified for testing water heating dishwashers. (Whirlpool, No. 14, at 1; Hobart, No. 15, at 3). Hobart states that Association of Home Appliance Manufacturers (AHAM) Standard DW–1, referenced in Section 2.6.2 of the DOE dishwasher test procedures, is discretionary as to test load size and could affect test results.[4] Hobart goes on to state that test loads vary depending on which laboratory is conducting the testing. The test load ranges from eight place settings (generally used by Procter and Gamble) to 12 place settings (generally used for the AHAM test for full sized units). WasteKing agrees that the size of the test load should be added to the specification. (WasteKing, No. 16, at 2). However, WasteKing does not propose a test load size.

GE commented that such a provision is redundant because under the Federal Trade Commission (FTC) labeling program, standard dishwashers have a capacity of eight or more place settings while compact dishwashers have a capacity of less than eight place settings. (GE, No. 12, at 3). GE further states that since the current test procedures require the use of a dish load in accordance with AHAM Standard DW–1, they believe that the "requirement of a minimum of eight place settings is already established for 'standard' dishwashers." GE infers that all water heating dishwashers are standard dishwashers.[5]

DOE agrees that standard sized water heating dishwashers should be tested with eight place settings in order to eliminate any test variability due to the size of the test load. However, DOE believes that a requirement to test water heating dishwashers with a minimum of eight place settings would be too restrictive since compact water heating dishwashers could be manufactured at a later date. DOE believes this amendment will standardize the testing and provide flexibility in the test procedure if compact water heating dishwashers were manufactured at a later date.

5. *Thermostatically Controlled Heating.* The June 1984 notice proposed retaining the requirement that water heating dishwashers be thermostatically controlled. Whirlpool, Hobart and WasteKing all commented in support of this proposal (Whirlpool, 6–21/1, No. 14 at 2, and No. 14a at 3; Hobart, No. 15, at 2; and WasteKing, No. 16, at 1). Maytag's proposed definition supports retaining the requirement for thermostatically controlled heating. *See* Maytag, No. 13, at 2.

In the June 1984 proposal, DOE asserted that "a key distinction between water heating dishwashers and other dishwashers is a control that shuts off the internal heater(s) after the water has been heated to a certain level." *See* 49 FR 23143, June 4, 1984. GE rejected DOE's assertion, claiming that this is a "restrictive and unnecessary design requirement", and that there is no certain water temperature level to be achieved. Rather, GE believes the temperature achieved is determined by the manufacturer in order to achieve acceptability of washing performance. (GE, 6–21/2).

Whirlpool contended that due to long pipe runs from the water heater to the dishwasher, the temperature of the water entering the dishwasher is reduced and that it is a hit or miss proposition as to what the heated water temperature in the dishwasher will be if one depends on a fixed time delay for water heating. Hobart, in its Final Arguments concerning its application for exception with the DOE Office of Hearings and Appeals for its KD–19 dishwasher (*see* Hobart, Final Argument, filed with DOE OHA, Case DEE–4459), stated that water heated to 120 °F in the water heater may be as low as 90 °F at the point of use. In addition, data submitted by Whirlpool in its Statement of Objections demonstrated that during the winter in certain areas of the country, the temperature may be lower than 90 °F. (See Whirlpool, Statement of Objection, filed with DOE, OHA, Case DEE–4459). Hobart commented on the June 1984 proposal that the thermostat provides "an assured environment to either raise the water temperature or avoid heating it more than necessary," and that this cannot be duplicated by mechanical timers.

GE states that for water heating dishwashers the amount of additional heating and the means to achieve it should depend upon the manufacturer's specification, and should not be a part of any standardized test procedure. GE further claims that its dishwashers using mechanical timer delay achieve excellent results. By knowing the characteristics of the dishwasher model, GE asserts that it is simply a matter of design to provide sufficient delay to assure excellent performance (GE, No. 12, at 3). Even if thermostatic controls were to provide greater control over the energy use performance of water heating dishwashers, DOE agrees with GE that water heating dishwashers should not be defined to require a restrictive design requirement such as thermostatic controls. As discussed above, DOE believes the market place should determine whether the dishwasher performance is acceptable, not the DOE test procedure. DOE accepts GE's arguments that a manufacturer should not be unnecessarily restricted by a standardized test method as to which design alternatives to consider. Thus, in today's final rule, DOE is deleting the requirement for thermostatic controls.[6]

3. *Miscellaneous.* The June 1984 notice proposed a new section (§ 2.7) to make clear which testing provisions applied to water heating dishwashers. In addition, DOE proposed certain minor technical and editorial changes in the June 1984 proposed rule.

Specifically, the parameter for the machine electrical energy consumption was proposed to be changed from "Me" to "M" in § 3.2.2. In § 4.2.1, the parameter for the per cycle water energy consumption using gas-heated water or oil-heated water was proposed to be changed from "We" to "Wg". Finally, in § 4.3.2, the parameter for the per cycle machine electrical energy consumption was proposed to be changed from "m" to "M".

D&M, Hobart, and Whirlpool commented in favor of each of the proposed changes. (D&M, No. 11, at 1; Hobart, No. 15, at 2; and Whirlpool, 6–21/1). GE also approved the inclusion of § 2.7 in the test procedure. (GE, 6–21/2). Accordingly, DOE is adopting these proposed provisions in today's final rule.

C. Environmental, Regulatory Impact, and Small Entity Impact Reviews

1. *Environmental Review.* The Department has reviewed today's final rule in accordance with the National Environmental Policy Act of 1969

[4] AHAM standard DW–1 does not specify the number of place settings required; rather, it allows the testing facility to determine the number of place settings to be used.

[5] As Hobart stated (Hobart, No. 15, at 2) the current definition of water heating dishwashers may need to be modified as dishwashers are introduced into the market place that are designed to be plumbed to cold water. Likewise, there may be water heating dishwashers manufactured at some future date with a capacity of less than eight place settings. DOE believes that for compact water heating dishwashers, the number of place settings to be tested should be the capacity specified by the manufacturer.

[6] If a manufacturer were to recommend that the inlet water temperature be increased above 120 °F in order to achieve acceptable performance levels, then DOE believes the product would not meet the definition of water heating dishwater. This product should be tested, for the purpose of energy efficiency/use claims, with a nominal water temperature of 140 °F.

(NEPA) (42 U.S.C. 4321 et seq.), the Council of Environmental Quality Regulations implementing the procedural provisions of NEPA (40 CFR Part 1500 et seq.), and the Department's own NEPA guidelines (45 FR 20694, March 28, 1980, as amended by 47 FR 7976, February 23, 1982) to determine if an environmental assessment (EA) is required.

Today's final rule serves only to standardize the measurement of energy usage for dishwashers. The action of prescribing these revised test procedures will not result in any environmental impacts. Because it is clear that today's final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, DOE has determined that neither an EA nor an EIS is required.

2. *Regulatory Impact Review.* The final rule has been reviewed in accordance with Executive Order 12291 which directs that all regulations achieve their intended goals without imposing unnecessary burdens on the economy, on individuals, on public or private organizations, or on State and local governments. The Executive Order also requires that regulatory impact analyses be prepared for "major rules." The Executive Order defines a major rule as 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 in domestic or export markets.

This final rule would only make minor changes in the test procedures for dishwashers. Therefore, DOE has determined that this final rule does not come within the definition of a major rule.

In accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the final rule was submitted to OMB for review without a regulatory impact analysis. This rule has been reviewed by OMB in accordance with the procedures applicable to rules other than major rules.

3. *Small Entity Impact Review.* The Regulatory Flexibility Act (Pub. L. 96-354) requires that an agency prepare a final regulatory analysis to be available at the time the final rule is published. This requirement does not apply if the agency "certifies that the final rule will not have a significant economic impact on a substantial number of small entities."

This rule only affects manufacturers of dishwashers. There are not a substantial number of small entities that manufacture dishwashers. Moreover, the changes made would not have significant economic impacts. The changes clarify testing requirements and would not change the current testing burdens.

Therefore, pursuant to section 605(b), DOE certifies that this final rule would not have a "significant economic impact on a substantial number of small entities."

In consideration of the foregoing, Part 430 of Chapter II of Title 10, Code of Federal Regulations, is amended as set forth below.

(Energy Policy and Conservation Act, Pub. L. 94-163, as amended by Pub. L. 95-619; Department of Energy Organization Act, Pub. L. 95-91).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C. October 25, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

Appendix C—[Amended]

1. Appendix C to Subpart B of Part 430 is amended by revising § 1.6 to read as follows:

* * * * *

1.6 "Water heating dishwasher" means a dishwasher for which the manufacturer recommends operation at a nominal inlet water temperature of 120 °F and which can operate at that inlet temperature by providing internal water heating in at least one wash phase of the normal cycle.

* * * * *

2. Appendix C to Subpart B of Part 430 is amended by revising section 2.6.2 to read as follows:

* * * * *

2.6.2 Dishwashers to be tested at a nominal 120 °F inlet water temperature. The dishwasher shall be tested on normal cycle and the truncated normal cycle with a test load of eight place settings plus six serving pieces as specified in section 6.1.1 of AHAM Standard DW-1. If the capacity of the dishwasher, as stated by the manufacturer is less than eight place settings than the test load shall be that capacity.

* * * * *

3. Appendix C to Subpart B of Part 430 is amended by adding a new section 2.7 to read as follows:

* * * * *

2.7 Testing requirements. Provisions in this Appendix pertaining to dishwashers which operate with a nominal inlet temperature of 120 °F shall apply only to water heating dishwashers.

* * * * *

4. Section 3.2.2 to Appendix C to Subpart B of Part 430 is amended by removing the term "Me" for the machine electrical energy consumption and inserting in its place the term "M".

5. Section 4.2.1 to Appendix C to Subpart B of Part 430 is amended by removing the term "We" for per cycle water energy consumption and inserting in its place the term "Wg".

6. Section 4.3.2 to Appendix C to Subpart B of Part 430 is amended by removing the term "m" for the per cycle machine electrical consumption and inserting in its place the term "M".

[FR Doc. 84-30976 Filed 11-26-84; 8:45 am]
BILLING CODE 6450-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Interpretive Ruling and Policy Statement 84-1; Membership in Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement (IRPS 84-1).

SUMMARY: This IRPS addresses field of membership policy for Federal credit unions (FCU's). It updates two prior IRPS (82-3 and 83-2), includes NCUA's new policy on granting FCU membership to senior citizens and retirees and sets forth the Standard FCU Bylaws which affect field of membership. Field of membership policy is based on Section 109 of the FCU Act, 12 U.S.C. 109, which states that FCU membership "shall be limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district."

EFFECTIVE DATE: November 15, 1984.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Hattie Ulan, Staff Attorney, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: In September of 1983, the National Credit Union Administration Board (Board) directed that a comprehensive study of the Board's deregulation of the field of membership policy be conducted. As a result of the study, the Board concluded that a revised IRPS should be developed and published to all Federal credit unions consisting of a concise statement of the recent changes in field of membership policy. Section 109 of the FCU Act, 12 U.S.C. 1759, limits FCU membership to "groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community or rural district." Prior to April 1982, section 109 was interpreted by NCUA narrowly. The deregulation of field of membership policy essentially began in April 1982. The NCUA Board now interprets the FCU Act more broadly regarding field of membership. The primary intent of the newly expanded field of membership policy and the essential basis for all changes in the policy since April 1982 is to provide credit union service to new groups—to people who do not presently have credit union service available to them.

This new policy statement (IRPS 84–1) combines the two previous policy statements, IRPS 82–3 and IRPS 83–2, sets out modifications which have been made since their publication, incorporates several unwritten policies which address field of membership, and sets forth the new policy on service to senior citizens and retirees. Several of the recommendations made in the field of membership policy study are also incorporated in the new policy statement. Two bylaw provisions which affect field of membership are also addressed in the new IRPS. IRPS 82–3 and IRPS 83–2 are cancelled as of the effective date of IRPS 84–1. The Chartering and Organizing Manual for Federal Credit Unions (Manual), which was revised in 1980, is superseded to the extent that it conflicts with this IRPS. All other portions of the Manual remain in effect. The Manual is being updated to reflect the current field of membership policy. It will be published in the near future.

IRPS 84–1 is divided into four major sections. The first section is entitled *Purchase of Loans of Liquidating Credit Unions Under section 107(14).* This section appeared as part of IRPS 82–3. The Board's policy has not changed in this area. FCU's may offer membership services to members of liquidating credit unions whose loans the FCU has purchased pursuant to section 107(14) of the FCU Act, 12 U.S.C. 1757(14). IRPS 82–3 also addressed FCU purchase of notes of liquidating credit unions for investment value pursuant to section 107(13) of the FCU Act. This section is deleted from the new IRPS since it does not concern field of membership policy. FCU's retain the authority to purchase notes of liquidating credit unions pursuant to section 107(13) of the FCU Act. The aggregate balances of such notes may not exceed five percent of the purchasing credit union's total shares and undivided earnings according to section 107(13). This limitation does not apply to the purchase of loans when membership services are offered under section 107(14).

The second section of the IRPS is entitled *Bylaws Affecting Field of Membership.* The "once a member, always a member" Bylaw (Article II, section 5 of Standard Federal Credit Union Bylaws) has been in effect since 1968 and has not been changed. With this Bylaw, if an FCU board of directors so resolves, members can retain affiliation with their FCU even though they are no longer within the field of membership. The Bylaw defining immediate families (Article XVIII, section 2(a) of the Standard Federal Credit Union Bylaws) was deregulated in 1983. FCU's that wish to serve immediate family members must first ascertain that the field of membership provision of the FCU's charter includes family members. If family members are not included, the FCU may apply to the appropriate regional director for a charter amendment. The FCU then has three basic choices in defining family members. 1. The FCU may utilize Article XVIII, section 2(a) of the standard form of FCU bylaws, which defines members of their immediate families to mean "grandparents, parents, husband, wife, children, grandchildren, brothers and sisters living under the same roof and in the same household." 2. The FCU may adopt one of the standard Bylaw amendments set out in NCUA Letter No. 56 (April 10, 1981). These standard amendments expand the definition of immediate families. 3. The FCU may choose to narrow or expand this definition by adopting a standard bylaw amendment, in accordance with the procedures set out in NCUA Letter No. 73 (February 2, 1983), that allows the FCU's board of directors to develop its own definition of the term "members of their immediate families."

In general, family members of anyone within the field of membership may join the FCU. There is, however, an exception to this policy. When dealing with a student group, immediate family members, however defined, extends only to students who have established membership themselves (i.e., family members may join the credit union only if the student has joined). This policy emphasizes that FCU's should not add student groups merely to include the student's parents in the field of membership.

The third section of the IRPS is entitled *Multiple Group Charters.* This is the area of field of membership policy that has undergone the most change since deregulation of field of membership began. As previously indicated, section 109 of the FCU Act provides that FCU membership shall be limited to groups having a common bond of occupation or association or to groups within a well defined neighborhood, community or rural district. The Board interprets the first part of this provision to allow more than one occupational or associational group to be included in the field of membership of a Federal credit union, on the condition that each group has its own occupational or associational common bond. Accordingly, two types of multiple group charters exist pursuant to section 109 of the FCU Act, those involving occupational and/or associational groups and those involving community based groups. Occupational and/or associational multiple group charters are addressed first.

Prior to 1982, multiple group charters and mergers were limited to either occupational *or* associational groups (a multiple group of occupational *and* associational groups could not exist). Multiple groups were further limited in that the common bonds within the multiple group had to be similar. IRPS 82–3 deregulated field of membership so that it was no longer necessary to limit multiple groups to either the associational or occupational type. A multiple group now could be made up of both associational and occupational groups. The requirement for similar common bonds was also eliminated at that time. As indicated above, the requirement that each group have its own common bond remains intact. The regional directors have been delegated the authority by the board to grant or deny this type of multiple group charter.

Five additional requirements must be met before this type of multiple group charter or charter amendment will be granted. These are listed in the IRPS. The first three criteria appeared in IRPS 82–3 and have not changed. The fourth criteria has been established to avoid overlaps in fields of membership. The fifth criteria was a part of IRPS 83–2 and has been slightly modified.

An overlap exists when a group is eligible for membership in two or more credit unions. The fourth criteria requires that if the group requesting service is already eligible for membership in another credit union, they must provide justification as to why they no longer desire that service. Policy requires that every effort be made to avoid an overlap situation. Ideally, a group should be eligible for membership in only one credit union. (However, it is recognized that an individual may be eligible for membership in a number of credit unions.) FCU's are encouraged to work out overlap problems internally. If a resolution of the problem is not reasonably forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Circumstances to be considered are the nature of the problems, efforts to resolve the problems, financial impact on the credit union, the desires of the groups, and if applicable, the opinions of the state credit union supervisor and other interested parties. Although the fourth criteria is a new requirement for the granting of multiple group charters, NCUA policy on overlaps is unchanged. The addition of the fourth criteria will alert the regional directors to possible overlap situations before they occur.

The fifth criteria for a multiple group charter states that all of the groups must be within the operational area of the home or a branch office of the FCU. The definition of branch office as stated in IRPS 83–2 has been clarified. The policy on justification for adding new groups within the area of a branch office has been slightly modified. Under IRPS 83–2, the addition of a new group could not be used to justify a proposed branch office. A proposed branch office could only be justified on the basis of the current field of membership. This policy has been modified in IRPS 84–1 by changing the requirement that groups be within the well-defined area of *an existing branch office* to a requirement that they be within the operational area of a *branch office*. An FCU can now include new groups as partial justification for a proposed branch office if the proposed branch office will also improve credit union service to the existing field of membership. The new group alone is not enough to justify a proposed branch office. The current field of membership must comprise a significant portion of the total field of membership to be served initially by the proposed branch office. The old policy has been modified for two reasons. In many cases, it effectively denied convenient credit union service to existing fields of membership. In addition, it was difficult to enforce. The requirement that new groups be within the "operational area" of the home or a branch office is substituted for the previous requirement that they be within a "well-defined area" of such an office. Since the limitation is not necessarily a geographic one, operational rather than well-defined area seems more appropriate. As stated in the IRPS, "operational area" shall mean an area surrounding the home or a branch office that can reasonably be served by the applicant credit union as determined by the regional director. The operational area limitation should help to ensure that groups receive service from FCU's, not merely become a part of the field of membership.

One additional issue involving operational area needs to be addressed: the corporate headquarters issue. Under prior policy, when a corporate headquarters was located within the well-defined area of an FCU, the entire employee group could be included in the field of membership. When a majority of employees worked within the operational area but the corporate headquarters was not within the area, the group was not eligible for membership. This inconsistency has been corrected. The new policy is as follows: When either the corporate headquarters is located or a simple majority of employees work within the operational area, the employee group is eligible to be added to the field of membership. It should be noted that these groups will now be treated as any other group in a multiple group charter application and are subject to the five criteria set out above.

The second type of multiple group charter exists when any portion of the group charter to be approved, the combined field of membership is limited to a well-defined neighborhood, community or rural district, as determined by the regional director. The well-defined neighborhood, community or rural district is mandated by section 109 of the FCU Act. Pursuant to delegated authority, if the population of the proposed well-defined neighborhood, community or rural district is under 35,000, the charter decision is made by the regional director. If the population exceeds 35,000, the charter must be approved by the NCUA Board. This population policy also applies whenever a community-based FCU proposes to expand its boundaries. If the population of the proposed expanded community exceeds 35,000, the charter must be approved by the NCUA Board. The policy does not apply when occupational or associational groups outside of the community are added to the field of membership without expansion of boundaries. The regional director will make the determination, regardless of population. Occupational or associational groups outside the community may be added, however, only if they are within an area such that, when combined with the community, the resulting larger area *could be* considered for a community-based charter.

The regional directors are now authorized to remove new groups added to a credit union if those groups are not being satisfactorily served. This does not include the authority to cut off membership rights of someone who has established membership with the FCU. They would retain their membership through the "once a member, always a member" Bylaw. If an FCU does not have the "once a member, always a member" Bylaw, it may be added before any groups are removed. Removal of groups should reflect the current policy to provide credit union service to new groups—not simply to include new groups within a credit union's field of membership.

One last problem related to multiple group chartering is cross-regional mergers and expansions. Since the field of membership policy has been broadened, more cross-regional mergers and expansions is as follows. No cross-regional mergers and expansions have taken place. The policy on approval and control of cross-regional merger or expansion will be authorized without the approval of all regional directors affected. In terms of administrative and operational control, the location of the continuing credit union in the case of a merger, or the home office in the case of an expansion, is controlling. That region will monitor and control the merged or expanded FCU and, of course, continue to examine the FCU once the merger or expansion is completed.

The last section of the IRPS addresses credit union service to senior citizens and retirees. On October 17, 1983, (See 48 FR 48830, dated October 21, 1983) the NCUA Board issued a request for comments for the second time on whether or not credit union services should be extended to retirees. Two hundred and fifty-one commenters responded to the second request. The overwhelming majority of the commenters (189) were in favor of expanding credit union service. Of those 189, 117 were in favor of offering such service to all retirees, regardless of prior credit union membership. Seventy-two commenters favored a more limited expansion. These 72 were fairly equally

divided between favoring service to retirees with prior credit union membership and to those with membership or eligibility for membership in a "like sponsor" credit union. Those that preferred the "like sponsor" option believed that such a requirement would maintain a common bond within each credit union. Fifty commenters were opposed to any extension of credit union service to retirees. The most frequent reason given for the opposition to the extension of service to retirees related to concerns about expansion of the common bond.

Having considered this issue further, the Board believes that none of the specific policies previously proposed concerning senior citizens and/or retirees provides an acceptable solution. On the one hand, legitimate concern has been expressed that simply authorizing Federal credit unions to serve all senior citizens and retirees in their area may not meet the statutory requirement of an occupational or associational common bond. (Community-based credit unions may, of course, already serve all senior citizens and retired persons in the community, and thus, service by community credit unions is not at issue.) On the other hand, the more limited proposals do not serve the important public policy goal of providing maximum opportunity for senior citizens and/or retired persons to obtain basic financial services as conveniently and economically as possible. The NCUA Board is committed to the notion that Federal credit unions can and should play an important part in fulfilling this obligation. The public comment record on this issue shows that Federal credit unions agree.

Accordingly, the Board has determined to formally state a policy of encouraging Federal credit unions to bring associations of senior citizens and/or retired persons within their fields of membership, and *to sponsor and assist* in the formation of such associations where they do not exist. The Board would hope that implementation of such a policy will become an important credit union initiative, with as little red tape and government interference as possible.

To facilitate the carrying out of this policy, the Board has taken the following important steps. First, the Board has determined that in the case of senior citizens and retiree associational groups, an exception will be created to standard associational chartering policy: the standard rule is that a primary purpose of the formation of an association may not be to provide credit union membership to the association members. That rule will not apply in the case of charter amendments to add senior citizens and/or retiree groups. In addition, the provisions of Section II, Chapter 4 of the NCUA Chartering Manual, concerning associational groups, will not apply to charter amendments to add senior citizens and/or retiree groups. These provisions, which include for example the requirement that a constitution, bylaws and financial statement be filed with NCUA as part of the application for an associational group charter, are in large part directed at determining the economic feasibility of the credit union and are of less concern when considering the addition of an associational group to an established credit union. Also, such provisions would interfere with the goal of facilitating formation of senior citizens and/or retiree associations and providing credit union services to these groups, with a minimum of bureaucracy and red tape. Details concerning the formation of these associations will be left to the sponsors and association members. Once an association has been formed, it can be expeditiously processed by the NCUA regional office for addition to an FCU's field of membership pursuant to the normal procedures for multiple group charter amendments. The NCUA Board believes that sponsoring and assisting in the formation of senior citizen and retiree groups by Federal credit unions is in the public interest. Senior citizens and retirees have always been an important segment of the credit union population, especially in their capacity as volunteers. It is the Board's belief that increased FCU accessibility to senior citizens and retirees will benefit the credit union industry as well as provide a needed service to a greater number of people who do not presently have credit union service available to them.

IRPS 84-1—MEMBERSHIP IN FEDERAL CREDIT UNIONS

I. Purchase of Loans of Liquidating Credit Unions Under Section 107(14)

Section 107(14) of the FCU Act, 12 U.S.C. 1757(14), authorizes FCU's to purchase assets and to assume liabilities of other credit unions, subject to regulations of the Board. The Board interprets this provision to authorize it to allow FCU's to provide customer services to members whose loans are purchased or whose share accounts are assumed pursuant to the provision. In cases of liquidation it is especially important, in order to protect the interests of the National Credit Union Share Insurance Fund, to utilize this authority. Accordingly, it shall be the policy of the Board that an FCU which purchases the loans of a liquidating credit union may offer full membership rights and services to the borrowers whose loans it has purchased. In cases where the borrower is converted to membership status, section 107(14) shall be considered the operative provision and the five percent limit of section 107(13) shall not apply.

II. Bylaws Affecting Field of Membership

Two of the Standard Federal Credit Union Bylaws (Bylaws) apply to field of membership policy. Section 5 of Article II of the Bylaws is the "once a member, always a member" Bylaw. It provides that the board of directors of each FCU may resolve that members who are no longer within the field of membership may retain membership if they meet reasonable minimal standards set by their board of directors. The second Bylaw affecting field of membership is section 2(a) of Article XVIII. This is the definition of immediate families. Not all FCU's include immediate family members within their field of membership. To be included, "members of their immediate families" must appear in section 5 of the FCU's charter. A standard Bylaw amendment to section 2(a) of Article XVIII allows FCU's adopting it flexibility in defining "members of their immediate families." With this Bylaw amendment, each FCU may define for itself the phrase "members of their immediate families."

III. Multiple Group Charters

In connection with new charters, charter amendments, conversions and mergers, the Board has delegated to the regional directors the authority to approve FCU fields of membership including more than one distinct group. The regional directors also have the authority to remove new groups added to a credit union if those groups are not being satisfactory served. In all cases of disapproval of a multiple group charter application or removal of a group, the regional director will advise the applicant of the reason(s) for disapproval or removal and of the right to appeal the decision to the NCUA Board. Pursuant to section 109 of the FCU Act, 12 U.S.C. 1759, the Board has recognized two types of multiple group fields of membership. The first type involves groups that have common bonds of occupation or association. The second type covers groups any portion of which is community based. The two types of multiple groups are addressed separately.

Occupational or Associational Based

In order for this type of multiple group charter to be approved, each occupational or associational group that becomes a part of the larger group must have its own common bond. Five additional criteria must be satisfied before a regional director can approve a multiple group charter.

1. All affected groups have requested service from the applicant;
2. The applicant can provide credit union service to each group;
3. The application is economically feasible and advisable;
4. The applicant indicates whether affected groups are eligible for membership or are being served by any other credit union. If groups are eligible for membership or are being served by another credit union, they must provide justification why they no longer desire that eligibility or continued service.
5. All of the groups must be within the operational area of the home or a branch office of the Federal credit union. Operational area is an area surrounding the home or a branch office that can be reasonably served by the applicant as determined by the regional director. A branch office means any office of a Federal credit union where an employee accepts payment on shares and disburses loans. For purposes of this definition, disbursing loans includes making advances on lines of credit but does not include extensions of overdraft protection credit.

Community Based

In order for this type of multiple group charter to be approved, the combined field of membership is limited to a well-defined neighborhood, community or rural district, as mandated by section 109 of the FCU Act. Any group or individual that is within the defined neighborhood, community or rural district, unless specifically excluded in the credit union charter, is eligible for membership in the community FCU. The approval of the NCUA Board is required if the population of the area exceeds 35,000. Should a group outside of the well-defined neighborhood, community or rural district seek to attain membership, that group must be geographically situated so that it and the community FCU are also within a more broadly defined well-defined neighborhood, community or rural district. The larger area must constitute a geographical area that could statutorily be established as a community credit union. Once it is determined that the larger defined area exists, two options are available. The first option is that a larger defined area will become the boundary for the community FCU. All groups and individuals within the larger defined area will now be eligible for membership. Under the first option, NCUA Board approval is required if the larger defined area's populations exceeds 35,000. The second option is that only groups seeking membership will be added to the community charter. The FCU boundaries will not be expanded to include all groups in the community charter. Under this second option, the five criteria set out under *Occupational or Associational Based* must be met.

IV. Service to Senior Citizens and/or Retirees

Pursuant to section 109 of the Federal Credit Union Act, senior citizen and/or retiree organizations may be added to Federal credit union fields of membership in compliance with the Multiple Group Charter policy set out above. The definitions of senior citizen and/or retiree are left to each individual organization. Federal credit unions may sponsor or assist in the formation of senior citizen and/or retiree organizations in their operational area. Section II, Chapter 4 of the Chartering and Organizing Manual for Federal Credit Unions does not apply to senior citizen and/or retiree organizations that wish to join an established Federal credit union. Such organizations may be formed with a primary purpose of providing eligibility for FCU service to the organizations and their members.

The NCUA Board finds that compliance with the above guidelines will result in fields of membership that meet the membership requirements of section 109 of the FCU Act, 12 U.S.C. 1759.

IRPS 82–3 and IRPS 83–2 are hereby cancelled and superseded by this interpretive ruling and policy statement.

List of Subjects in 12 CFR Part 701

Credit unions.

Dated November 15, 1984.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84–30959 Filed 11–26–84; 8:45 am]

BILLING CODE 7535–01–M

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12 CFR Part 701

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: In order to conform its rules and regulations to a recent amendment to the Federal Credit Union Act (12 U.S.C. 1751 et. seq.) the NCUA Board has revised § 701.21(f) (12 CFR 701.21(f)). The revised rule now authorizes Federal credit unions ("FCU's") to make home improvement loans to their members with maturities of up to 15 years.

EFFECTIVE DATE: December 26, 1984.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director, Department of Legal Services, or Steven Bisker, Assistant General Counsel, at the above address. Telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: Section 107(5)(A)(ii) of the FCU Act (12 U.S.C. 1757(5)(A)(ii)) was recently amended by the Housing and Community Development Technical Amendments Act of 1984, Pub. L. 98–440, October 4, 1984. The amendment authorizes FCU's to make loans "for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member" with maturities of up to 15 years. Prior to this amendment the maximum maturity for these types of loans was 12 years (unless the loan was secured by a second trust on the dwelling). The new law does not require that a second trust be taken in order to grant a home improvement loan with a 15 year maturity.

Since § 701.21(f) merely lists the types of loans expressly authorized by the Act with maturities of up to 15 years, the Board is promulgating this as a final rule to amend the list to include the newly enacted authority to offer home improvement loans with 15 year maturities.

The Board finds that notice and comment is unnecessary since the rule simply restates the authority to make such loans expressed in the Act.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions because the rule will increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

Financial Regulation Simplification Act

The final rule implements an amendment to the FCU Act that reduces burdens and limitations on FCU's. The NCUA Board finds that full and separate consideration of all the requirements of

the Financial Regulation Simplification Act is impracticable and unnecessary in this instance for the reasons set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Home improvement loans.

(12 U.S.C. 1757, 1766(a), and 1789(a)(11))

By the National Credit Union Administration Board on the 15th day of November, 1984.

Rosemary Brady,

Secretary of the Board.

Accordingly, the NCUA rules and regulations are amended as follows:

1. Section 701.21(f) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(f) *15 Year Loans.* Notwithstanding the general 12 year maturity limit on loans to members, a Federal credit union may make loans with maturities of up to 15 years in the case of (1) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, (2) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and (3) a loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

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[FR Doc. 84-30960 Filed 11-26-84; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 701

Fees Paid by Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board has determined that a change in the record date of total assets used in determining a Federal credit union's (FCU's) operating fee will improve the manner in which the fees are assessed and paid. This rule changes the record date from December 31 to June 30. The fee assessment (payment) date has also been amended to conform with the recently amended share insurance regulation (§ 741.5). The rule now provides that payment must be made not later than January 31 (required by the prior rule) or as directed by the Board (new amendment). In addition, a subsection of the rule that is no longer relevant has been deleted.

EFFECTIVE DATE: December 26, 1984.

ADDRESS: National Credit Union Administration, 1776 G St., NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, Director, or Steven R. Bisker, Assistant General Counsel, Department of Legal Services at the above address. Telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: Prior to this amendment to § 701.6, the January operating fee assessment was based upon an FCU's total assets as of December 31 of the preceding year. Under the former system the Board had to determine its fee schedule by projecting the estimated total assets of all FCU's since such asset information was not available to the Board prior to the payment date for the fee assessment (not later than January 31). In order to meet the payment deadline, each FCU calculated its fee assessment based upon a fee schedule approved by the Board each November and then remitted the fee to the Agency. FCU's did not receive payment billings from the Agency. Often, errors occurred in the fee because of the use of incorrect financial information and/or faulty computations.

The change in the record date of total assets to June 30 allows the Board ample time to review each FCU's financial reports (the semiannual Financial and Statistical report for the period ending June 30) and correct any errors that may exist. More importantly, the Board will now be able to establish a fee schedule based upon actual asset amounts instead of estimates. FCU's will not be saved from making payments that in the past may have been higher than were actually needed to meet the expenses of NCUA in carrying out its responsibilities under the FCU Act. Further, the Board will now calculate the fee and will provide a billing statement to each FCU. The staff time saved by NCUA and all FCU's under the new procedure will further help to keep the operating fee to a minimum.

This rule also revises § 701.6 by adding a new provision which authorizes the Board to establish a specific date for FCU's to pay their operating fee. The amendment conforms this section to the recently revised share insurance rule (§ 741.5(d)). This change will enable the Board to bill FCU's for both the yearly operating fee and share insurance premium at the same time. This too should help to cut down on staff processing time for NCUA and all FCU's.

These revisions to § 701.6 are being promulgated as a final rule. For the reasons stated above, the Board finds that notice and comment are impracticable, unnecessary, and contrary to the public interest.

Lastly, § 701.6(d)—Calendar Year 1979 Operating Fee, is no longer needed since it was relevant only to fees for calendar year 1979. The Board has, therefore, deleted this provision of the rule.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions because the rule increases their management flexibility and reduces their paperwork burdens.

Financial Regulation Simplification Act

Since this rule reduces burdens and delay would cause unnecessary harm, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, considered most of these policies, as set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit unions, Operating fees.

(12 U.S.C. 1755, 1766(a), 1789(a)(11))

By the National Credit Union Administration Board on the 15th day of November, 1984.

Rosemary Brady,

Secretary Of The Board.

PART 701—[AMENDED]

§ 701.6 [Amended]

Accordingly, § 701.6 is amended as follows:

1. Section 701.6(a) is amended by deleting the date "December 31" and inserting in its place the date "June 30" where it appears in this paragraph.

2. Section 701.6(a) is further amended by adding after "not later than January 31 of each calendar year" the provision, "or as otherwise directed by the Board."

3. Section 701.6(b) is amended by deleting "January 31 of" in the second sentence and by deleting "on January 31 of" in the penultimate sentence and by adding "in" after "operating fee" in that sentence.

4. Section 701.6(d) is removed in its entirety.

[FR Doc. 84-30961 Filed 11-26-84; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket Nos. RM83-13-000, 001, 002, 003, 004 and 005]

Annual Charges for Use of Government Dams and Other Structures

November 20, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of effective date and OMB control number for final rule.

SUMMARY: On May 24, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM83-13-000, 49 FR 22770 (June 1, 1984) setting annual charges under section 10(e) of the Federal Power Act for hydroelectric projects which use Government dams or other structures. On August 23, 1984, 49 FR 33859 (August 27, 1984), the Commission granted rehearing in part of the final rule. This notice sets forth the OMB control number for the information collection requirements set forth in the Commission's August 23 order on rehearing and the effective date of this requirement.

EFFECTIVE DATE: The information collection requirement in 18 CFR 11.22(d) is effective November 13, 1984.

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

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. IV 1980) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320, require that OMB approve certain information collection requirements imposed by agency rule. On October 18, 1984, OMB approved the information collection requirement in 18 CFR 11.22(d) and issued control number 1902-0136 for that rule. Therefore, the rule is in effect as of November 13, 1984.

The following technical change is made in FR Doc. 84-22612, appearing on page 33862 of the issue of August 27, 1984:

§ 11.22 [Amended]

1. On page 33862, column 3, "(Information collection requirements approved by the Office of Management and Budget under Control Number 1902-0136)" is added at the end of the text of § 11.22(d).

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31057 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Amendments to the Pennsylvania Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 938 by approving an amendment to the Pennsylvania permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment pertains to anthracite coal mining operations. The Federal regulations at 30 CFR 938.15 are amended to incorporate into the Pennsylvania Permanent Program the amendments being approved.

EFFECTIVE DATE: The approval of these program amendments is effective on November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd St., Suite L-4, Harrisburg, Pennsylvania 17101. Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania State Program

On February 29, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Pennsylvania. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary disapproved the Pennsylvania program. The State resubmitted its program on January 25, 1982, and subsequently the Secretary approved the program subject to the correction of minor deficiencies. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982 Federal Register notice (47 FR 33050).

II. Submission of Program Amendment

By a letter dated March 30, 1984, Pennsylvania submitted to OSM pursuant to 30 CFR 732.17, a revision to its approved program pertaining to standards for mining anthracite coal. In the amendment, Pennsylvania proposed to amend its regulations at Subchapters A, B, C, D, and F of Chapter 88, Title 25.

On April 30, 1984, (49 FR 18313) OSM published a notice in the Federal Register announcing receipt of the amendment and soliciting public comments on such amendment. The public comment period closed May 30, 1984. No one expressed an interest in the hearing scheduled for May 25, 1984, and therefore, the hearing was not held.

On September 21, 1984, OSM and Pennsylvania discussed certain concerns about implementation and oversight activities for anthracite coal mining operations. However, no new information pertaining to the amendment was received at this meeting; therefore, the public comment period was not re-opened.

III. Director's Findings

Finding 1

The Director finds that the proposed changes to Pennsylvania's regulations streamline its provisions pertaining to anthracite operations. Many of the changes are intended to clarify references and remove old references that are now not relevant. To facilitate immediate implementation of these changes and to avoid confusion as to what regulations are in effect, the Secretary is making this rule effective immediately.

The Director also notes that Part 820 of 30 CFR of the permanent regulatory program contains special performance standards for anthracite mines in the Commonwealth of Pennsylvania. Section 529(a) of SMCRA requires that changes in the State's regulation of anthracite mining be reflected in OSM's regulations. The environmental protection provisions in force on August 3, 1977, in that State for anthracite mining were adopted by OSM and incorporated into 30 CFR Part 820 in accordance with section 529 of SMCRA (44 FR 15449, March 13, 1979). On October 12, 1982, OSM published a final rule adopting and incorporating into 30 CFR Part 820 revisions to the Pennsylvania statutes and regulations concerning anthracite mining that were

approved by OSM pursuant to 30 CFR Part 732 (47 FR 44943).

The Director finds that the changes submitted by Pennsylvania to Chapter 88 meet the intent and purpose of section 529 of SMCRA and are sufficient to meet the purposes of SMCRA. The Director, therefore, finds that no additional regulations are necessary to meet the purposes of SMCRA. Each change is discussed by subchapter briefly below.

Subchapter A

1. Section 88.1 Definitions

"Access Roads"—The definition was added to replace "Type B Road" which has been deleted (consistent with the OSM approved definition in Chapter 87).

"Coal Bank"—The deletion of the words "those existing" was for clarification purposes.

"Common use roads"—The definition was added to replace "Type C Road" which has been deleted (consistent with the DER's nomenclature for mine roads).

"Haul Road"—The definition was added to replace "Type A Road" which has been deleted (consistent with the OSH approved definition in Chapter 87).

"Moist bulk density"—The definition deleted since the term is not used in the performance standards for anthracite coal and therefore serves no purpose.

"Permit Area"—The change was made to clarify that Chapter 88 covers all types of mining activities (surface mining, underground mining, coal bank removal and restoration, coal processing, and coal refuse disposal).

"Spoil"—The change makes the definition of spoil consistent with the definition of spoil pile in the SMCRA of Pennsylvania.

"Type A and Type B Road"—These definitions have been deleted and replaced by "Haul Road" and "Access Road" to be consistent with the approved definitions in Chapter 87.

"Type C Road"—The definition has been deleted and replaced by the term "Common Use Road". The definition for common use road is essentially the same as the previous definition for "Type C" road.

2. Section 88.21

This section was revised to clarify the regulation and remove old § 88.21(b) which was improperly placed under this section (refer to § 88.23(b) for proper placement).

Section 88.23

Section 88.23(b) was revised to clarify that it is the obligation of the applicant to take the initiative to obtain information from the appropriate Federal or State Agency. The Department is willing to provide relevant and available information, but cannot compel other State and Federal agencies to provide such information.

3. Section 88.24

This section was rewritten for clarification and precision. The revision adds the requirements for the description of the structure within the proposed permit area and its relationship to the structure of the general area and requirements for the location, identification and status of other mining within or adjacent to the proposed permit area.

4. Section 88.25

Editorial and clarification.

5. Section 88.26

Section 88.26(b)(2) combines the original paragraphs (2) and (3).

Section 88.26(b)(2)(v) limits the analysis of water samples to total iron rather than total and dissolved iron.

6. Section 88.28

As written § 88.28 would have required the applicant to submit all information required by Section (1)–(4) even if only precipitation data was requested. The amendment will give the Department the necessary authority to request the specific climatology information when needed without requiring the applicant to provide unnecessary information.

7. Section 88.30

The revision clarifies the requirements for pre-mining environmental resource information of section 4(a)(2)(A) and 4(1) of the Surface Mining Conservation and Reclamation Act pertaining to land use, productivity and post-mining land use capabilities.

8. Section 88.31

Revisions are editorial and serve as clarification.

9. Section 88.42

DER deleted the requirement that operators furnish the anticipated annual and total production of coal since such information is subject to several variable factors (weather, coal market etc.). DER believes this information is not necessary for an environmental assessment of the permit application. The Director finds that this revision is consistent with section 529(a) of SMCRA and that no additional regulations are necessary to meet the purposes of SMCRA.

10. Section 88.44

DER stated that, due to the nature of anthracite mining, it would be extremely difficult to plan the sequence for more than five years. Therefore, DER revised § 88.44 to provide that a permit expire after five years and if further mining is planned a new plan must be submitted with a permit renewal.

11. Section 88.44(a)(13)

The revision provides that if air pollution collection and control facilities are needed, they must be part of the operation plans.

12. Section 88.45

The amendment deletes unnecessary information requirements and retains the necessary authority for DER to develop appropriate applications for blasting activities.

13. Section 88.46

Editorial in nature for clarification purposes.

14. Section 88.48

Editorial for clarification.

15. Section 88.53(c)(d)

Clarification to denote which criteria should apply to the proposed impoundment. The revision specifies in (e) and (f) that Coal waste-dams or embankments may be constructed and will be under the requirements of subchapter (C).

16. Section 88.60

The amendment to the application in § 88.60 for haul roads, access roads and other transportation facilities reflects the corresponding amendment to the environmental performance standard for these facilities (see §§ 88.138–88.150).

Subchapter B

1. Section 88.82

Non-substantive editorial change for clarification and cross reference.

2. Sections 88.83, 88.84, 88.85

The amendment removes the distinction between temporary and permanent openings and includes all the necessary standards in one section. Regardless of whether openings to the subsurface (i.e., exploration holes, bore holes, underground mine openings, etc.) are temporary or permanent, they must be handled in a manner that does not adversely affect the surface and ground waters of the area or create a health or safety hazard.

3. Section 88.86

Editorial and clarification.

4. Section 88.90

Since DER does not have a program to qualify laboratories for soil testing, the phrase "by a qualified laboratory" is deleted. The amendment to § 88.90 also clarifies that the results of tests are to be submitted to the Department.

5. Section 88.91

Paragraph (a): The amendment incorporates the positive standard "prevent to the maximum extent possible" and deletes redundant language in the definition of "hydrologic balance."

Paragraph (c): The amendment deletes the general listing of practices to prevent pollution which are covered in detail by other performance standards in the Chapter.

6. Section 88.92

The addition reflects the need to meet the requirements of several existing Pennsylvania regulations. The deletion is an editorial change to correct a misprint in the *Pennsylvania Bulletin.*

7. Section 88.93

Sullivan County was deleted and is covered by Chapter 87. Additionally, editorial changes were made to correct a misprint in the *Pennsylvania Bulletin.* This section, as it appears now, is what OSM approved originally and is how the original should have been printed.

8. Section 88.95

The amendment deletes the requirement of specific design criteria of the diversion. The amendment does retain the requirements for performance standards, including the requirement that any diversion shall be designed, constructed and maintained using current engineering practices to pass safely the peaks run-off from a precipitation event with a two-year recurrence interval for temporary diversions and ten-year recurrence interval for permanent diversion. The Director finds that this is consistent with section 529(a) of SMCRA and that no additional regulations are necessary to meet the purposes of SMCRA.

9. Section 88.96

The amendment incorporates the standard "prevent to the maximum extent possible" rather than the "minimize to the maximum extent possible"; incorporates the erosion and sediment control requirements of Chapter 102; and deletes the listing of sediment control practices already contained in Chapter 102.

10. Section 88.97

Editorial change for clarification.

11. Section 88.98

The amendment deletes the arbitrary standard for a waiver from the required use of sedimentation ponds (e.g., the disturbed drainage area within the total disturbed area is small).

Paragraph (c): This paragraph was changed to show that the requirements of Chapter 102 must be met while deleting the repetitiveness of listing those requirements in Chapter 88.

12. Section 88.99

Editorial and clarification.

13. Section 88.101

Editorial.

14. Section 88.102

Clarification of the applicable design criteria for dams, ponds, embankments, and impoundments.

15. Section 88.103

Clarification of the applicable design criteria for coal processing waste dams and embankments.

16. Section 88.104

Since equivalent standards for preventing the contamination or pollution of ground water area are contained in § 88.100 and § 88.119, the amendment deletes the additional reference to these standards.

17. Section 88.105

Paragraph (b) incorporates the positive standard "prevent to the maximum extent possible" disturbance to the prevailing hydrologic balance.

18. Section 88.106

Editorial for clarification.

19. Section 88.108

The amendment recognizes that certain facilities that are to remain after mining may be in acceptable condition and need not be renovated if the renovation would cause more environmental harm than benefit.

20. Section 88.110, 88.111, 88.112

Regardless of where excess spoil is disposed, the disposal area must achieve certain minimum standards for site selection, design, construction, stability, environmental impact and reclamation. Consequently, the amendment removes the distinction between head-of-hollow fills, valley fills and durable rock fills pertaining to design criteria, but retains the necessary standards applicable to the excess spoil disposal site. The Director finds that this is consistent with section 529(a) and that no additional regulations are necessary to meet the purposes of SMCRA.

21. Section 88.115

Present regulations do not allow, under any circumstances, the removal of backfilling equipment unless all backfilling and leveling have been completed and released by the Department. The revised amendment recognizes that there are limited circumstances under which backfilling equipment may be temporarily removed prior to completion of backfilling and grading.

22. Section 88.116

Editorial change to establish consistency with language of the SMCRA.

23. Section 88.117

Establishes consistency with language of the SMCRA.

24. Section 88.118

The amendment recognizes that the swell factor of the spoil may result in minor increases in grade in comparison to premining conditions.

25. Section 88.119

Clarification only.

26. Section 88.122

The amendment provides flexibility in the operator's schedule as to when seeding and planting will be accomplished within the first desirable period of planting. The Director finds that this is consistent with section 529(a) of SMCRA.

27. Section 88.125

The amendment allows for more flexibility in planting for wildlife habitat by providing for reduction of the extent of woody species planting on site specific cases. The Director finds that this is consistent with section 529(a) of SMCRA. In addition, paragraph (b) was deleted since performance standards for commercial forestland are included in § 88.129.

28. Section 88.127

Editorial and clarification.

29. Section 88.129

The section was revised to implement and be consistent with the changes made in § 88.124(b).

30. Section 88.130

Paragraph (a)—The deleted phrase was removed since it appeared to imply that the Department was obligated to approve a proposed revegetation technique. The Department reserves the

right to approve, request changes, or deny revegetation plans after reviewing the plan.

31. Section 88.134

Editorial and clarification.

32. Section 88.135

Clarification only.

33. Section 88.138–88.149

The revisions to §§ 88.138–88.149 delete detailed design requirements considered by appropriate technical personnel in the design of these facilities while retaining the necessary level of performance to be achieved. The amendment also removes the design requirements for truck traffic which is more appropriately a concern of the operator. The Director finds that this is consistent with section 529(a) of SMCRA and that no additional regulations are required to meet the purposes of this Act.

34. Section 88.150

The term "common use roads" is used to reflect the new definitions of roads in § 88.1.

C. Subchapter C

1. Section 88.182

Same explanation as § 88.82

2. Section 88.184

Same explanation as § 88.90.

3. Section 88.186

Paragraph (c) deletes the general listing of practices which are covered in detail by the other performance standards in the chapter.

4. Section 88.187

(1) The revision clarifies the reference and makes this section consistent with § 88.92.

5. Section 88.188

Sullivan County is deleted from the listing in Chapter 88 but is covered by Chapter 87.

6. Section 88.190

Same justification as § 88.95.

7. Section 88.191

Same justification as § 88.96.

8. Section 88.192

Same justification as § 88.97.

9. Section 88.193

Subsection (b) is revised to correct a misprint.

10. Section 88.194

Paragraph (b) is changed to show that the requirements of Chapter 102 must be met and the previous paragraphs (c) and (d), which listed the requirements of Chapter 102 in Chapter 88, are deleted.

11. Section 88.195

Editorial and clarification.

12. Section 88.197

Same explanation as § 88.102

13. Section 88.198

Same explanation as § 88.108.

14. Section 88.200

Same explanation as § 88.104.

15. Section 88.202

Same explanation as § 88.106.

16. Section 88.210

Same explanation as § 88.122.

17. Section 88.212

Paragraph (e): Revision to clarify the type of required pH test.

Paragraph (g): The Department does not have a program to qualify laboratories for soil testing; therefore, the phrase "by a qualified laboratory" is deleted and replaced by "using standard methods approved by the Department".

18. Section 88.123

Same explanation as § 88.125.

19. Section 88.215

Explanation and clarification.

20. Section 88.217

The section was revised to be consistent with and to implement the changes made in § 88.213(b).

21. Section 88.231–88.242

Same explanation as §§ 88.138–88.149.

22. Section 88.243

Same explanation as § 88.150.

D. Subchapter D

1. Section 88.282

Editorial and clarification.

2. Section 88.286

Same explanation as §§ 88.83, 88.84, and 88.85.

3. Section 88.286

Editorial and clarification.

4. Section 88.290

Same explanation as § 88.90.

5. Section 88.291

The amendment incorporates the positive standard "prevent to the maximum extent possible". The amendment deletes the general listing of practices to prevent pollution which are covered in detail by the other performance standards in the Chapter.

6. Section 88.292

Editorial.

7. Section 88.293

Sullivan County was deleted from Chapter 88 and is covered by Chapter 87.

8. Section 88.295

Same explanation as § 88.95.

9. Section 88.296

Same explanation as § 88.96.

10. Section 88.297

Editorial and clarification.

11. Section 88.298

Paragraph (a) is revised for clarification. Paragraph (c) is reworded for clarification and to correct a reference. Paragraph (d) is changed to state that the requirements of Chapter 102 must be met; the repetitive listing of those requirements is deleted.

12. Section 88.299

Clarification only.

13. Section 88.301

The revision adds paragraph (7) requiring that the impoundment must be suitable for the approved postmining land use.

14. Section 88.302

Same explanation as § 88.102.

15. Section 88.303

Same explanation as § 88.103.

16. Section 88.304

Same explanation as § 88.104

17. Section 88.305

Same explanation as § 88.105.

18. Section 88.306

Same explanation as § 88.106.

19. Section 88.308

Same explanation as § 88.108.

20. Section 88.310

Clarification.

21. Section 88.312

Redrafted for clarification purposes.

22. Section 88.315

Paragraph (c) is added to maintain the approximate original contour standard for active surface mines where coal refuse disposal may be permitted. Paragraph (d) is added as a protection

against a major source of fires under past practices in refuse disposal.

23. Section 88.316

Same explanation as § 88.315(d).

24. Section 88.319

Incorporated into other sections of Chapter 88.

25. Section 88.320

Incorporated into other sections of Chapter 88.

26. Section 88.321

The added provision references the regulatory standard for handling noncoal wastes. The deleted provision is covered under other sections of Chapter 88.

27. Section 88.323

Same explanation as § 88.122.

28. Section 88.326

Same explanation as § 88.125

29. Section 88.328

Editorial change.

30. Section 88.330

The section is revised to implement and be consistent with § 88.336(b).

31. Section 88.332

Rewritten for clarification and to require that requests for temporary cessation be in writing.

32. Section 88.335–88.346

Same explanation as §§ 88.138–88.149.

33. Section 88.88.347

Same explanation as § 88.150.

F. Subchapter F

1. Section 88.482

The definition for "Permit Area" was revised for clarification.

2. Section 88.491

Paragraph (i)(13) corrected a previous misprint.

3. Section 88.492

In Paragraph (d)(4) the word was *coal* added for clarification. The other changes under § 88.492 are editorial and clarify references.

Finding 2

The Director finds that condition (d) pertaining to prime farmland and anthracite mining operations has not been addressed in this Pennsylvania proposal. The Director finds that Pennsylvania is required to satisfy condition (d) as imposed in the **Federal Register** on July 30, 1982 (47 FR 33050). The time in which to satisfy the condition was extended in the **Federal Register** dated October 12, 1984, to November 30, 1984 (49 FR 40025).

IV. Public Comments

1. Pursuant to section 503(b) of SUCRA and 30 CFR 732.17(a)(10)(i), comments were solicited from various Federal agencies on the proposed state permanent program amendments. Of those agencies invited to comment, comments were received from the following agencies: The United States Department of Agriculture, Soil Conservation Service (SCS) and the United States Environmental Protection Agency (EPA).

The EPA by its letter dated June 1, 1984, offered no comment on the proposed revisions.

The SCS by its letter dated May 25, 1984, offered the comment that "overall the engineering design standards are adequate." Additionally, the SCS comments that it would be beneficial if § 88.95 provided for permanent diversions to be left in place where needed for long-term erosion control.

Subchapter B, at § 88.95(g) provides that "when no longer needed the diversion shall be regraded to blend with the natural contours and drainage pattern * * *." This section provides other minimun standards for diversions designed to protect the hydrologic balance. Chapter 87, Surface Mining of Coal, and Chapter 89, Underground Mining of Coal and Coal Preparation Facilities distinguishes clearly between temporary and permanent diversions. Chapter 88 addresses anthracite coal mining operations in addition to the types of mining addressed in Chapters 88 and 89. Therefore, OSH believes that Pennsylvania provides for permanent diversions.

The SCS also said that it believes revised PA § 88.138(f) is very good if it also includes road cuts and fills. OSH agrees with the commenter and believes that the Pennsylvania regulation provides adequate protection by providing that "any disturbed area adjacent to the road shall be vegetated or otherwise stabilized to prevent erosion".

The commenter indicated that its comments on Subchapter B also apply to the revisions for Subchapters C and D. The responses to the comments for Subchapter B are also intended to apply to the applicable comments for Subchapters C and D.

Approval of Program Amendments

Accordingly, the revisions to Chapter 88 of Title 25 submitted by Pennsylvania on March 30, 1984, are hereby approved pursuant to 30 CFR 732.17.

The Federal regulations at 30 CFR 938.15 are amended to indicate approval of these program amendments. The approval of the amendments to the Pennsylvania program are effective November 27, 1984.

Additional Findings

1. *Compliance with the National Environmental Policy Act:* Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental document need be prepared on this rulemaking as State program decisions are exempt from compliance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

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

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

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

List of Subjects in 30 CFR Part 938

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

Accordingly, 30 CFR Part 938 is amended as set forth herein.

Dated: November 19, 1984.

John D. Ward,

Acting Director, Office of Surface Mining.

PART 938—PENNSYLVANIA

Accordingly, Part 938 of Title 30 is amended as follows;

* * * * *

30 CFR 938.15 is amended to add paragraph (f):

§ 938.15 Approval of Amendment to State Regulatory Program.

* * * * *

(f) The following amendments are approved effective November 27, 1984:

Subchapters A, B, C, D and F of chapter 88 of Title 25 as submitted to OSM by Pennsylvania on March 30, 1984.

Authority: Pub. L. 98–87, Surface Mining Control and Reclamation act of 1977 (30 U.S.C. 1201 *et. seq.*).

[FR Doc. 84–30906 Filed 11–26–84; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 72

[CGD 84–034]

Light List Printing Cycle

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is amending the publication schedule of Light List Volume V, Mississippi River System, to provide for a biennial printing. The current regulations require that each volume of the Light List be published annually. This action is in response to requests from the marine industry which note that the small number of yearly changes to aids to navigation on the Mississippi River System does not justify a yearly reprint of Light List Volume V.

EFFECTIVE DATE: December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Parker, Marine Information Branch, U.S. Coast Guard, (202) 426–9566.

SUPPLEMENTARY INFORMATION: On Monday, August 13, 1984, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (49 FR 32228). Interested persons were requested to submit comments. One comment was received and while the commenter's suggestion has been adopted, no change to the rule is necessary.

Basis and Purpose

The Light List Volume V, Mississippi River System, provides a comprehensive listing of the official names, locations, characteristics, and general descriptions of all aids to navigation maintained by or under the authority of the U.S. Coast Guard on the Mississippi River System. The Coast Guard currently publishes all Light Lists annually to incorporate any changes which have occurred during the preceding twelve months. At the Coast Guard/Marine Industry Aids to Navigation Workshops in St. Louis and Memphis in October 1983, many mariners requested that Volume V of the Light Lists be published biennially. The Cost Guard concurs with this suggestion since there has been, on an average, only 350 changes (including editorial changes) made to Volume V at each annual printing. All other Light Lists will continue to be published annually since more than 2,000 changes are made to each of the other volumes at every annual printing. The slight number of changes made to aids to navigation on the Mississippi River System during a twelve month period does not fairly justify the cost and inconvenience to mariners of the annual printing. The slight changes which do occur are immediately noted in the Local Notice to Mariners, therefore a biennial publication schedule will not affect navigational safety on the Mississippi River System. The revised publication schedule will however result in savings to those mariners who are required to have a current Light List onboard while transiting the river system. Section 164.33 of Title 33 Code of Federal Regulations, require all self-propelled vessels of 1,600 or more gross tons to have a corrected copy of the Light List onboard for the area of transit.

Discussion of Comments

One comment suggested that the cover reflect both years that the Light List Volume V will be in effect and not just the year of issue. The commenter noted the requirement that mariners carry an up-to-date Light List and suggested that listing both years on the cover would avoid any possible confusion. The Coast Guard agrees and will include both years on the outside cover, in addition to listing the next expected printing date on the title page.

Drafting Information

The principal persons involved in drafting this rulemaking are Mr. Frank Parker, Project Manager, Marine Information Branch, and Lieutenant Dave Shippert, Project Attorney, Office of the Chief Counsel.

Evaluation

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. The number of yearly changes made annually to Light List Volume V does not warrant annual publication. This final rule will result in a small savings to both the mariner and the Coast Guard. Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 72

Government publications, Notice to Mariners and Light Lists, Navigation (water).

PART 72—[AMENDED]

In consideration of the foregoing, the Coast Guard amends Part 72 of Title 33 Code of Federal Regulations, revising § 72.05–1 introductory text of paragraph (a) to read as follows:

§ 72.05–1 Purpose.

(a) The Coast Guard publishes the following Light Lists annually, with the exception of Volume V, which is published biennially, covering the waters of the United States, its territories and possessions:

* * * * *

(14 U.S.C. 93; 49 U.S.C. 108; 49 CFR 1.46))

Dated: November 21, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84–31000 Filed 11–26–84; 8:45 am]
BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13 84–11]

Drawbridge Operation Regulations; East Fork Hoquiam River at Hoquiam, WA

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: At the request of the Grays Harbor County Department of Public Works, the Coast Guard is adding regulations governing the Panhandle Bridge across the East Fork Hoquiam River, mile 0.7, at Hoquiam, Washington, by requiring that advance notice of openings be given. This proposal is being made because of a steady decrease in the level of boating activity on the waterway and because no requests have been made to open the draw since 1982. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on December 27, 1984.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: On August 2, 1984, the Coast Guard published proposed rule (49 FR 30976) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated August 16, 1984. In each notice interested persons were given until September 17, 1984 to submit comments.

Drafting Information: The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

Discussion of Comments: The proposed rule provided that the bridge need not open for the passage of vessels. Only one response was received to the **Federal Register** and Coast Guard notices. The response was from a local towboat company and expressed concerns about the proposed closure of the bridge. Comments indicated a desire on the part of the towboat company for assurance that the bridge would open for navigation in the future. Although only one waterway user responded to the notice of the proposed change, the Coast Guard feels that their concerns are significant. Limited access past the bridge could be maintained with negligible cost to the bridge owner if the operating machinery was kept in working condition and the bridge was opened only upon advance notification. The bridge owner was so advised and had no objections to requirements for maintenance of machinery and advance notification for openings. Accordingly, the final rule was changed to provide that the bridge shall open on signal if at least 48 hours notice is given.

Economic Assessment and Certification: These regulations are considered to be non-major under Executive Order 12291 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. The East Fork Hoquiam River is not currently used for commercial navigation, therefore no navigation interests would be affected by the regulation. The bridge owner would be affected only to the extent that the bridge operating machinery be maintained and a person be designated to open the draw upon 48 hours advance notice. Due to the low level of usage of the waterway, this is viewed as having a minimal economic impact on the bridge owner. 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 adding a new § 117.1047(e) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.1047 Hoquiam River.

* * * * *

(e) The draw of the Grays Harbor County highway bridge across the East Fork Hoquiam River, mile 0.7, shall open on signal if at least 48 hours notice is given.

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

Dated: November 9, 1984.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 84–31002 Filed 11–26–84; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202–389–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still

permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311(a), (b), and (c) and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: November 20, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charge the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date. (38 U.S.C. 1819(f))

(1) Effective November 21, 1984, 15 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective November 21, 1984, 14½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective November 21, 1984, 14½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 12½ per centum per annum, effective November 21, 1984, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 12½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 12¾ per centum per annum, effective November 21, 1984, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 12¾ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective November 21, 1984, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 14 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 12½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 14 percent per annum. (38 U.S.C. 1811 (d)(1) and (2)(A))

* * * * *

[FR Doc. 84-31010 Filed 11-26-84; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NOAA issues an emergency rule under section 305(e) of the Magnuson Fishery Conservation and Management Act to set season opening dates for the 1984/1985 Tanner crab fishery. This rule is necessary to make the dates effective promptly as requested by the fishing industry and the North Pacific Fishery Management Council in response to the best available socioeconomic and biological information. This action is intended to promote an orderly fishery that is consistent with the needs of the industry.

DATES: Sections 671.21(a) and (c) and 671.26(a), (c)(2), (d)(2), (e)(2), and (f)(2) are suspended from noon, local time, November 27, 1984, until noon, local time, February 25, 1985. Sections 671.21 (d) and (e) are effective at noon, local time, November 27, 1984, until noon, local time, February 25, 1985.

ADDRESS: Requests for copies of the environmental assessment prepared for this action should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Biologist, Kodiak Field Office, NMFS), 907-486-3298.

SUPPLEMENTARY INFORMATION: The fishery management plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP) was developed by the North Pacific Fishery Management Council (Council) and approved and implemented by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), under

the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP was published in the **Federal Register** on May 16, 1978 (43 FR 21170).

Section 671.26 establishes four vessel registration areas: A (Southeastern), E (Prince William Sound), H (Cook Inlet), and J (Westward); and districts within those areas. Registration by area provides an important information base for instituting conservation measures and for dispersing the fleet. The registration areas generally conform to the biological boundaries of the stocks within each area. The function of registration is to limit the number of areas in which a vessel may operate and to determine the size and capacity of the fleet that will be operating in a given area. The districts were established for purposes of better monitoring the fishery to conserve small units of crab stocks. Section 671.26 also defines criteria for setting fishing season opening and closing dates. These dates are established by the Council during joint meetings with the Alaska Board of Fisheries (Board), usually in March of each year. At these joint meetings, testimony is received from the fishing industry concerning any proposed season dates. At the March 1984 joint meeting, a series of dates was adopted by both the Board and the Council based on the status of crab stocks and needs of the industry. The Board and the Council met during September 1984 to consider changes in these season dates. Although specific dates were not considered for two registration areas—E and H—the Council requested the Director, Alaska Region, NMFS (Regional Director) to initiate action that would make all dates established under the FMP consistent with those established for State of Alaska waters.

Although November 1 is generally considered the start of the "biologically safe" period when Tanner crab are not in a breeding or soft-shell condition, other factors are also considered by Board and Council when they decide upon season dates.

The opening dates in the districts (Table I) were determined on the basis of socioeconomic as well as biological factors as follows:

TABLE I.—SEASONS FOR THE COMMERCIAL TANNER CRAB FISHERY OFF THE COAST OF ALASKA

Registration area/District	1983/84 season dates	1984/85 season opening dates
A—Southeastern:		
Southeast	Dec. 1 to May 1	Feb. 10.
Yakutat	Feb. 1 to May 15	Jan. 15.
E—Prince William Sound:		
Western	Nov. 15 to May 31	Jan. 5.
Eastern	Nov. 15 to May 31	Jan. 5.
Hinchinbrook	Nov. 15 to May 31	Jan. 5.
H—Cook Inlet:		
Southern	Dec. 1 to Apr. 30	Nov. 1.
Central	Dec. 1 to May 31	Nov. 1.
Kamishak Bay	Dec. 1 to May 31	Nov. 1.
Barren Islands	Dec. 1 to May 31	Nov. 1.
Outer	Dec. 1 to May 31	Nov. 1.
Eastern	Dec. 1 to May 31	Nov. 1.
J—Westward:		
Kodiak (all sections except Semidi Island).	Feb. 10 to Apr. 30	Jan. 15.
Semidi Island	Feb. 10 to May 15	Jan. 15.
South Peninsula	Feb. 14 to May 15	Jan. 15.
Chignik	Feb. 14 to May 15	Jan. 15.
Eastern Aleutians	Feb. 15 to June 15	Jan. 15.
Western Aleutians	Nov. 10 to June 15	Nov. 10.
Bering Sea:		
(Chionoecetes bairdi).	Feb. 15 to June 15	Jan. 15.
(Chionoecetes opilio)	Feb. 15 to Aug. 1	Jan. 15.

Registration Area A, Southeast District—A starting date simultaneous with that for Registration Area J (January 15) was considered rather than any earlier date, in order to prevent "pulse fishing" by vessels stopping to fish in the Southeast District of Registration Area A before moving to the more Traditional grounds in Registration Area J. However, the later date February 10 was selected, because meat recovery would be much better.

Yakutat District—January 15 was selected, concurrent with Registration Area J, to prevent pulse fishing.

Registration Area E, all districts—January 5 was set to coincide with the start of the red king crab fishery to avoid unnecessary discard and mortality of Tanner crab.

Registration Area H, all districts—November 1, an earlier starting date, was set to allow fishing before the onset of inclement weather.

Registration Area J, all districts except the Western Aleutians—Most discussion at the joint Council-Board meeting concerned possible effects that the El Nino phenomenon might have on the fishery. El Nino has been held responsible for waters becoming warmer earlier in late winter or early spring, causing Tanner crab to "go off the bite" as they undergo maturation more rapidly. When this condition occurs, they are less likely to enter crab pots in search of food, thus causing catches per unit of effort to decrease during the fishing season. Hence, the Council and the Board determined that an earlier starting date, balanced against the need to maximize meat recovery, was desirable. January 15 was selected as the optimal date.

Western Aleutians—In this district, Tanner crab are harvested as bycatches in the king crab fishery. The season opening is made to coincide with the start of the king crab season, to avoid unnecessary discard and mortality of Tanner crab.

The Council, on reviewing the proposed season dates and approving those considered necessary for the conservation and management of Tanner crab, recognized the need to make Federal dates consistent with those set by the Board for State of Alaska waters in order to avoid the following problems: (1) Burdens on State and Federal agencies in attempting to enforce seasons in the fishery conservation zone that are not concurrent with the adjacent territorial sea, (2) burdens on the State in funding and conducting dockside sampling programs, (3) incomparable data resulting from non-concurrent sampling periods, (4) confusion in the fishing industry as to what areas may be fished during different seasons.

The Secretary of Commerce (Secretary) concurs with the Council's finding that it is necessary to make the fishing seasons consistent, and finds that an emergency will exist unless such an action is undertaken promptly to establish those seasons consistent with Alaska's seasons and to avoid split seasons in the same geographic areas (vessel registration areas) for the reasons set forth above. Therefore, he establishes the season opening dates set out in Table 1 above, under section 305(e) of the Magnuson Act, effective for a period of 90 days from the publication of this emergency rule.

Classification

The Assistant Administrator has determined that this rule is necessary to respond to an emergency and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator prepared an environmental assessement for this rule and concluded that no significant impact on the human environment will result from its implementation. You may obtain a copy of the environmental assessment from the Regional Director at the address above.

The Assistant Administrator also finds, under 5 U.S.C. 553(b) and (d) of the Administrative Procedure Act, that the imminence of the season openings and the concerns described above make it impracticable and contrary to the public interest to provide notice and a prior opportunity for public comment, or

to delay for 30 days the effective date of this emergency rule.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by Alaska's Office of Management and Budget under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 671

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: November 21, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

PART 671—[AMENDED]

For reasons set forth in the preamble, 50 CFR Part 671 is amended as follows:

1. The authority citation for Part 671 reads as follows:

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

§ 671.21 Optimum yield.

2. In § 671.21, paragraphs (a) and (c) are suspended until February 25, 1985.

New paragraphs (d) and (e) are added to read as follows:

* * * * *

(d) *Optimum yields and season opening dates.* The OY and season opening date for Tanner crab for each Federal registration area/district is set forth in Table II. These specifications of optimum yield are effective for the fishing year beginning November 1, 1984. All season dates in this paragraph are inclusive. Time periods begin at 12:00 noon on the dates specified, based on local time zones.

TABLE II.—OPTIMUM YIELDS (MILLIONS OF POUNDS) OF TANNER CRAB STOCKS AND FISHING SEASON OPENING DATES IN THE FISHING DISTRICTS OF REGISTRATION AREAS OFF ALASKA [1]

Registration area/District	Optimum yield	1984/85 season opening dates
A—Southeastern:		
Southeast	1.0 to 3.0	Feb. 10.
Yakutat	0.1 to 1.0	Jan. 15.
E—Prince William Sound:		
Western	1.5 to 3.5	Jan. 5.
Eastern		Jan. 5.
Hinchinbrook		Jan. 5.
H—Cook Inlet:		
Southern	1.5 to 3.0	Nov. 1.
Central		Nov. 1.
Kamishak Bay		Nov. 1.
Barren Islands		Nov. 1.
Outer		Nov. 1.
Eastern		Nov. 1.
J—Westward:		
Kodiak	11.0 to 33.0	Jan. 15.
South Peninsula	2.0 to 6.0	Jan. 15.
Chignik	0.5 to 5.0	Jan. 15.
Eastern Aleutians	0.1 to 2.0	Jan. 15.
Western Aleutians	0.1 to 2.0	Nov. 10 [3]
Bering Sea:		
(Chionoecetes bairdi).	5.0 to 28.5	Jan. 15.
(Chionoecetes opilio).	20.0 to 130.0 [2]	Jan. 15.

[1] Catches of Tanner crab in a State of Alaska registration area or district will be considered part of the optimum yield specified for the contiguous Federal registration area or district of the same name.

[2] This range represents the domestic annual harvest.

[3] Although this date is not changed, it is included for continuity.

(e) *Field orders.* Except as provided in § 671.21(b), if the Regional Director determines that the optimum yield for a particular species of Tanner crab in any geographic area specified in Table II will be reached, the Secretary will issue a field order pursuant to § 671.27(a) prohibiting fishing for that particular species of Tanner crab by vessels of the United States in the applicable geographic area from the effective date of the field order.

§ 671.26 Size and Sex Restrictions.

3. In § 671.26, paragraphs (a), (c)(2), (d)(2), (e)(2) and (f)(2) are suspended until February 25, 1985.

[FR Doc. 84-31040 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Share, Share Draft, and Share Certificate Accounts

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: Certain states have recently enacted laws and promulgated regulations that attempt to regulate disclosures, funds availability, and service fees relating to deposit accounts and similar accounts including Federal credit union ("FCU") share, share draft, and share certificate accounts. The NCUA Board believes it is necessary to formally state its position on such regulation. The proposed amendment clarifies the NCUA Board's intention in previously deregulating FCU activities in this area and expressly provides that, to the extent state law may be applicable to FCU's, it is preempted.

DATE: Comments are due by December 26, 1984.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Robert Fenner, Director, Department of Legal Services, or Steven Bisker, Assistant General Counsel, at the above address. Telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: On April 27, 1982, § 701.35 of the NCUA Rules and Regulations was substantially deregulated. The rule previously dictated much of the terms and conditions, including disclosures, governing Federal credit union share, share draft and share certificate accounts. In deregulating, the NCUA Board intended to place the responsibility for determining the terms and conditions of such accounts on each FCU's board of directors. Recently, however, several states (e.g., New York, California, Connecticut) have enacted laws or promulgated regulations requiring disclosures and purporting to specify the form and content of FCU disclosures regarding deposit availability and service fees charges and, in some cases, purporting to establish time periods in which drafts (checks, etc.) deposited into an FCU account must be credited and available for withdrawal. While the Board believes that these state laws are in conflict with its deregulation of such activity and are therefore preempted, in order to clarify its position the Board is proposing this amendment to § 701.35.

It is the Board's belief that the problems of funds availability and service fees that may be encountered by depositors of some financial institutions generally do not arise in Federal credit unions. FCU's are required, pursuant to NCUA's rules and regulations (*See*, §§ 701.35(b) and 740.2) to accurately represent the terms and conditions of share, share draft, and share certificate accounts. Further, unlike other financial institutions, FCU's are controlled by their membership. Therefore, if an FCU's board of directors institutes policies which the members find objectionable and refuses to change such policies, the members have the ability to replace those directors through the election process.

It should be noted that the issue of disclosure of funds availability policies has been a subject of Congressional scrutiny in recent months. If, and when, Federal legislation is enacted, further amendments to § 701.35 may be necessary. However, for the present, the Board, by way of this amendment, intends to make clear its position on state regulation of these activities.

The proposed rule expressly provides that FCU's are authorized to determine, free from state regulation, the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters associated with the establishment, maintenance or closing of a share, share draft, or share certificate account. However, it is not the Board's intent by proposing this rule to otherwise alter or affect the terms, conditions, etc. of any contracts or agreements that presently exist between an FCU and its members.

Since there are states where the state law is presently in effect, and purportedly applicable to FCU's, it is necessary to expedite this rule to alleviate the uncertain position that FCU's in those states find themselves in. The Board has therefore provided for a 30 day rather than a 60 day comment period.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board hereby certifies that the proposed amended rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions because the rule would increase their management flexibility and reduce their paperwork burdens. A Regulatory Flexibility Analysis is, therefore, not required.

Financial Regulation Simplification Act

Since the proposed rule would reduce burdens and delay would cause unnecessary continuance of such burdens, the NCUA Board finds that full and separate consideration of all the requirements of the Financial Regulation Simplification Act is impracticable. The NCUA Board has, however, addressed most of these policies, as set forth in the preamble above.

List of Subjects in 12 CFR Part 701

Credit unions, Share, drafts, Share certificates, Funds availability, Service fees.

(12 U.S.C. 1757, 1766(a), and 1789(a)(11)

By the National Credit Union Administration Board on the 15th day of November, 1984.

Rosemary Brady,
Secretary of the Board.

PART 701—[AMENDED]

Accordingly, NCUA proposes to amend it existing rules and regulations as follows:

1. It is proposed that two new paragraphs (c) and (d) be added to § 701.35 to read as follows:

§ 701.35 Share, share draft, and share certificate accounts.

(c) A Federal credit union is empowered to determine the types of disclosures, fees or charges, time for crediting of deposited funds, and all other matters, not inconsistent with this section, affecting the opening, maintaining or closing of a share, share draft or share certificate account. To the extent that state law attempts to

regulate such activity, it is preempted. Nothing herein is intended, however, to allow a Federal credit union to unilaterally amend or modify its contract with a member unless it has previously reserved the right to do so.

(d) For purposes of this section "state law" means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[FR Doc. 84-30962 Filed 11-26-84; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

[Rev. 6, Amdt. 2]

Small Business Investment Companies; Computation of Net Gain in Marketable Securities

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: On September 30, 1983, SBA adopted a regulation (§ 107.303(b)) permitting Small Business Investment Companies to include, in their computation of "Private Capital" for the purpose of determining their respective overline limits, net unrealized gains in the value of marketable portfolio securities. SBIC's and their industry trade association have raised questions concerning the propriety of including "restricted securities" in the computation of net gain in marketable securities. This amendment clarifies the meaning of "marketable securities" by excluding any securities which are restricted in any manner or form from the definition set forth in § 107.303(b)(1). If adopted as a final rule, this amendment will be effective as of the date it was published as a proposed regulation.

DATE: Comments must be received on or before December 27, 1984.

ADDRESS: Written comments, in duplicate, are to be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert G. Lineberry, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416, (202) 653-6848.

SUPPLEMENTARY INFORMATION: The purpose of the proposed rule is clarification of the term: Marketable Securities. SBA defines Marketable Securities to mean only securities that are readily saleable at any time, free of any legal restrictions, and that otherwise meet the terms of § 107.303(b)(1) of these regulations. The proposed rule implements section 306(a) of the Small Business Investment Act, which generally forbids SBICs to invest more than 20 percent of their Private Capital in any one Small Concern, without SBA approval. The existing regulation allows SBICs to include in their computation of Private Capital, for purposes of that restriction only, unrealized gain on Marketable Securities.

Section 107.303(a) of these regulations generally forbids an SBIC from investing in any one Small Concern, an amount in excess of twenty percent of its Private Capital; in the case of Licensee's under section 301(d) of the Small Business Investment Act of 1958, this overline limit is thirty percent. Section 107.303(b) permits an SBIC to increase the base from which its overline limit is computed, by including in Private Capital the net amount of unrealized gain on its holdings of Marketable Securities, as defined in § 107.303(b)(1).

An SBIC that uses unrealized gain for the purpose of increasing its overline limit, and that makes financings based on the increased limit, is obliged to respond to a decline in the price of its Marketable Securities, either by increasing the amount of its paid-in capital or by divesting itself of the excess investment. SBA is aware of the difficulties an SBIC might face in obtaining new capital or in divesting itself of the excess investment. It was anticipated that an SBIC would be able to rely on the liquidity of its holdings of Marketable Securities as a method of complying with the regulatory requirement of § 107.303(b)(6). In the context of this requirement, the definition of Marketable Securities could not embrace securities held by an SBIC if the SBIC's right to sell them at any time was limited in any way. Accordingly, the regulation is to be amended to make it clear that securities that cannot themselves be readily sold are not "Marketable Securities," even if other securities of the same class or series are readily saleable.

Compliance With Executive Order 12291 and the Regulatory Flexibility Act

For the purposes of Executive Order 12291, effective February 17, 1981, SBA hereby certifies that this rule is not a "major rule" as defined by section 1(b) of the Executive Order. This rule will not have an annual effect on the economy of $100 million or more: nor will it result in a major increase in costs or prices for consumers, individuals industries, Federal, state, or local government agencies or geographic regions, or significant adverse effects on competition, employment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

SBA further certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant impact upon a substantial number of small entities. The proposed rule will directly affect only SBICs, and only a very small percentage of SBICs: Those SBICs that have a net unrealized gain in the value of Marketable Securities and wish to make investments in amounts that otherwise would exceed their overline limits. The effect on Small Concerns will be indirect. This rule will increase the amount of financial assistance that can be extended to Small Concerns by those SBICs directly affected by the rule. The number of such Small Concerns and the amount of increased Financial assistance that may be made available to them is impossible to estimate. However, any economic impact on small entities will not be significant.

Compliance With the Paperwork Reduction Act

The proposed amendment to 13 CFR Part 107 contains no reporting or recordkeeping requirements. Therefore, it is not subject to the review and clearance provisions of the Paperwork Reduction Act of 1980, 5 U.S.C. 3501 *et seq.*

Lists of Subjects in 13 CFR Part 107

Investment companies, loan programs/business, small business.

PART 107—[AMENDED]

Accordingly, Part 107, Chapter I of Title 13, Code of Federal Regulations is proposed to be amended by revising § 107.303(b)(1). As revised § 107.303(b)(1) would read as follows:

§107.303 Overline limitation.

* * * * *

(b) * * *

(1) "Marketable securities" means readily salable securities that are traded on a regulated stock exchange, or that are listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or that have, at a minimum, at least three market makers as defined in section 3(a)(38) of the Securities Exchange Act

of 1934 [15 U.S.C. 78c(a)(38)] one of which has offices in at least ten states.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 30, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-31014 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Organization, Procedures and Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Federal Trade Commission proposes to amend its Rules of Practice to streamline the briefing of cases involving cross appeals from an administrative law judge's initial decision and to conform its rules regarding the length and format of briefs and service of process more closely to the Federal Rules of Appellate Procedure.

DATE: Written comments must be received on or before January 11, 1985.

ADDRESS: Send comments to the Secretary, Federal Trade Commission, 6th & Pennsylvania Ave., NW., Washington, D.C. 20580. Comments will be available for public inspection in Room 130 at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, (202) 523-3521, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Under Commission Rule § 3.52, when cross appeals from an administrative law judge's decision are filed, each party is permitted to file an appeal brief, an answering brief, and a reply brief. Thus, in a case with one respondent, there may be as many as six briefs filed. Rule 28 of the Federal Rules of Appellate Procedure allows a maximum of four briefs in cases involving two parties—an opening brief filed by appellant, an answering brief filed by appellee, which includes its response to appellant's brief as well as its argument in support of its own cross appeal, a reply filed by appellant and an additional reply by appellee limited to issues raised by its cross appeal.

The Commission believes that the present rule has led to excessive, duplicative briefing and that it would be appropriate to streamline briefing procedures by amending the rule to make it more closely resemble Fed. R. App. P. 28. For purposes of briefing cross appeals, the proposal designates as an appellant any respondent to whom the administrative law judge has directed an order to cease and desist; and it designates as appellant complaint counsel if the initial decision dismisses the complaint as to all respondents.

The Commission also proposes to amend its rules with respect to the form and length of briefs. The amended rule would require that, except for footnotes and quoted material within the text, all briefs submitted in typewritten form must be double-spaced between each line of text. To eliminate disparity between the effective length of a printed brief and that of a typewritten brief, the proposal allows for approximately twenty-five percent more pages for a typewritten brief than for a printed brief. Additional pages are allowed for cross appeals.

Finally, the Commission proposes (1) to amend Rule 4.4 to provide that service by mail is complete on mailing, as provided by Fed. R. App. P. 25, and to provide that, in adjudicative proceedings under Part III of the rules, service be made on both the Secretary of the Commission and the appropriate supervisor of complaint counsel in the case; and (2) to amend Rule 4.3 to provide that when service is made by mail, three days should be added to the time periods prescribed by the rules, as provided by Fed. R. App. P. 26(c).

List of Subjects

16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice.

16 CFR Part 4

Administrative practice and procedure, Freedom of information, Privacy, Sunshine Act.

For these reasons, Part 3, Subpart F, § 3.52, Part 4, §§ 4.3—4.4 of Chapter I of Title 16, *Code of Federal Regulations*, are proposed to be amended as follows:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

1. Section 3.52 is amended by redesignating paragraphs (f), (g) and (h) as (h), (i) and (j), revising paragraphs (a) through (e), and adding new paragraphs (f) and (g) to read as follows:

§ 3.52 Appeal from initial decision.

(a) *Who may file; notice of intention.* Any party to a proceeding may appeal an initial decision to the Commission by filing a notice of appeal with the Secretary within 10 days after service of the initial decision. The notice shall specify the party or parties against whom the appeal is taken and shall designate the initial decision and order or part thereof appealed from. If a timely notice of appeal is filed by a party, any other party may thereafter file a notice of appeal within 5 days after service of the first notice, or within 10 days after service of the initial decision, whichever period expires last.

(b) *Appeal brief.* The appeal shall be in the form of a brief, filed within 30 days after service of the initial decision, and shall contain, in the order indicated, the following:

(1) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A concise statement of the case;

(3) A specification of the questions intended to be urged;

(4) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific page references to the record and the legal or other material relied upon; and

(5) A proposed form of order for the Commission's consideration instead of the order contained in the initial decision.

The brief shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten, exclusive of pages containing the table of contents, tables of authorities and any addendum containing statutes, rules and regulations.

(c) *Answering brief.* Within 30 days after service of the appeal brief, the appellee may file an answering brief, which shall contain a subject index, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto, as well as arguments in response to the appellant's appeal brief. However, if the appellee is also cross-appealing, its answering brief shall also contain its arguments as to any issues the party is raising on cross appeal, including the points of fact and law relied upon in support of its position on each question, with specific page references to the record and legal or other material on which the party relies in support of its cross appeal, and a proposed form of

order for the Commission's consideration instead of the order contained in the initial decision. If the appellee does not cross-appeal, its answering brief shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten. If the appellee cross-appeals, its brief in answer and on cross appeal shall not, without leave of the Commission, exceed 105 pages, if printed, or 130 pages, if typewritten. The page limitations of this paragraph are exclusive of pages containing the table of contents, tables of authorities and any addendum containing statutes, rules and regulations.

(d) *Reply brief.* Within 7 days after service of the appellee's answering brief, the appellant may file a reply brief, which shall be limited to rebuttal of matters in the answering brief and shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten. However, if the appellee has cross-appealed, any appellant who is the subject of the cross appeal may, within 30 days after service of such appellee's brief, file a reply brief, which shall be limited to rebuttal of matters in the appellee's brief and shall not, without leave of the Commission, exceed 75 pages, if printed, or 95 pages, if typewritten. If the appellee has cross-appealed, any party who is the subject of the cross appeal, other than an appellant may, within 30 days after service of the appellee's brief, file a reply brief which shall be limited to rebuttal of matters raised by the appellee's cross appeal with respect to the party and shall not, without leave of the Commission, exceed 60 pages, if printed, or 75 pages, if typewritten. The appellee who has cross-appealed may, within 7 days after service of a reply to its cross appeal, file an additional brief, which shall be limited to rebuttal of matters in the reply to its cross appeal and shall not, without leave of the Commission, exceed 30 pages, if printed, or 40 pages, if typewritten. No further briefs may be filed except by leave of the Commission.

(e) *Form of briefs.* Briefs may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs produced by the standard typographic process shall be bound in volumes having pages 6⅛ by 9¼ inches and type matter 4⅛ by 7⅛ inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8½ by 11 inches and type matter not exceeding 6½ by 9½ inches, with double-spacing between each line of text. Footnotes and quoted material within the text may be single-spaced.

(f) *Signature.* (1) The original of each brief filed shall have a hand-signed signature by an attorney of record for the party, or in the case of parties not represented by counsel, by the party itself, or by a partner if a partnership, or by an officer of the party if it is a corporation or an unincorporated association.

(2) Signing a brief constitutes a representation by the signer that he or she has read it, that to the best of his or her knowledge, information, and belief, the statements made in it are true, and that it is not interposed for delay. If a brief is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may go forward as though the brief had not been filed.

(g) *Designation of appellant in cases involving cross appeals.* In a case involving an appeal by complaint counsel and one or more respondents, any respondent who has filed a timely notice of appeal and as to whom the administrative law judge has issued an order to cease and desist shall be deemed an appellant for purposes of paragraphs (b), (c), and (d) of this section. In a case in which the administrative law judge has dismissed the complaint as to all respondents, complaint counsel shall be deemed the appellant for purposes of paragraphs (b), (c), and (d) of this section.

* * * * *

PART 4—RULES OF PRACTICE MISCELLANEOUS RULES

By revising § 4.2 (d)(2) to read as follows:

§ 4.2 Requirements as to form, and filing of documents other than correspondence.

* * * * *

(d) * * *

(2) Briefs filed on an appeal from an initial decision shall be in the form prescribed by § 3.52(e).

By adding § 4.3 paragraph (c) to read as follows:

§ 4.3 Time.

* * * * *

(c) *Additional time after service by mail.* Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him or her and the paper is served by mail, 3 days shall be added to the prescribed period.

By revising paragraphs (a)(3), (b) and (c) of § 4.4 to read as follows:

§ 4.4 Service.

(a) *By the Commission.*

* * * * *

(3) All other documents may be served by any method specified in paragraph (a)(1) of this section or by first-class mail and shall be deemed served on the day of personal delivery or the day of mailing.

* * * * *

(b) *By other parties.* Service of documents by parties other than the Commission shall be by delivering copies thereof as follows: Upon the Commission, by personal delivery or delivery by first-class mail to the Office of the Secretary of the Commission and, in adjudicative proceedings under Part III of the Commission's Rules of Practice, to the Assistant Director in the Bureau of Competition, the Associate Director in the Bureau of Consumer Protection, or the Director of the Regional Office of complaint counsel. Upon a party other than the Commission or Commission counsel, service shall be by personal delivery or delivery by first-class mail. If the party is an individual or partnership, delivery shall be to such individual or a member of the partnership, if a corporation or unincorporated association, to an officer or agent authorized to accept service of process therefor. Personal service includes handing the document to be served to the individual, partner, officer, or agent; leaving it at his or her office with a person in charge thereof, or, if there is no one in charge or if the office is closed or if the party has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Documents shall be deemed served on the day personal service or the day of mailing.

(c) *Proof of service.* Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed.

By direction of the Commission, date November 15, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-30696 Filed 11-26-84; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21495; File No. S7-36-84]

Exemption of Certain Direct Participation Program Interests From Sections 7(c) and 11(d)(1)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is soliciting comment on a rule which would exempt the securities of certain direct participation programs from those provisions of sections 7(c) and 11(d)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), which currently prohibit broker-dealers from arranging extensions of credit to investors to purchase securities. The proposed exemptive rule would allow broker-dealers, subject to certain conditions, to participate in public offerings of securities of direct participation programs that provide for mandatory installment payments. Currently, sections 7(c) and 11(d)(1) prohibit the public sale of securities that provide for mandatory installment payments by investors. The Commission does not believe that permitting payments on an installment basis in the public sale of direct participation programs presents the kind of abuse that sections 7(c) and 11(d)(1) were designed to prohibit, provided that certain conditions are met.

DATE: Comments must be received on or before January 22, 1985.

ADDRESSES: Interested persons should submit three copies of their comments to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Kathryn V. Natale, Office of Chief Counsel, Division of Market Regulation, (202) 272-2848.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is soliciting comment on proposed Rule 3a12-9 which would, pursuant to section 3(a)(12) of the Exchange Act, deem interests in certain direct participation programs[1] to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Exchange Act.[2] If adopted, the new rule would permit broker-dealers to participate in a public offering of securities of direct participation programs that provides for mandatory payments on an installment basis, provided that certain conditions are met. Currently, Regulation T, promulgated by the Board of Governors of the Federal Reserve System ("Board") under section 7 of the Exchange Act, and section 11(d)(1) of the Exchange Act are interpreted to prohibit broker-dealers from participating in public offerings of interests in direct participation programs with mandatory installment payment features.[3] An effect of this prohibition has been to encourage the use of private placements for sales of interests in direct participation programs with mandatory installment payment features or encourage the use of voluntary installment features in public offerings. Rule 3a12-9, if adopted, would not require that direct participation program securities be sold on a mandatory installment basis. It would, however, provide an alternative to sales that require the investor immediately to pay the entire purchase price. The rule would permit the timing and amount of payments to be coordinated with the program's capital needs. The rule in no way affects the treatment of installment payments under the Securities Act of 1933.[4]

The Commission is proposing Rule 3a12-9 in part as a response to a recommendation made by the National Association of Securities Dealers, Inc., ("NASD") to provide relief from the credit restrictions in this area.[5] The NASD argues that permitting broker-dealers to participate in public offerings of direct participation programs with installment payment features will encourage federal registration of these offerings and thus provide additional investor protection. The NASD also argues that the concerns that led the Congress to adopt section 7(c) do not arise in the context of installment sales of direct participation programs. The NASD points out that the regulatory oversight of direct participation programs by the NASD and the states has been substantially increased over the past decade, and that the federal tax laws now address certain abuses associated with the sale of some direct participation programs.[6] The NASD's regulations address investor suitability, due diligence by members, the accuracy and adequacy of disclosure and the amount and form of underwriting compensation. Separate state regulatory guidelines for the registration of direct participation programs have been adopted by the North American Securities Administrators Association, Inc. ("NASAA"), a voluntary

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[1] The term "direct participation program" refers to an investment medium that provides direct flow-through tax consequences to its investors. These programs take the form of limited partnerships and include, but are not limited to, oil and gas programs, real estate programs, agricultural programs and cattle programs.

[2] Section 3(a)(12) defines "exempted securities" to include such other securities: As the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any [one] or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities."

[3] *See, e.g.*, Securities Credit Transactions Handbook, 5-606.31 (Staff Op. September 30, 1983) (Installment payments are not permissible under Regulation T where the investor will incur a "substantial economic penalty" for non-payment of the installments). In March of 1972, the Board concluded that the sale by a broker-dealer of a publicly offered tax shelter program with installment features constitutes an "arranging" for the extension of credit in violation of Regulation T. 12 CFR 220.124. In July of 1972, the Board staff indicated that the March interpretation related only to publicly offered programs which were not exempt from registration with the SEC. Securities Credit Transactions Handbook section 5-551. In 1975, the Board amended Regulation T, among other things, to except from the arranging prohibition those private offerings exempt from SEC registration pursuant to section 4(2) of the Securities Act of 1933 ("1933 Act"). 12 CFR 220.7(a). Because the prohibitions of section 11(d)(1) of the Exchange Act would have rendered an exemption for intrastate offerings ineffective, the staffs of the Board and the Commission concluded that an express exemption from Regulation T for intrastate offerings was inappropriate.

[4] Since direct participation interests often are offered on an "all or none" or "part or none" basis, questions arise whether such interests can be considered sold for purposes of Rule 10b-9 under the Exchange Act when the investor does not make any, or makes a minimal, down payment. Rule 10b-9 imposes disclosure requirements on certain "all or none" or "part or none" offerings. The staff of the Commission has permitted interests in direct participation programs with installment payment features to be considered sold for Rule 10b-9 purposes in cases where the subscriber makes a specified initial contribution; the balance of the purchase price is evidenced by a recourse note; and the offering materials adequately disclose the effects of the installment payment feature on the program's proceeds and operations. Under Rule 15c2-4, which addresses the handling of investor funds in contingent offerings, investors' funds may not be forwarded to the partnership until the required minimum number of securities has been sold (as evidenced by the requisite initial cash contributions and recourse notes) by the specified date. The Commission therefore solicits comment on the application of Rules 10b-9 and 15c2-4 to "all or none" or "part or none" offerings with installment payment features that would be permitted by proposed Rule 3a12-9.

[5] Letter dated April 26, 1983 to Robert S. Plotkin, Assistant Director of the Board, from Frank J. Wilson, Executive Vice President, NASD, which is publicly available in File No. S7-36-84.

[6] *See, e.g.*, the Economic Recovery Tax Act of 1981 and the Tax Equity and Fiscal Responsibility Act of 1982. Legislative efforts in this area are ongoing. *See, e.g.*, New York Times, June, 5, 1984, Section D, at 1.

organization comprised of state securities regulatory agencies. The guidelines, among other things, establish standards regulating sponsors and impose investor suitability requirements. While the NASAA continuously re-evaluates and updates its registration guidelines, it should be noted that its guidelines currently prohibit assessments, installment payments or other deferred payments for non-specified property programs.

For a number of reasons that are fully discussed in its letter, the NASD believes that it would be appropriate to exempt, without conditions, broker-dealers that participate in public offerings of direct participation program interests with mandatory installment payment features from the credit restrictions. Alternatively, the NASD suggested that certain conditions could be imposed on such offerings. While the Commission believes that some or all of the NASD's suggested conditions may be necessary to assure investor protection, and, therefore, has included certain conditions in the rule, the Commission also solicits comment on whether it would be appropriate to entirely exempt direct participation program interests from the credit restrictions when sold on an installment basis.

Proposed Rule 3a12–9 would apply to interests in direct participation programs that, pursuant to a bona fide business plan which is fully described in the registration statement filed under the Securites Act of 1933, do not require the full purchase price from the investor at the outset of the operation.[7] An example of such a program would be an oil and gas program that requires one installment to cover drilling and another to facilitate the development of productive wells. The term "business development plan" is defined in paragraph (b)(2) of the rule to mean a specific plan of the program's anticipated economic development and the amounts of future capital contributions to be required. Disclosure of the bona fide business plan would provide investors with material information concerning the program and alert them to their responsibility to make deferred payments. The rule would also require that the installment feature of the plan bear a direct relationship to the cash needs and program objectives described in the business plan. The Commission solicits comment on the "bona fide business plan" limitation. In particular, commentors are requested to address whether the definition of the term "bona fide business plan" should be expanded to specifiy the type of information that must be provided. Finally, the Commission requests comment regarding the ability to accurately estimate, over a period, capital needs for all types of unspecified property programs.

As proposed, the rule also would require that the issuer register the securities under section 12(g) of the Exchange Act and that the securities remain so registered until all of the mandatory payments have been made. A reporting requirement was suggested in the NASD proposal.

The Commission also solicits comment on whether additional limitations should be included in the rule to address potential leverage and suitability concerns. The NASD's proposal suggested that the following additional conditions might be appropriate: (1) That not less than 35% of the purchase price of the direct participation program be paid within a twelve-month period from the date the investor is admitted as a limited partner; and (2) that the total purchase price of the program interest be discharged in a period of three years from the date the investor is admitted as a limited partner in a non-specified program or five years in the case of a specified property program.[8] The Commission solicits comment on whether the rule should distinguish between specified and non-specified programs in areas other than the maximum amount of time in which the full purchase price must be paid as suggested by the NASD, and whether it would be appropriate to limit application of the rule to specified programs. The Commission also seeks comment on whether other limitations would be appropriate such as a minimum investment size, investor accreditation standards and minimum down payment.[9]

In its recommendation, the NASD asked for clarification on the applicability of section 11(d)(1) of the Exchange Act to intrastate offerings. The Commission currently interprets section 11(d)(1) to apply to intrastate offerings. There is nothing in the legislative history of section 11(d)(1) to suggest that the rule should not apply to intrastate offerings. In addition, because an intrastate offering generally constitutes a distribution of a new issue of securities within the meaning of section 11(d)(1), a person who transacts business in securities both as a broker and a dealer would be subject to its prohibitions. The Commission solicits comment on whether it would be appropriate to provide an express exemption from the arranging provisions of Regulation T and section 11(d)(1) for intrastate offerings.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed Rule 3a12–9. The Analysis notes that the objective of deeming interests in certain direct participation programs to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) is to enhance investor protection by encouraging federal registration of offerings in direct participation program interests with installment features. The Analysis states that the proposed rule would require that the issuer register the securities under section 12(g) of the Exchange Act and that the securities remain so registered until the total purchase price of the program security has been paid. The Analysis also states that this proposal is being made with the concurrence of the staff of the Board.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Kathryn V. Natale, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272–2848.

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[7] The term "direct participation program" is defined to mean a program financed through the sale of securities other than margin securities (as defined in 12 CFR 220.2(o)) that provides direct flow-through tax consequences to investors. The exclusion of margin securities takes into account the fact that interests in some direct participation programs are listed and traded on a national securities exchange and, therefore, are margin securities. The Commission believes that it would not be appropriate to permit securities that may already be sold on credit to be sold on an installment basis.

[8] Under the NASD proposal, a specified property program would be defined as a program in which 80% of the amount of money available for investment is allocated to specific properties. A non-specified program would be one in which less than 80% is so allocated.

[9] It would appear that, absent specific exemptive relief, sales of program securities in compliance with Rule 3a12–9, if adopted, would be subject to the disclosure requirements of Rule 15c2–5 under the Act. 17 CFR 240.15c2–5, Disclosure and Other Requirements when Extending Credit in Certain Transactions. Paragraph (b) of that rule exempts any credit extended or loan arranged subject to and made in compliance with Regulation T. If program securities are exempt from Regulation T when sold on an installment basis by operation of Rule 3a12–9, it would seem that the exemption in Rule 15c2–5 is unavailable. The Commission believes that the information required to be disclosed by Rule 15c2–5 would generally be disclosed in the prospectus in any event so that compliance with the Rule would not be burdensome. Nevertheless, the Commission solicits comment on whether, if it determines to adopt Rule 3a12–9, it should amend Rule 15c2–5 to provide an express exemption for credit extended or loans arranged in compliance with Rule 3a12–9.

Statutory Basis

Proposed Rule 3a12–9, would be adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(a)(12), 7(c), and 11(d)(1) and 23 [15 U.S.C. 78c(a)(12), 78g, 78k, and 78w].

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

PART 240—AMENDED

On the basis of the above discussion and analysis, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adding § 240.3a12–9 as follows:

§ 240.3a12–9 Exemption of certain direct participation program interests from the arranging provisions of sections 7(c) and 11(d)(1).

(a) Direct particpation program securities sold on a basis whereby the purchase price is paid to the issuer in a series of mandatory installments shall be deemed to be exempt securities for the purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Act provided that:

(1) The securities are registered under the Securities Act of 1933;

(2) The issuer registers the securities under section 12(g) of the Exchange Act and the securities remain registered under that section until the total purchase price of the security is paid; and

(3) The mandatory installment payments bear a direct relationship to the cash needs and program objectives described in a business development plan disclosed in the registration statement filed with the Commission pursuant to the Securities Act of 1933.

(b) For purposes of this rule:

(1) "Direct participation program" shalll mean a program financed through the sale of interests in securities other than margin securities (as defined in 12 CFR 220.2(o)) that provides direct flow-through tax consequences to its investors and created pursuant to a contractual agreement between and among investors as in a limited partnership: *Provided, however,* That the term "direct participation program" does not include real estate investment trusts, Subchapter S corporate offerings, tax qualified pension and profit sharing plans pursuant to sections 401 and 403(a) of the Internal Revenue Code ("Code"), tax shelter annuities pursuant to section 403(b) of the Code, individual retirement plans under section 408 of the Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940.

(2) "Business development plan" shall mean a specific plan of the program's anticipated economic development, and the amounts of future capital contributions to be required, in the form of deferred payments, at specified times or upon the occurrence of certain events.

By the Commission.

November 16, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30879 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

17 CFR Part 270

[Release No. IC–14244; File No. S7–39–84]

Pricing of Redeemable Securities for Distribution, Redemption, and Repurchase

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing for comment a rule and rule amendment under the Investment Company Act of 1940 relating to the pricing of redeemable securities by investment companies. Specifically, the proposals would limit the days on which pricing might be required to customary United States business days, and would provide that an investment company will not have suspended the right of redemption if it prices a redemption request by computing net asset value pursuant to the amended rule. The proposals, if adopted, would simplify and clarify pricing requirements primarily for funds with portfolio securities trading on foreign markets.

DATE: Comments must be received by January 28, 1985.

ADDRESS: Three copies of all comments should be submitted to Shirley E. Hollis, Acting Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–39–84. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Jay Gould, Esq., Office of Disclosure Policy and Adviser Regulation, (202) 272–2107, 450 Fifth Street, NW., Room 5130, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment a proposed amendment to rule 22c–1(b) [17 CFR 270.22c–1] and a new rule 22e–2 [17 CFR 270.22e–2] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*]. The amendment to rule 22c–1(b) would require investment companies subject to its provisions to compute the current net asset value of their redeemable securities at least every weekday (Monday through Friday) except for: (i) Days which are customary United States business holidays that are stated in the prospectus, (ii) days on which no security is tendered for redemption and no customer order is received, or (iii) days when the degree of trading in the investment company's portfolio securities is such that the current net asset value of the investment company's redeemable securities will not be affected by changes in the value of the portfolio securities. New rule 22e–2 would simply apply the pricing provisions of amended rule 22c–1 to the section 22(e) requirement regarding the honoring of redemption requests. Proposed rule 22e–2 would make it clear that an investment company would not be required to price redemption requests on days on which pricing would not be required under rule 22c–1.

Background

Rule 22c–1(b), as amended in 1979, requires investment companies issuing redeemable securities to compute the net asset value of shares (i) not less frequently than once daily on each day (other than days when no order to purchase or sell is received and no tender for redemption is made) in which there is a sufficient degree of trading in the investment company's portfolio securities that the current net asset value of the fund's redeemable securities might be materially affected by changes in the value of the portfolio securities, and (ii) at such specific time during the day as determined by a majority of the board of directors of the investment company no less frequently than annually.[1]

Rule 22c–1 was originally adopted in 1968 to require forward pricing of investment company redeemable securities.[2] The rule requires that an open-end investment company, for purposes of sales, redemptions and repurchases of its redeemable securities, give investor orders the next computed price of the net asset value after receipt of the order. Prior to adoption of rule 22c–1, investor orders to purchase and redeem could be executed at a price

[1] 17 CFR 270.22c–1(b).

[2] ICA Release No. 5519 (October 16, 1968); 33 FR 16331 (November 7, 1968).

computed before receipt of the order, allowing investors to lock-in a low price in a rising market and a higher price in a falling market. The forward pricing provision of rule 22c–1 was designed to eliminate these trading practices and the dilution to fund shareholders which occurred as a result of backward pricing.

Under the rule as originally adopted, current net asset value was to be computed at least once every day at the close of the New York Stock Exchange. In 1979, the rule was amended to unlink the pricing of investment company shares from New York Stock Exchange trading days and eliminate the requirement that pricing be done at a specific time.[3] As amended the rule gave the boards of directors of investment companies responsibility for establishing the time for pricing, and permitted an investment company to compute current net asset value at a time which is most appropriate for its particular investment portfolio.[4]

In amending the rule in 1979, the Commission intended that investors receive a fair and accurate valuation of their securities so that they could take appropriate trading action on every day in which there is a "significant degree of trading" in the portfolio securities. As the Commission has interpreted the amended rule, an investment company is not required to keep its administrative offices open on Saturdays, Sundays, and holidays but it must accept investor orders every day mail is delivered and price its redeemable securities as of the day such orders are received.

Proposed Amendment to Rule 22c–1(b)

The proposed amendment to 22c–1(b) would establish customary United States business days as the days on which an investment company, at a minimum, must price its redeemable securities provided customer orders are received [5] and there is significant trading in the fund's portfolio securities. Specifically, the amendment would permit a fund to limit its business days to Monday through Friday, exclusive of customary United States business holidays that are disclosed in the prospectus.

As discussed above, currently, an investment company whose portfolio securities trade on Saturday, for example, must segregate mail received on Saturday from other mail and determine whether the trading in the fund's portfolio securities on Saturday might have materially affected the fund's net asset value. If so, Saturday net asset value must be computed and Saturday orders must be processed at that price. The same procedures must be followed where trading in the fund's portfolio securities occurs on a business holiday in the United States on which mail is delivered.

Members of the investment company industry have argued that this requirement imposes an administrative and financial burden on investment companies and their transfer agents or pricing services which is not justified by the limited benefits derived by investors. The rule permits investment companies to keep their admimistrative offices closed on Saturday and, accordingly, does not require that investment companies receive wire or telephone transactions on Saturday. Even if funds were open on Saturday, the Federal Reserve wire transfer system is closed on Saturday as are transfer agents, pricing services and other investment company support organizations. In addition, investor orders received in Saturday's mail generally do not reflect an attempt to act on Saturday's trading activity.

Because the arguments made by investment companies appear to have merit, the Commission has decided to propose an amendment to Rule 22c–1. The proposed amendment would permit an investment company to give investor orders received in Saturday's mail the next computed price on Monday. This arrangement would give all investors equal opportunity to place orders with the fund, while permitting funds to limit pricing to customary business days. The amendment also would eliminate the need to price on holidays on which mail is delivered.

An investment company's pricing practices must be disclosed in its prospectus. Because the United States business holidays observed by funds may vary somewhat, the rule would require specific disclosure in the prospectus of the holidays on which the fund will not price its redeemable securities.[6] Also, to the extent that a fund's pricing practices may limit investor access to the fund on days when significant trading in the fund's portfolio securities may occur, the Commission would expect the fund to explain the consequences of its pricing practices in it prospectus.

It should be noted that, although the rule amendment would permit funds to eliminate segregated pricing of orders received on Saturdays and holidays, it would not require them to do so. Also, if the rule amendment is adopted, the Commission will re-examine it from time to time if the increasingly international character of the securities markets results in longer trading days, additional trading days in United States markets, or other changes that may affect the operation of the rule.

Proposed Rule 22e–2

Section 22(e) of the Investment Company Act provides that an investment company may not suspend the right of redemption, or postpone payment upon redemption for more than seven calendar days after tender of redemption, except in limited circumstances. These circumstances are when the New York Stock Exchange is closed other than on normal closing days or when trading is restricted, in emergencies where it is not reasonably practicable to calculate net asset value, and where ordered by the Commission for the protection of shareholders. The staff has interpreted section 22(e) generally to require investment companies to honor a redemption request received on any day the New York Stock Exchange is open.

To clarify the application of the general pricing requirements of rule 22c–1 to the pricing of redemption requests pursuant to section 22(e), proposed rule 22e–2 states that a fund does not violate section 22(e) if it honors redemption requests by pricing them in accordance with the pricing requirements of rule 22c–1.[7] Thus, an investment company

[3] ICA Release No. 10827 (August 13, 1979), 44 FR 48659 (August 20, 1979).

[4] For example, because substantially all money market trading occurs in the morning, most money market funds compute net asset value at noon.

[5] Investment companies will be expected to comply with the long-standing staff position with regard to when an order to purchase or redeem is "received." Arguments have sometimes been made that where the fund itself is closed for business, an order has not been "received" even though the postal service has delivered the order to the fund's place of business or transfer agent. The staff has historically not accepted that argument, but has taken the position that if a fund is unable, due to emergency conditions such as snowstorms or power failures, to complete the mechanical process of pricing on a day on which it would normally be required to do so under Rule 22c–1, the price for that day may be calculated subsequently and applied to sales, redemptions and repurchases that were in fact received in the mail or otherwise on that same day. Similarly, if a fund decided to close its business operations for a local holiday or for other comparable reasons, the fund would be expected to later calculate net asset value for that day and apply that price to orders that were received that day.

[6] Open-end management companies would disclose their pricing practices and holiday closings in Part A of Form N1–A.

[7] A fund whose portfolio securities trade on several foreign exchanges or on one or more foreign exchanges in addition to a domestic market may continue to rely on the Division's no-action position

Continued

can postpone calculating a price for redemption purposes on any day on which pricing is not required under rule 22c–1. This means, for example, that an investment company would not violate section 22(e) of the Act if it did not calculate a price for redemption purposes on a day where the primary trading market for the investment company's portfolio securities was closed, and the degree of trading in the investment company's other portfolio securities was not significant enough to trigger the pricing requirement of rule 22c–1. It should be noted, however, that an investment company would violate section 22(e) (and section 22(c)) and rule 22c–1 of the Act if it failed to price a redemption request with respect to a day where the degree of trading in its portfolio securities was such that pricing under rule 22c–1 would be required even though there was no trading in a substantial portion of the investment company's portfolio securities because the foreign exchange on which those securities trade was closed. New Rule 22e–2 codifies a staff position maintaining the principle of forward pricing established by rule 22c–1.[8]

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposals

Accordingly, Part 270 of Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

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

1. Paragraph (b)(1) of § 270.22c–1 is revised to read as follows:

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

* * * * *

(b) For the purposes of this section: (1) The current net asset value of any such security shall be computed no less frequently than once daily, Monday through Friday, at such specific time during the day that a majority of the board of directors of the investment company determines no less frequently than annually. However, the current net asset value of such securities need not be determined on (i) days in which the degree of trading in the investment company's portfolio securities is such that the current net asset value of the investment company's redeemable securities will not be materially affected by changes in the value of the portfolio securities, (ii) days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company, or (iii) customary United States business holiday as specifically disclosed in the prospectus: * * *

* * * * *

2. By adding § 270.22e–2 to read as follows:

§ 270.2e–2 Pricing of redemption requests when foreign exchange on which investment company trades is closed but the New York Stock Exchange is open.

An investment company shall not be deemed to have suspended the right of redemption if it honors a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of rule 22c–1. (§270.22c–1)

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the proposed amendment to rule 22c–1 and proposed rule 22e–2. The analysis notes that the proposed amendment and proposed rule would have the principle effect of allowing investment companies whose portfolio securities trade primarily on foreign exchanges to maintain customary United States business days while preserving forward pricing of investor orders. The objective of the proposed amendment and proposed rule is to reduce operating costs to investment companies while still providing investors with access to the fund and forward pricing for all transactions.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jay Gould, Esq., Office of Disclosure Policy and Adviser Regulation, Securities and Exchange Commission (202) 272–2107, 450 Fifth Street, NW., Washington, D.C. 20549.

Statutory Authority

The Commission is proposing the amendments to rule 22c–1 pursuant to sections 22(c) (15 U.S.C. 80a–22(c)) and section 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act of 1940.

The Commission is proposing rule 22e–2 pursuant to sections 6(c) (15 U.S.C. 80a–6(c)), 22(e) (15 U.S.C. 80a–22(e)) and 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act of 1940.

By the Commission.

Shirley E. Hollis,

Acting Secretary.

November 21, 1984.

[FR Doc. 84–31022 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

in *Putnam Growth Fund and Putnam International Equities Fund,* Inc., (pub. avail. February 23, 1981) with regard to the limited circumstances under which a fund may use a previous closing price to calculate current net asset value. Under *Putnam,* if the foreign exchange on which a portfolio security is principally traded is closed at the time a fund computes its current net asset value, then the fund may use the previous closing price on the foreign exchange to calculate the value of the security, except when an event has occured since the time the value was established that is likely to have resulted in a change in such value. If an event does occur which will affect the value of portfolio securities after the market has closed, the fund must, to the best of its ability, determine the fair value of the securities, as of the time pricing is done under Rule 22c–1, by using appropriate indicia of value which, in certain cases, may include the opening price at which trading in the securities next begins.

[8] Nomura Capital Fund of Japan, Inc., Nomura Index Fund of Japan, Inc. (pub. avail. January 20, 1980).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 12 84–05]

Regulated Navigation Area; San Francisco Bay and Its Tributaries Inland to and Including the Ports of Sacramento, CA and Stockton, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a Regulated Navigation Area to include the waters of San Francisco Bay inland to and including the port areas of Sacramento, CA and Stockton, CA. The purpose of this regulation would be to prescribe certain operational guidelines and procedures to be observed by vessels transiting this area carrying designated quantities of Certain Dangerous Cargoes. These safety procedures would be established to minimize the potential for a vessel casualty which could result in an accidental release or detonation of these cargoes.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Comments should be mailed or hand delivered to Marine Safety Division, Twelfth Coast Guard District, Government Island, Building 54–B, Room 250, Alameda, CA 94501. The comments will be available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William F. Walker, Marine Safety Division, Twelfth Coast Guard District, Government

Island, Alameda, CA 94501 (415) 437–3465.

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 [CGD12 84–05] 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 proposed rules may be revised 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 for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR William F. Walker, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Rule

Certain commodities have been identified that would create an unacceptable public safety hazard if released. Carriage of these cargoes is regulated by the Coast Guard. The Commander, Twelfth Coast Guard District is responsible for implementing these regulations, and under 33 CFR 165.11 has the authority to regulate vessel traffic within the Twelfth Coast Guard District. The Captain of the Port San Francisco Bay (COTP) enforces these regulations for the San Francisco Bay Area, including its inland tributaries.

The presence of a vessel transporting Certain Dangerous Cargoes within the San Francisco Bay Area with its dense population, valuable industrial complex and fragile ecological system presents a potential hazard because of the possibility of a collision, grounding or other accidental damage. The consequences of such an event, especially in the narrower reaches of the bay or near one of the bridges, are considered serious enough to justify special treatment for these vessels to reduce the potential of a hazardous occurrence.

The substance of these regulations is derived from Captain of the Port San Francisco Bay Public Notice 2–82 issued 13 December 1982. Certain provisions of that notice relating to restricting movements of vessels carrying explosives to daylight hours and restricting movements of vessels during periods of reduced visibility and at night have been relaxed in these rules. Certain other provisions relating to internal Coast Guard policy considerations such as the escort of affected vessels and provisions for communications with the escorted vessel have been omitted and will be the subject of a revised COTP Public Notice.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Its economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. For the past year, these restrictions have been in force via COTP Public Notice 2–82 issued 13 December 1982 without negative comments having been received. Additionally, these rules relax two restrictions contained in the COTP Public Notice. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding a new § 165.1201 to read as follows:

§ 165.1201 San Francisco Bay and tributaries—regulated navigation area.

(a) The following is a Regulated Navigation Area—The navigable waters of San Francisco Bay from the line of demarcation, as described in 33 CFR 80.1250, inland to and including the port areas of Stockton, CA and Sacramento, CA and all connecting rivers and tributaries.

(b) *Definitions.* As used in this section:

(1) "Carried in bulk" means a commodity that is loaded or carried on board a vessel without containers or labels and received or handled without mark or count.

(2) "Certain Dangerous Cargoes" means those cargoes described in 33 CFR 160.203.

(3) "Designated Quantities" of Certain Dangerous Cargoes means:

(i) More than 100 short tons (NEC) of class A explosives aboard self-propelled vessels; or

(ii) More than 5 short tons (NEC) of class A explosives aboard non self-propelled vessels; or

(iii) More than 2000 short tons of oxidizing materials or blasting agents; or

(iv) Any amount of other Certain Dangerous Cargoes carried in bulk.

(4) "COTP" means Captain of the Port, San Francisco Bay.

(5) "Net Explosive Content (NEC)" means 40 percent of the gross weight of an explosive load unless otherwise demonstrated.

(c) *Waivers.* (1) The COTP may, upon written request, except as allowed in paragraph (3) of this paragraph, waive any regulation in this section if it is found that the proposed operation can be conducted safely under the terms of that waiver.

(2) Each written request for a waiver must state the need for the waiver and describe the proposed operation.

(3) Under unusual circumstances due to time considerations, a person may orally request a waiver from the COTP provided that a written request is submitted within five working days after the oral request.

(4) The COTP may, at any time, terminate any waiver issued under this subsection by providing written notice to the affected parties.

(d) *Regulations.* (1) The owner, master, agent or person in charge of a vessel entering or operating within this Regulated Navigation Area carrying designated quantities of Certain Dangerous Cargoes shall:

(i) Provide the COTP with 24 hours advance notice of any vessel movement.

(ii) Proceed only when visibility exceeds one nautical mile. Upon encountering reduced visibility, all vessels shall proceed to a safe anchorage as directed by the COTP.

(iii) Adhere to the Vessel Traffic Separation Scheme except as permitted by COTP or Vessel Traffic Service San Francisco.

(iv) Restrict speed of advance through the water to 12 knots or less. Vessel Traffic Service may authorize higher speeds when necessary to avoid unfavorable passing or meeting situations.

Authority: (33 U.S.C. 1223 and 1231; 49 CFR 1.46; and 33 CFR 1.05–1[g][4]).

Dated: November 21, 1984.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 84-31005 Filed 11-26-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD12 84-06]

Regulated Navigation Area; Humboldt Bay, CA and Approach Channel

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a Regulated Navigation Area to include the waters of Humboldt Bay, CA and its approach channel. The purpose of this regulation would be to prescribe certain operational guidelines and procedures to be observed by vessels transiting this area carrying dangerous cargoes. These safety procedures would be established to minimize the potential for a vessel casualty which could result in an accidental release of these potentially hazardous cargoes.

DATES: Comments must be received on or before January 11, 1985.

ADDRESSES: Comments should be mailed or hand delivered to Marine Safety Division, Twelfth Coast Guard District, Building 54-B, Room 250, Alameda, CA. 94501. The comments will be available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William F. Walker, Marine Safety Division, Twelfth Coast Guard District, Government Island, Alameda, CA 94501, (415) 437-3465.

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 [CGD12 84-06] 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 proposed rules may be revised 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 for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LCDR William F. Walker, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of the Proposed Rule

Certain commodities have been identified that would create an unacceptable public safety hazard if released. Carriage of these cargoes is regulated by the Coast Guard. The Commander, Twelfth Coast Guard District is responsible for implementing these regulations and under 33 CFR 165.11 has the authority to regulate vessel traffic within the Twelfth Coast Guard District. The Captain of the Port San Francisco Bay (COTP) enforces these regulations within Humboldt Bay and its approach channel.

Of major concern in Humboldt Bay is the transit of vessels towing barges across the often hazardous Humboldt Bay Bar and the approach channel. This area of concern becomes progressively more acute in the case of barges carrying oil (and its derivatives), or Certain Dangerous Cargoes in bulk, which include chlorine. A serious marine casualty involving one of these barges could result in the accidental release of these cargoes which could pose a significant threat to the environment and the public in the surrounding area. These regulations are intended to prescribe operational guidelines and procedures to be followed by the owners, masters, agents, or persons in charge of such towing vessels to minimize the potential for such a marine casualty.

The substance of these regulations is derived from Captain of the Port San Francisco Bay Public Notice 3-82 issued 15 December 1982. The provision of that notice requiring two additional assist tugs has been relaxed. Other provisions dealing with internal Coast Guard policy matters such as weather evaluation criteria, operations of Coast Guard escort craft, and communications procedures have been omitted from the rules and will be the subject of a revised COTP Public Notice on the subject.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be minimal since for some time, the generally accepted practice of the towing industry in this area has been to require two additional assist tugs to aid vessels towing barges laden with these hazardous cargoes while crossing the Bar. Captain of the Port Public Notice 3-82 formalized the existing industry practice for all such vessel transits. Comments received subsequent to the issuance of this Notice questioning the need for two assist tugs have been considered and have provided the impetus for relaxing these rules. Accordingly, a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security Measures, Vessels, Waterways.

PART 165—[AMENDED]

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations, by adding a new § 165.1202 to read as follows:

§ 165.1202 Humboldt Bay and approach channel—regulated navigation area.

(a) The following is a Regulated Navigation Area—The navigable waters of Humboldt Bay, entrance channel thereto and the waters within a 1000 yard radius of the seaward end of the entrance channel's south jetty.

(b) *Definitions.* As used in this section:

(1) "Carried in bulk" means a commodity that is loaded or carried on board a vessel without containers or labels and received or handled without mark or count.

(2) "Certain Dangerous Cargoes" means those cargoes described in 33 CFR 160.203.

(3) "COTP" means Captain of the Port, San Francisco Bay.

(4) "Insurance wire" means an auxiliary towing rig suitable in size and configuration to be used to safely hook up to and maneuver a barge upon failure of the main tow wire.

(c) *Waivers.* (1) The COTP may, upon written request, except as allowed in paragraph (3) of this paragraph, waive any regulation in this section if it is found that the proposed operation can

be conducted safely under the terms of that waiver.

(2) Each written request for a waiver must state the need for the waiver and describe the proposed operation.

(3) Under unusual circumstances due to time considerations, a person may orally request a waiver from the COTP provided that a written request is submitted within five working days after the oral request.

(4) The COTP may, at any time, terminate any waiver issued under this subsection by providing written notice to the affected parties.

(d) *Regulations.* The owner, master, agent or person in charge of a vessel towing a barge carrying oil or oil derivative products entering or operating within this Regulated Navigation Area shall:

(1) Provide the COTP with 24 hours advance notice of any vessel movement; and

(2) Obtain permission from COTP prior to entry; and

(3) During the transit of a barge carrying Certain Dangerous Cargoes, in particular chlorine, in addition to the above:

(i) Provide on scene one additional towing vessel of adequate size and horsepower to assist during the transit; and

(ii) Provide an insurance wire streamed off the stern of the barge.

Authority: (33 U.S.C. 1223 and 1231; 49 CFR 1.46; and 33 CFR 1.05–1(g)(4)).

Dated: November 21, 1984.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander, Twelfth Coast Guard District.

[FR Doc. 84–31006 Filed 11–26–84; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[Gen. Docket No. 84–902; RM–3975]

Frequency Reallocation Making Additional Portions of the 470–512 MHz Band Available for Police Use in Los Angeles County; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule correction.

SUMMARY: In FR Doc. 84–30495, in the issue of Wednesday, November 21, 1984, on page 45875, a typographical error appeared in the heading which referred to the docket number of this proceeding, concerning *Frequency Reallocation to Make Additional Portions of the 470–512 MHz Band Available for Police Use in Los Angeles County*, as Gen. Docket No. 84–904. *The correct docket number should read: Gen. Docket No. 84–902.*

FOR FURTHER INFORMATION CONTACT: Don Precure, (202) 653–8170.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–30902 Filed 11–26–84; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thurday, December 6, 1984 at 1:30 p.m. and Friday, December 7, 1984 at 9:30 a.m. in The Amphitheater of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C.

The Conference will consider proposed recommendations on the following subjects:

1. Preemption of state regulation by federal agencies.
2. Release of confidential information under protective orders in antidumping and countervailing duty proceedings.
3. Administrative settlement of tort and other mometary claims against the Government.

In addition, there will be a general discussion of issues in administrative law reform in the next four years.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, D.C. 20037, telephone (202) 254–7020.

Dated: November 21, 1984.

Richard K. Berg,
General Counsel.

[FR Doc. 84-31001 Filed 11-26-84; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–84]

Foreign-Trade Zone 9, Honolulu, HI; Application for Subzone at Dole Pineapple Plant, Honolulu; Extension of Record

The period for comments on the above case involving a special-purpose subzone for the pineapple cannery and can making facility of Dole Processed Food Company in Honolulu, Hawaii (49 FR 40068, 10/12/84) is extended to December 4, 1984, to allow interested parties to submit and review new information.

Comments are invited in writing during this period. Submissions shall include 3 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania, Room 1529, Washington, D.C. 20230.

Dated: November 19, 1984.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 30956 Filed 11-26-84; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

C–357–403]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Oil Country Tubular Goods From Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods (OCTG). The net bounty or grant is determined to be 0.9 percent *ad valorem*. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the notice of our preliminary determination and to require a cash deposit on this product in the amount equal to the net bounty or grant.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Stuart Keitz; Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–0160 or 377–1769.

SUPPLEMENTARY INFORMATION:

Final Determination and Order

Based upon our investigation, we determine that certain benefits constituting bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods. For purposes of this investigation, the following program is found to confer a bounty or grant:

- Post-Financing of Exports Under Circular OPRAC 1–9

We determine the net bounty or grant to be 0.9 percent.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company, and the CF&I Steel Corporation filed on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Argentina of oil country tubular goods received, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28289). We stated that we expect to issue a preliminary determination by September 6, 1984. On August 3, 1984, LTV Steel Company entered this proceeding as a co-petitioner with Lone Star Steel Company and CR&I Steel Corporation.

Argentina is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. The merchandise being investigated is dutiable. Therefore, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Argentina in Washington, D.C., on July 13, 1984. On August 17, 1984, we received responses to the questionnaire.

On September 6, 1984, we preliminarily determined that benefits constituting bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Argentina of oil country tubular goods (49 FR 28289). A hearing was requested and took place on October 17, 1984. We received briefs from the parties to the proceeding on October 10, 11 and 31.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil, country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

Dalmine Siderca S.A.I.C. (Dalsid) is the sole exporter of this product to the United States during the period for which we are measuring bounties or grants, April 1983 through March 1984.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order", which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

I. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufactures, producers, or exporters in Argentina of OCTG under the following program.

Post-Financing of Exports Under Circular OPRAC 1–9

On September 24, 1982, the Central Bank of Argentina established a post-financing program for exports under Circular OPRAC 1–9. OPRAC 1–9 loans are granted for up to 30 percent of the peso equivalent of the foreign currency in which the export transaction was paid. The term of the loan is 180 days. The interest rate charged on OPRAC 1–9 loans is the regulated rate used by commercial banks, as established by Central Bank Regulations. The system of financing is through the Central Bank of Argentina, which delegates the responsibility for granting the loans to intermediary banks. Dalsid received loans under the OPRAC 1–9 program.

To determine if the loans to Dalsid provided under the OPRAC 1–9 program constitute a bounty or grant, we compared the rate of interest charged on the OPRAC 1–9 loans, with the national average commercial rate for short-term borrowing, as required in the Subsidies Appendix.

In June 1982, the Central Bank of Argentina restructured the banking and financial system. All outstanding short-term loans were refinanced under a regulated interest rate, which is set monthly by the Central Bank. During this period banks were also allowed to lend a portion of their deposits at an unregulated rate, known as the tasa libre.

For purposes of the preliminary determination, we used as our benchmark a weighted-average of the regulated rate, the unregulated rate and the rates tied to the wholesale price index. During verification we discovered that the loans tied to the wholesale price index (WPI) are really variable rate long-term loans, and we now believe that it would not be appropriate to use the WPI rate in any sort of a weighted-average.

For the purpose of this final determination, we have used as our benchmark a weighted average of the various forms of comparable short-term borrowing available from Argentine banks as the national average commerical rate for short-term borrowing. Given the particular characteristice of the Argentine economy and financial system during the period of review, we feel that there is no single comparable instrument that we can use as a short-term benchmark. Given this situation, we think that a weighted average of the regulated, unregulated and acceptance lending rates, best reflects a comparable national average short-term interest rate. During the period for which we are measuring bounties or grants, various short-term borrowing rates were available from Argentine banks. From April 1983 to July 1983 the regulated and unregulated rates were in effect. Beginning August 1, 1983, funds were no longer lent at the unregulated rate. For the months of August and September, when only the regulated rate was in effect, we are using this rate alone as the benchmark. In October, 1983 the acceptance rate (aceptaciones) came into use in Argentina. With this rate, a cash rich firm and a cash poor firm are matched together by the banks. The banks endorse these agreements and act as intermediaries for the transaction. The terms for acceptance loans are for up to 90 days. From October, 1983 to March, 1984 the basis for the weighted average is the regulated rate and the acceptance rate.

Because the amount of credit that can be extended by Argentine banks is closely controlled by the government, two types of extra-bank lending have come into practice in Argentina. While not illegal, these forms of borrowing are not monitored or regulated by the government in any way, and thus no official government statistics on the lending rates or on the size of the credit pools exist. One type of extra-bank loan, known as Bonex repurchase agreements, involves a loan agreement which is guaranteed by the sale and repurchase of Argentine government dollar-denominated bonds. The other type of extra-bank loan is guaranteed by a post-dated check. Both forms of borrowing are for very short periods, normally two to seven days.

In calculating a weighted-average benchmark, we have included the regulated rate, the unregulated rate and the acceptance rate, because we felt that these rates best represent the most comparable alternative instuments to OPRAC 1–9 borrowing. We have not included the Bonex repurchase rates or rates on loans guaranteed by post-dated checks, because the terms of these loan are for very short periods, and thus would not be a likely source of borrowing to finance 180-day export transactions.

Using this weighted average as a benchmark, we calculate a bounty or grant on exports of 0.9 percent *ad valorem.*

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Argentina of OCTG under the following programs.

A. Reembolso—Tax Rebate on Exports

The reembolso program was established in 1971. It authorized a refund, by cash payment on export, of taxes "that bear directly or indirectly" on exported products and/or their component raw materials for the purpose of promoting exports. The amount of the reimbursement is equal to a fixed percentage of the f.o.b. value of the exported merchandise. This percentage varies by product. Dalsid participates in the reembolso program.

Under the Act, the non-excessive rebate of indirect taxes levied at the final stage, and of prior stage cumulative indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. With respect to such non-VAT rebates, in order to determine whether a cash payment on exports is a *bona fide* rebate of indirect taxes, we examine whether: (1) The program involved operated for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

The reembolso program is designed to refund taxes that "bear directly or indirectly on exported products." We view taxes borne by a product as indirect, and taxes on, for example, income as direct.

Based on our review of the total tax incidence which the reembolso is designed to rebate, we are satisfied that the reembolso operates "for the purpose of rebating indirect taxes," and that it meets our first test.

In 1980, the Value Added Tax was established (Law 22.294/80) and in 1981, certain minor taxes were suspended (Law 22.374/81). As a result of these modifications to the Argentine tax system, the government in 1983 reviewed the incidence of taxes on oil country tubular goods in order to reevaluate the levels of the reembolso. In reviewing the studies on fiscal incidence of taxes, the government selected Dalsid as representative of the oil country tubular goods industry, as it is the only Argentine firm producing these products. In conjuction with the more general study conducted in 1978, this review provides a sufficient basis for our final determination that there is a clear link between eligibility for the reembolso and indirect taxes paid.

In the questionnaire response, the government of Argentina provided us with data form its most recent analysis of the tax incidence on oil country tubular goods. This analysis, which was completed in 1983, shows that the taxes levied on oil country tubular goods, which the reembolso is designed to rebate, total 25.1 percent of the f.o.b. value of the exports. Six categories are included in the analysis: Domestic raw material inputs, imported raw material inputs, transformation costs, labor, taxes paid directly, and export taxes.

In calculating the allowable tax incidence in the domestic and imported raw material categories, we only included those indirect taxes levied at prior stages of production that apply to physically incorporated inputs.

During verification we verified the total amount of Dalsid's purchases of physically incorporated inputs for OCTG production which allowed us to determine that the proportion comprised of physically incorporated inputs is correct.

In the domestic raw material category, we determined that 6.2 percent of the tax incidence claimed is allowed. For purposes of the preliminary determination, we did not allow the tax incidence claimed on gas. However, during verification we determined that Dalsid used the Midrex process for the reduction of iron. In our countervailing duty investigation of *Carbon Steel Wire Rod* from Argentina, 47 FR 42393 (Sept. 27, 1982) we determined that the firm under investigation also used the Midrex process. In conjunction with that investigation, we found that a portion of natural gas used in the reduction process meets our physical incorporation test. Therefore, of the total 6.5 tax incidence claimed for domestic raw materials, we are allowing 6.2 percent. For the imported raw materials, we allowed 0.6 percent. We verified that the government has reasonably calculated and documented the tax incidence on the physically incorporated raw materials, and has demonstrated a clear link between such tax incidence and the rebate paid on export, thus meeting our third test.

Regarding taxes paid on the transformation costs, we are including those indirect taxes paid on materials used in transforming the raw materials into oil country tubular goods, which meet our standard for physical incorporation. Taxes on energy, equipment and services do not meet this standard. Thus of the 8.9 percent claimed, 1.5 percent is allowed.

The taxes on labor, which total 1.2 percent, are direct taxes. We have, therefore, disallowed this amount.

The export taxes paid on oil country tubular goods, which include foreign exchange and stamp taxes, also are allowable because these taxes are all final stage indirect taxes: The rate of each tax and its incidence is calculated. The total incidence of the taxes in this category is 2.5 percent.

In the response three taxes were included in the category of the taxes paid directly on oil country tubular goods. We verified that the Provincial Law 9226 and the Municipal Tax Law 1423/79 refer to indirect taxes actually paid by Dalsid, at the final stage on oil country tubular goods. At verification we requested more information concerning the Emergency Tax (Law 22915), which we preliminarily disallowed. We were given copies of the law which instituted a 20 percent tax to cover budgetary shortfalls in Argentina. Respondents claim that this tax is a surtax based on both direct and indirect taxes. We do not have enough information to determine the portion of the surtax based only on indirect taxes. For this reason, we are not allowing the Emergency Tax. In the category of final stage taxes paid directly on OCTG, we are satisfied that two of the three taxes listed are indirect taxes and meet our third test. Applying this standard, we determine that of the 5.4 percent tax incidence claimed, 0.8 percent is allowable and 4.6 percent is not.

Of the total 25.1 percent tax incidence calculated in the reembolso study, we have allowed 11.6 percent.

Since July 5, 1982, the reembolso for oil country tubular goods has been 10 percent (Resolution ME 8/82). Because the reembolso does not exceed the total allowable indirect taxes of 10 percent, we determine that the reembolso does

not confer a bounty or grant on oil country tubular goods.

B. Import Duty Exemptions on Raw Materials

Argentine tariff law authorizes import duty exemptions on raw materials when there is no domestic production or insufficient domestic production to meet domestic demand, and when importation will not interfere with the market for domestic production. On its face the program is not limited to a specific enterprise or industry or group of enterprises or industries, but rather is available to any industry facing inadequate local supply of raw materials. However, because nominal general availability is not necessarily sufficient to prevent a program from being a domestic subsidy, we preliminarily determined the program to be countervailable. Neither Dalsid nor the government of Argentina had provided enough information about the program to establish that the benefits were not limited to a specific industry or group of industries.

At verification we requested documentation to determine whether the exemptions are limited to a specific industry or group of industries. We verified that a number of firms in a wide variety of industries were exempted from import duties on raw materials. Thus, we determine that import duty exemptions on raw materials are not limited to a specific industry or group of industries.

C. Government Loan Guarantees

Petitioners alleged that the Argentine OCTG industry may have benefited from preferential loan guarantees provided by the Banco Nacional de Desarrollo (National Development Bank or BANADE).

BANADE is a state-owned financial institution that extents credit to Argentine companies for the purchase of locally made capital goods, and provides loan guarantees to Argentine companies wishing to purchase capital goods abroad and needing foreign currency loans to do so.

At verification we found that BANADE financing was made available to all industries in every province of Argentina. None of the criteria laid out in BANADE regulations is industry- or region-specific.

III. Programs Determined Not To Be Used

We determine that the following programs, listed in the notice of "Initiation of Countervailing Duty Investigation, "were not used by the manufacturers, producers, or exporters in Argentina of OCTG.

A. Medium- and Long-Term Loans Under Law 22.510 and Under Decrees 989/81 and 1894/83

Petitioners alleged that the Argentine OCTG industry may have benefited from preferential medium- and long-term loans under Law 22.510 and under Decree 989/81 and 1894/83.

We verified that Dalsid did not receive any loans under Law 22.510. Regarding Decree 1894/83, we verified that this decree only applies to state enterprises, provinces and municipalities. Dalsid does not fit into any of these categories.

Decree 989/81 was cancelled by decree 169/82, but we verified that Dalsid never received any benefits from 989/81.

B. Capital Tax Exemptions Under Decrees 5038/61 and 548/81

Petitioners alleged that the Argentine OCTG industry received preferential capital tax exemptions.

We verified that Dalsid pays the capital tax and does not receive any exemption under Decrees 5038/61 and 548/81.

C. Subsidized Raw Material Inputs Under Decree 619

Petitoners alleged that the Argentine OCTG industry may have benefited from subsidized raw material inputs under Decree 619, which provides that the Argentine government may subsidize industries supplying basic inputs, such as oil residue coal, electricity, and natural gas to the steel industry.

We verified that Dalsid did not receive benefits under Decree 619. The National Direction of Industrial Control administers Decree 619 and other tax benefits. After reviewing information from that agency, we determined that Dalsid did not use Decree 619.

D. Government Trade Promotion Programs

Petitioners alleged that the Argentine OCTG industry benefited from trade promotion programs which are funded by the government of Argentina and are designed to increase participation of Argentine companies in international trade fairs and trade missions.

We verified that the government of Argentina had not organized trade fairs in which Dalsid participated.

E. Additional Reembolso for Exports From Southern Argentine Ports

Petitioners alleged that the Argentine OCTG industry received additional rebates of taxes through the reembolso program for exports from southern Argentine ports.

We verified that the only companies eligible for this additional reembolso are those located south of the Colorado River. Since Dalsid is located north of this river, it could not avail itself of this program.

F. Exemption From Stamp Tax Under Decree 186/76

Petitioners alleged that the Argentine OCTG industry received an exemption from paying stamp taxes, which is authorized under Decree 186/76.

We verified that Dalsid is not exempted from paying stamp taxes under Decree 186/76.

G. Preferential Exchange Rates for Steel Industry Imports

Petitioners alleged that the Argentine OCTG industry benefited from preferential exchange rates in place under Argentine law for imports of machinery, parts, raw material, fuels, and other products used or installed in steel plants.

On October 29, 1982, the Central Bank established a single exchange rate. While in Argentina, we verified that only one exchange rate existed during our period of investigation.

H. Price Premiums From Argentine Government Purchases of Argentine-Produced Steel

Petitioners alleged that the Argentine OCTG industry may have benefited from price premiums paid by the Argentine government on its purchases of Argentine-produced steel products.

During verification, we determined that government enterprises actually paid less than private companies for the same Argentine-produced steel products.

IV. Programs Determined To Have Been Suspended

A. Pre-Financing of Exports Under Circular OPRAC 1–1

Petitioners alleged that the Argentine OCTG industry benefited from preferential short-term loans for pre-financing of exports under Circular OPRAC 1–1. Circular OPRAC 1–1 instituted a pre-financing program for Argentine exports as an alternative to the Circular RF 153 program for pre-financing of exports through dollar-indexed peso loans. This program was initiated on August 21, 1981, and terminated on March 31, 1982. Under Circular OPRAC 1–1, loans could not exceed one year, and firms receiving

OPRAC 1–1 loans could not also receive Circular RF–153 loans.

We verified that the Circular OPRAC 1–1 program was terminated on March 31, 1982 and that Dalsid had no Circular OPRAC 1–1 loans outstanding during the period for which we were measuring bounties or grants.

B. Benefits Under the "Argentine Steel Industry Development Contribution Fund"

Petitioners alleged that the Argentine OCTG industry benefits from the "Argentine Steel Industry Development Contribution Fund," a fund which earmarks certain import surcharge taxes for steel industry development.

This fund was eliminated by law 22.374 on January 16, 1981. Dalsid did not benefit from this fund during our period of measuring bounties or grant. We also verified that Dalsid did not, in the past 15 years, receive benefits from this fund.

Comments by Petitioners

Comment 1. Because it supplied its annual reports in Spanish, without translations, petitioners allege that Dalsid did not cooperate with Department of Commerce (DOC) procedure.

DOC Position. Pursuant to § 355.39(d) of Commerce Regulations (19 CFR 355.39), all responses to requests for information must be in English and in the form requested unless such requirement is waived. In this case there were no existing translations and the DOC did not need to have the reports translated.

Comment 2. Petitioners argue that DOC erred by choosing a benchmark interest rate for OPRAC 1–9 that does not accurately reflect the true cost of short-term commercial borrowing in Argentina. Petitioners argue that at least 30 percent of total short-term credit in Argentina consists of non-bank loans at unregulated rates after August 1, 1983, and that the DOC should use a national average commercial rate, which includes non-bank interest rates.

DOC Position. See the "Analysis of Programs" section of this notice.

Comment 3. Petitioners argue that all reembolso rebates [of indirect taxes] received by Dalsid on its exports of OCTG are countervailable because the government of Argentina did not prove that the incidence of indirect taxes on OCTG is clearly linked to the amount of rebate which the reembolso provides for OCTG.

DOC Position. DOC verified (1) that the reembolso program operates for the purpose of rebating indirect taxes; (2) that there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) that the government has reasonably calculated and documented the actual tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on exports.

Comment 4. Petitioners allege that DOC failed to assess on an item-by-item basis whether the imported items in the reembolso program were physically incorporated.

DOC Position. Part of our verification process consisted of determining that those imported raw materials are physically incorporated into the final product as claimed in the reembolso study. Dalsid claimed that iron ore and iron alloys are physically incorporated. We verified this claim and allowed Dalsid its claim for the indirect taxes associated with these items.

Comment 5. Under the input categories of domestic raw materials and transformation costs, petitioners argue that certain items are not physically incorporated, and that certain taxes, such as those for the fund on electricity consumption and the North Hydroelectric fund appear to apply to goods not physically incorporated.

DOC Position. We verified that a portion of gas claimed in the domestic raw material category does become physically incorporated in the Midrex iron reduction process, and we have allowed only this portion of the gas. It was also verified that certain inputs claimed under the transformation cost category (such as paint, grease and a portion of electrodes) also meet our standard for physical incorporation. We verified that such taxes as those on electricity consumption and the North Hydroelectric fund are borne by physically incorporated inputs.

Comment 6. Petitioners argue that certain taxes paid directly by the OCTG industry are not clearly stipulated to be indirect taxes and therefore, absent such information, should be considered as direct taxes.

DOC Position. The DOC verified that the municipal tax and the taxes under Provincial Law 9226 79, are indirect taxes levied on the final stage of OCTG production and are actually paid by Dalsid. The Emergency Tax is a surtax on all direct and indirect taxes paid by Dalsid. Because of a lack of information concerning this tax, we have disallowed this portion of the taxes paid directly.

Comment 7. Petitioners argue that import duties paid by suppliers should not be an allowable rebate because they are paid by suppliers and are not borne by the product.

DOC Position. The DOC verified that import duties on inputs into goods purchased from Dalsid's suppliers are indeed indirect prior stage taxes borne by the goods purchased by Dalsid.

Comment 8. Petitioners allege that Table C, Annex 7 of the response shows an indirect tax incidence of 11.9% on scrap, without an explanation.

DOC Position. On November 6, 1984, respondents amended the response filed by the government of Argentina on August 17, 1984. In this amendment, each indirect tax corresponding to scrap is listed:

We verified that Dalsid pays the indirect taxes borne by scrap.

Comment 9. Petitioners allege that because the reembolso information provided by respondents does not include allowances for fixed costs and inland transportation, the proportion of allowable indirect taxes on OCTG is overstated.

DOC Position. DOC verified the percentage of f.o.b. value accounted for by inputs, by examining invoices of OCTG inputs actually purchased by Dalsid. We determined that the percentage of the f.o.b. value which is comprised of variable costs (upon which the indirect taxes are levied) and final stage taxes, total 99.5 percent. Petitioners' contention that fixed costs and inland freight should account for some portion of the f.o.b. value of OCTG is not born out by Dalsid's actual cost experience. Petitioners work the calculation backwards, by imposing a share within the f.o.b. value which represents fixed costs and inland freight, without regard to whether fixed costs are actually being covered by each shipment.

Comment 10. Petitioners allege that the government of Argentina may direct suppliers of raw materials to set preferential prices for targeted industries and that DOC erred in not initiating an investigation on whether any subsidy on the production of an input flows down to the production of the end product if the purchaser buys the input from an unrelated supplier.

DOC Position. We did not investigate petitioners' allegation that OCTG producers in Argentina have benefited subsidized inputs, *i.e.*, upstream subsidies. As explained in our "Notice of Initiation of a Countervailing Duty Investigation" (49 FR 28289), petitioners did not provide sufficient evidence to warrant an investigation of these claims.

Since our decision not to initiate on the upstream subsidy allegations in this case, the Trade and Tariff Act of 1984 (TTA) has come into force. We have determined that there is nothing in the

upstream subsidies provisions of the TTA that would cause us to change our earlier conclusions.

Comment 11. Petitioners allege that regarding input purchases for OCTG from related suppliers, Dalsid only provides information about scrap purchases.

DOC Position. We verified that the only suppliers related to Dalsid are those listed in the response, and that the only raw material input purchased from these related suppliers is scrap. However, when a firm under investigation purchases the same input from related and unrelated suppliers, it is our practice to compare the prices paid to each type of supplier. In this situation, we need not compare the prices that Dalsid's related supplier charges to customers other than Dalsid, with what Dalsid paid. We verified that Dalsid pays the same prices to both related and unrelated suppliers for its scrap purchases.

Comment 12. Petitioners contend that import duty exemptions on raw materials and BANADE guarantees are countervailable even if they are generally available, citing the Court of International Trade's decision in *Bethlehem Steel Corp.* v. *United States*, 7 CIT————, Slip OP. 84–67 (June 8, 1984).

DOC Position. In *Bethlehem*, the courts broad opinion that the Department cannot apply a rule that "generally available" benefits are not subsidies is dictum. The Department continues to interpret the language in section 771(5)(B) of the Act that the term subsidy includes "domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industries. . . ." to mean that benefits broadly or "generally" available do not constitute countervailable bounties or grants. In this case we determine that the exemption from certain programs is "generally available."

Comment13. Petitioners argue that even if one accepts the notion that generally available benefits are not countervailable, programs such as import duty exemptions on raw materials and capital goods and BANADE guarantees should be examined for the pattern of disbursement to determine if OCTG producers or exporters as a group benefit disproportionately.

DOC Position. Concerning import duty exemptions on capital goods, in the final affirmative countervailing duty determination on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006) DOC determined that import duty exemptions on capital goods were not countervailable because such exemptions were not limited to a specific industry or group of industries. DOC verified that import duty exemptions on raw materials and BANADE guarantees are, indeed, generally available.

Comment 14. Petitioners argue that although the multiple exchange rate system was abolished prior to the period of investigation, DOC erred in not investigating precisely what machinery or capital goods Dalsid may have purchased while the dual rates were in effect. They allege that Dalsid would continue to receive benefits from such purchases, which should be treated as grants and allocated over time.

DOC Position. Under the multiple exchange rate regime that was in effect from July through December 1981, and July through November 1982, only exporters of certain specified goods were eligible for the higher rate of exchange on their export operations. In no case were firms eligible to receive a higher rate of exchange for their purchases of imported inputs.

Comment 15. Petitioners allege that no information was given concerning price premiums for Agentine Government purchases of Argentine-produced steel.

DOC Position. At verification, we reviewed invoices which pertained to sales to government enterprises and private companies. The sales covered the same product and the transactions took place on roughly the same date. In each case, the government-owned company paid less than the private company.

Comment 16. Petitioners allege that in the response Dalsid did not state whether it had participated in trade shows, nor did Dalsid provide information about its trade missions.

DOC Position. It is stated in Argentine Government response that Dalsid does not participate in trade shows organized by the Argentine Government.

The GAO provided a calendar of trade fairs for 1983 and 1984 for DOC officials. Dalsid did not appear in either of the listings.

Respondent's Comments

Comment 1. Respondents argue that DOC should use Dalsid's own commercial experience as the short-term benchmark to measure benefits under the OPRAC 1–9 program, because the administrative burden of calculating a company-specific benchmark, when only one firm is under investigation, is not great.

DOC Position. We believe that the use of a national average interest rate as the commercial benchmark for short-term loans captures the benefit to the companies with sufficient accuracy. We believe that the weighted average of comparable short-term interest rates best represents what a firm would have to pay for short-term borrowing if it did not have access to OPRAC 1–9 financing. Further, we attempt to establish policy guidelines that apply across all cases. While the burden of calculating company-specific short-term benchmarks may not be great in this particular case because only one firm is involved, it is likely that this will not always be the case.

Comment 2. Respondents argue that information made available to DOC at verification demonstrates that import duty exemptions on raw materials are not limited to a specific industry or group of industries, and are therefore not a countervailable benefit.

DOC Position. We agree, and have reversed our preliminary finding that import duty exemptions constitute bounties or grants.

Comment 3. Respondents argue that the DOC erred in not allowing the portion of indirect taxes levied on gas which is rebated under the reembolso program.

DOC Position. We agree. Under the Midrex process for iron reduction, 75% of the gas used in the process becomes physically incorporated into the final product. We have therefore allowed this amount of the portion claimed.

Verification

In accordance with section 776(a) of the Act, we verified the date used in making our final determination. During this verification, we followed normal procedures, including inspection of documents, discussions with government officials and on-site inspection of Dalsid's operations and records.

Administration Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulations (19 CFR 355.35). A public hearing was held on October 17, 1984. In accordance with the Department's regulations (19 CFR 355.34(a)), all written views have been received and considered. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The net bounty or grant for duty deposit purposes is 0.9 percent *ad valorem*. We are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise entered or

withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.**

This notice is published in accordance with sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

Dated: November 20, 1984.

William T. Archey,

Acting Assistant Secretary.

[FR Doc. 84-31041 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-403]

Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods From Brazil

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods. The net subsidy is 24.97 percent *ad valorem* for Confab, 25.24 percent *ad valorem* for Mannesmann, and 11.35 percent *ad valorem* for Persico. We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of oil country tubular goods from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after September 12, 1984, and to require a cash deposit or bond on entries of these products in the amount equal to the net subsidy.

EFFECTIVE DATE: November 27, 1984.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Stuart Keitz, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5050 or 377-1769.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Working Capital Financing for Exports (Resolutions 674 and 882)
- Export Financing Under the CIC-CREGE 14-11 Circular
- IPI Export Credit Premium
- Export Profits Exemption from Corporate Income Tax
- Funding for Expansion Through IPI Tax Rebates

We determine the net subsidy to be 24.97 percent *ad valorem* for Confab, 25.24 percent *ad valorem* for Mannesmann, and 11.35 percent *ad valorem* for Persico.

Case History

On June 13, 1984, we received a petition from the Lone Star Steel Company of Dallas, Texas, and the CF&I Steel Corporation of Pueblo, Colorado, on behalf of the U.S. industry producing oil country tubular goods. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in Brazil of oil country tubular goods receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 3, 1984, we initiated such an investigation (49 FR 28290). We stated that we expected to issue a preliminary determination by September 6, 1984. On August 3, 1984, the petition was amended and the LTV Steel Company of Cleveland, Ohio became co-petitioner.

Since Brazil is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On July 30, 1984, the ITC determined that there is a reasonable indication that these imports are materially injuring, or threatening material injury to, a U.S. industry (49 FR 31782).

We presented a questionnaire concerning the allegations to the government of Brazil in Washington, D.C., on July 13, 1984. On August 17, 1984, we received a response to the questionnaire. On September 12, 1984, we published our preliminary determination that benefits constituting subsidies within the meaning of the countervailing duty law were being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods (49 FR 35827).

At the request of both petitioners and respondents, we held a hearing on October 24, 1984, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioners and respondents filed briefs discussing these issues before and after the hearing.

Scope of the Investigation

The products covered by this investigation are oil country tubular goods (OCTG), which are hollow steel products of circular cross-section intended for use in the drilling of oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. This investigation covers both finished and unfinished oil country tubular goods.

The provisions of the *Tariff Schedules of the United States, Annotated (TSUSA)* covering all steel pipe and tube, including oil country tubular goods, were changed as of April 1, 1984. We have reviewed the classification of steel pipe and tube by the U.S. Customs Service and determined that our original listing of the products subject to this investigation should be amended. As a result of the changes mentioned above, oil country tubular goods now comprise TSUSA item numbers 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

There are three known producers and exporters in Brazil of oil country tubular goods to the United States. We have received information from the government of Brazil regarding Confab Industrial S.A. (Confab), Mannesmann S.A. and Mannesmann Commercial S.A. (Mannesmann), and Persico-Pizzamiglio S.A. (Persico). The period for which we are measuring subsidization ("the review period") is calendar year 1983.

Analysis of Programs

Throughout this notice, we refer to general principles applied to the facts of the current investigation. These principles are described in the Subsidies Appendix attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Petitioners have alleged that both Mannesmann and Persico are uncreditworthy. As we have determined that no long-term loans or loan guarantees are being provided to these companies on terms that are inconsistent with commercial considerations, their creditworthiness is of only secondary importance in this investigation. Because no long-term loan benchmarks are required, creditworthiness only figures into the calculation of the discount rate for firms receiving benefits that are treated as grants. Persico did not receive any such benefits. Therefore our creditworthiness analysis has been limited to Mannesmann.

Based upon our review of Mannesmann's financial statements, we found Mannesmann to have been profitable in all but two of the last six fiscal years; in the first half of 1984, the company returned to profitability. Cash flow generated from operations exceeded interest and principal payments in all years, except 1979. In general, the financial position of the company has been favorable. Therefore, we determine Mannesmann to be creditworthy.

For purposes of this determination, we are calculating an *ad valorem* subsidy rate for each company because of the material differences in the programs under which subsidies were received and in the subsidy rates of each company. We allocated the benefits received by each respondent in 1983 over the total sales value or export value, as appropriate, of each respondent.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of oil country tubular goods under the following programs.

A. Preferential Working Capital Financing for Exports (Resolutions 674 & 882)

Resolution 882 financing, administered by the Carteira do Comércio Exterior (CACEX) of the Banco do Brasil, is a form of short-term lending of working capital to purchase inputs for the production of goods destined for export. On January 1, 1984, Resolution 882 superseded Resolution 674, under which such financing was previously granted. Eligibility for 674/882 financing is determined on the basis of past exports or an acceptable export plan. The amount of available financing is calculated by making a series of adjustments to the dollar value of exports.

Following CACEX approval of their applications, participants in the program receive certificates representing portions of the total dollar amount for which they are eligible. The certificates may be presented to banks in return for cruzeiros at the exchange rate in effect on the date of presentation. Use of a certificate establishes a loan obligation with a term of up to one year (360 days). Certificates must be used within 12 months of the date of issue and loans incurred as a result of their use must be repaid within 18 months of that date.

During the review period, the interest rate ceiling on loans obtained under the program was raised from 40 to 60 percent. Resolution 882 changed the interest rate to full monetary correction plus three percent, the interest and principal being payable in one lump sum at the expiration of the loan. Confab, Mannesmann, and Persico have participated in the program. Since 674/882 financing is contingent on export performance, and provides funds to participants at interest rates lower than those available from commercial sources, we determine that this program confers an export subisdy.

In our investigation of Certain Carbon Steel Products from Brazil [Final Affirmative Countervailing Duty Determinations (49 FR 17988)], we used an interest rate reflecting compensating balances as our benchmark. Since that determination, we have gathered information that Brazilian banks do not uniformly require compensating balances of their customers. In many cases, because banks lend only to a few favored clients, they do not require compensating balances since their clients maintain a sufficient volume of business overall. Moreover, when compensating balances are required, the size and terms of the requirement may vary widely.

While the Department has stated in the Subsidies Appendix its preference for using effective rates, we do this only when we have sufficient information to calculate an effective rate. Because there is no evidence of a uniform requirement for compensating balances and no publication gives a definitive measure of the extent to which compensating balances are actually used, we have determined not to use compensating balances in calculating our benchmark interest rate. Therefore, we are using the minimum nominal discount rate of accounts receivable, which does not reflect compensating balances, as published in *Analise/Business Trends*, as our benchmark in calculating the subsidy.

Moreover, in earlier cases where we have used the nominal discount rate of accounts receivable, we used an uncompounded rate as our benchmark for Resolution 674 loans. We now feel that this rate is inappropriate, since compounding is necessary in order to equate the charges on a 30-day loan with an annual loan. Accordingly, we compounded the benchmark described above in our calculations.

To calculate the benefit, we compared the interest rates charged with the appropriate benchmark and applied the difference to the principal amounts, based on the dates interest was paid. We allocated the benefit over the total value of all exports by each company under investigation, and calculated a subsidy rate of 13.08 percent *ad valorem* for Confab, 6.19 percent *ad valorem* for Mannesmann, and 4.56 percent *ad valorem* for Persico.

B. Export Financing Under the CIC–CREGE 14–11 Circular

Under its CIC–CREGE 14–11 circular ("14–11"), the Banco do Brasil provides 180- and 360-day cruzeiro loans for export financing, on the condition that companies applying for these loans negotiate fixed-level exchange contracts with the bank. Companies obtaining a 360-day loan must negotiate exchange contracts with the bank in an amount equal to twice the value of the loan. Companies obtaining a 180-day loan must negotiate an exchange contract equal to the amount of the loan. In addition to requiring exchange contracts, the Banco do Brasil requires that these loans be fully secured by collateral in the form of tangible property. The bank normally requires that the value of collateral equal at least 130 percent of the amount of the loan. The bank also charges a commission on all such loans.

All exporters of manufactured products with production cycles of less than 180 days may apply for these loans. The maximum level of eligibility is based on the value of the applicant's exports in the previous year. Companies receiving Resolution 882 loans have a maximum eligibility of 10 percent. All others have a maximum eligibility of 15 percent.

Although this program does in certain aspects appear to operate on a purely commercial basis, the government of Brazil has not supplied sufficient data to support its assertion that commissions,

exchange contract requirements and collateral requirements serve to raise the effective cost of these laons to a level of comparability with those on short-term loans from other commercial sources. Without such data, we must compare unadjusted nominal rates on 14–11 loans with our short-term benchmark interest rate, *i.e.*, the nominal discount rate of accounts receivable, as the best information available. This comparison shows that the nominal interest rate on 14–11 loans is below the benchmark.

Confab and Persico both obtained loans under this program. To calculate the benefit, we compared the interest rates charged with the appropraite benchmark and applied the difference to the principal amounts, based on the dates interest was paid. We then allocated the benefit over the total value of each company's exports, which resulted in a subsidy rate of 0.38 percent *ad valorem* for Confab and 1.04 percent *ad valorem* for Persico.

C. IPI Export Credit Premium

Brazilian exporters of manufactured products are eligible for a tax credit on the Impôsto sôbre Produtos Industrializados (Industrialized Products Tax, or IPI). The IPI export credit premium has been found to confer a benefit in previous countervailing duty investigations involving Brazilian products. After having suspended this program in December 1979, the government of Brazil reinstated it on April 1, 1981, in accordance with Ministry of Finance "Portaria" (Notice) No. 270 (amended by Portaria No. 252 on November 29, 1982).

Subsequent to April 1, 1981, this credit premium was partially phased out in accordance with Brazil's commitment pursuant to Article 14 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"). The government of Brazil reduced the benefit from 15 percent to 14 percent on March 31, 1982; from 14 percent to 12.5 percent on June 30, 1982; and from 12.5 percent to 11 percent on September 30, 1982.

We divided the credits earned in 1983 by each respondent over the value of each company's exports of oil country tubular goods in that year, and calculated a net subsidy of 10.5 percent *ad valorem* for Confab, 10.87 percent *ad valorem* for Mannesmann, and 5.75 percent *ad valorem* for Persico.

D. Export Profits Exemption From Corporate Income Tax

Under Decree-Laws 1158 and 1721, exporters of oil country tubular goods are eligible for an exemption from income tax of a portion of profits attributable to export revenue. Confab and Mannesmann S.A. took an exemption from income tax payable in 1983 on a portion of export profits earned in 1982. We multiplied that portion by the nominal corporate tax rate, and allocated the benefit over the total value of 1983 exports to calculate a subsidy rate of 1.06 percent *ad valorem* for Confab and 1.27 percent *ad valorem* for Mannesmann.

E. Funding for Expansion Through IPI Tax Rebates

Decree-Law 1547, enacted in April 1977, provides funding for capital investment in approved expansion projects in the Brazilian steel industry through a rebate of the IPI, a value-added tax imposed on domestic sales. The IPI tax is an indirect tax and, as such, is passed on to the consumer. A steel company collects this tax on sales as an agent for the government, and does not pay the tax itself. Decree-Law 1547 is a mechanism by which a steel company is permitted to collect funds due the government and then receive a 95 percent tax rebate. The program does not involve the rebate of payments made from the company's own funds.

Originally, the IPI tax applied to all domestic sales transactions. In 1979, the value-added tax was eliminated except for producers in 14 industry sectors, including tobacco, automobiles, spirits and alcohol, ceramics, rubber, and steel. The tax rate is different for each of the specified industry sectors; for steel products, the value-added tax is 5 percent.

A Brazilian steel company may deposit 95 percent of the net IPI tax due in a special account with the Banco do Brasil. The amounts deposited are to be applied to steel expansion projects. When rebated to the firms, they constitute reserves that must eventually be converted into subscribed capital. Mannesmann received benefits under this program from 1977 to 1983.

Under the terms of Resolution 68–77 issued by the Conselho de Não-Ferrosos e Siderurgia (CONSIDER), which implements Decree-Law 1547, IPI tax rebates are payable only on basic steel products and certain fabricated steel products such as seamless steel pipes; the CONSIDER resolution excludes welded steel pipes. Mannesmann received IPI tax rebates as a manufacturer of both basic steel products and seamless steel pipe, which includes oil country tubular goods. Confab and Persico, which manufacture neither basic steel products nor seamless steel pipes but only welded steel pipes, received no benefits under this program.

In order to calculate the benefit attributable to this program, we treated the total IPI rebates received in each year as a grant. For the discount rate, we used the weighted cost of capital formula explained in the Subsidies Appendix. We weight-averaged the debt and equity variables in the formula by Mannesmann's respective debt-to-total-capitalization and equity-to-total-capitalization ratios. Using our grant methodology for rebates received through 1983, we calculated an *ad valorem* subsidy rate of 6.91 percent for Mannesmann.

II. Program Determined Not To Confer Subsidies

Government Guarantees on Long-Term Loans

Petitioners allege that the respondents have benefited from certain government guarantees on foreign-currency loans. In its response, the government of Brazil stated that the Banco Nacional do Desenvolvimento Econômico e Social (BNDES) guaranteed a number of foreign-currency loans issued to Persico under Resolution 63 of the Banco Central do Brasil (BCB).

At cerification, we found no evidence that Resolution 63 loan guarantees are provided on an industry-specific or region-specific basis. Moreover, we examined in detail Persico's long-term loans and ascertained that the loan guarantees, for which Persico paid a fee, did not have any bearing on the interest rate and terms of the guaranteed loans, and that the loan guarantees were made on terms not inconsistent with commercial considerations. Accordingly, we determine that government loan guarantees bestowed no countervailable benefits to the products under investigation.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers or exporters in Brazil of oil country tubular goods did not use the following programs, listed in our notice of "Initiation of a Countervailing Duty Investigation; Oil Country Tubular Goods from Brazil" (49 FR 28290).

A. Exemption of IPI Tax and Customs Duties on Imported Equipment

Under Decree-Law 1428, the Conselho do Desenvolvimento Industrial (Industrial Development council, or CDI) provides for the exemption of 80 to 100 percent of the customs duties and 80 to 100 percent of the IPI tax on certain imported machinery for projects

approved by the CDI. The recipient must demonstrate that the machinery or equipment for which an exemption is sought was not available from a Brazilian producer. The investment project must be deemed to be feasible and the recipient must demonstrate that there is a need for added capacity in Brazil.

Decree-Law 1726 repealed this program in 1979. Subsequently, no new projects were eligible for these benefits. However, companies whose projects were approved prior to the repeal still receive these benefits pending completion of the project.

We verified that neither Confab, Mannesmann, nor Persico received any benefits under this program during the review period. Therefore, we determine that this program was not used by the producers of the products under investigation.

B. Accelerated Depreciation for Equipment

Pursuant to Decree-Law 1137, any company which purchases Brazilian-made capital equipment and has an expansion project approved by the CDI may depreciate this equipment at twice the rate normally permitted under Brazilian tax laws. We verified that none of the respondents availed itself of this program during the review period. Therefore, we determine that this program was not used by the producers of the products under investigation.

C. Resolution 330 of the Banco Central do Brasil (BCB)

Resolution 330 provides financing for up to 80 percent of the value of the merchandise placed in a specified bonded warehouse and destined for export. Exporters of oil country tabular goods would be eligible for financing under this program. However, we verified that neither Confab, Mannesmann, nor Persico had participated in this program during the review period. Accordingly, we determine that this program was not used.

D. The BEFIEX Program

The Comissão para a Concessão de Benefícios Fiscais a Programas Especiais de Exportação (Commission for the Granting of Fiscal Benefits to Special Export Programs, or BEFIEX) grants at least three categories of benefits to Brazilian exporters:

- Under Decree-Law 77.065, BEFIEX may reduce by 70 to 90 percent import duties and the IPI tax on the importation of machinery, equipment, apparatus, instruments, accessories and tools necessary for special export programs, approved by the Ministry of Industry and Trade, and may reduce by 50 percent import duties and the IPI tax on imports of components, raw materials and intermediary products;
- Under article 13 of Decree No. 72–1219, BEFIEX may extend the carry-forward period for tax losses from 4 to 6 years;
- Under article 14 of the same decree, BEFIEX may allow special amortization of pre-operational expenses related to approved projects.

At verification, we ascertained that none of the respondents had received benefits through this program. Accordingly, we determine that this program was not used during the review period.

E. The PROEX Program

Petitioners allege that short-term credits for exporters were established under the Programa de Financiamento à Produção para a Exportação (PROEX), previously referred to as the Apôio à Exportação program. We verified that none of the respondents availed itself of this program during the review period. Therefore, we determine that this program was not used by the producers of the products under investigation.

F. Incentives for Trading Companies

Petitioners allege that the respondents distribute their export sales through such intermediaries as trading companies, and that under Resolution 643 of the BCB, trading companies can obtain export financing similar to that obtained by manufacturers under Resolution 882. We verified that the respondents were ineligible for participation in this program, because such participation is precluded by receipt of Resolution 674/882 financing. Accordingly, we determine that this program was not used during the review period.

G. Construction of a Port for the Steel Industry

Petitioners allege that Brazil's Third National Development Plan (1980–85) provides for the construction of a port at Praia Mole designed mainly for the export of steel products and the imports of coal.

In its response, the government of Brazil indicated that the Praia Mole facility is located at Ponta Tubarao near Vitoria in the state of Espirito Santo. Its purpose is to allow the Companhia Siderurgica de Tubarão (CST) and Açcominas to import coal and export iron ore and steel. We also verified that none of the respondents used the Praia Mole port for the exportation of oil country tubular goods during the review period. Accordingly, we determine this facility was not used by the producers of the products under investigation.

H. The CIEX Program

Decree-Law 1428 authorized the Comissão para Incentivos à Exportação (Commission for Export Incentives, or CIEX) to reduce import taxes and the IPI tax up to 10 percent on certain equipment for use in export production. We verified that the CIEX program had been superseded by the BEFIEX program, and that the respondents did not receive any benefits under the CIEX heading during the review period. Accordingly, we determine that this program was not used by the producers of the products under investigation.

I. Resolution 68 (FINEX) Financing

Resolution 68 of the Conselho Nacional do Comércio Exterior (CONCEX) provides that CACEX may draw upon the resources of the Fundo de Financiamento à Exportação (FINEX) to extend dollar-denominated loans to both exporters and foreign buyers of Brazilian goods.

Although we verified that none of the respondents received any direct benefits under this program during the review period, we were unable to verify whether any U.S. importer received Resolution 68 financing. If such financing were available, we believe it would confer an export subsidy on oil country tubular goods. Since we have no factual evidence on the record of the level of Resolution 68 financing made available to U.S. importers of oil country tubular goods. We cannot determine to what extend, if at all, this program was used. We intend to investigate this matter further in any administrative review that may occur under section 751 of the Act.

J. Local Tax Incentives

Petitioners allege that the respondents benefited from certain unspecified local tax measures and incentives in Brazil. In its response, the government of Brazil states that it knows of no local tax measures that would benefit the respondents. At verification, we saw no evidence that any such local tax incentives existed or that the respondents had received any such incentives. Therefore, we determine that this program was not used by the producers of the products under investigation.

Petitioners' Comments

Comment 1. Petitioners argue the Department's benchmark interest rate for preferential short-term loans should

reflect an alleged requirement by Brazilian banks that certain customers maintain compensating balances as a condition of trade bill discounting. Petitioners cite the fact that Mannesmann, in its response to the Department's antidumping questionnaire with respect to the subject merchandise, stated it maintains compensating balances as a condition of trade bill discounting. Therefore, petitioners believe that the Department should use the national average discount rate when determining its benchmark, as it did in *Certain Carbon Steel Products from Brazil* (49 FR 17988).

DOC Position. We agree (*see* the discussion of the benchmark interest rate in the "Analysis of Programs" section of this notice). Furthermore, whether or not Mannesmann maintains compensating balances as a condition of trade bill discounting is irrelevant to our choice of benchmark, because we do not use company-specific benchmarks for short-term preferential loans.

Comment 2. Petitioners claim the Department acted improperly in taking into account program-wide changes in interest rates for Resolution 674 loans, thereby comparing 1984 interest rates to a benchmark rate. According to the petitioners, the Department should have used the interest rates actually paid in 1983 on these loans and compared those with the average discount rate for 1984.

DOC Position. For purposes of our preliminary determination, we followed our practice of taking into account program-wide changes occurring after the review period but prior to the preliminary, such as the enactment of Resolution 882. We have now learned that another program-wide change has occurred. At approximately the same time as our preliminary determination, the Banco do Brasil issued Resolution 950 which changes, *inter alia*, the interst applicable to Resolution 882 loans. We have not had sufficient opportunity to analyze the impact of that change.

Given that the program-wide change enacted prior to our preliminary determination has been superseded in turn, we have decided for our final determination not to take into account the effects of Resolution 882. Therefore we have compared the interest rates charged under Resolution 674 to the benchmark for the review period in order to arrive at the benefit arising from this short-term export financing.

Comment 3. Petitioners contend that the Department should determine whether OCTG producers have benefited from upstream subsidies through their purchases of subsidized inputs.

DOC Position. We did not investigate petitioners' allegation that OCTG producers in Brazil have benefited from subsidized inputs, *i.e.*, upstream subsidies. As explained in our notice of "Initiation of a Countervailing Duty Investigation; Oil Country Tubular Goods from Brazil" (49 FR 28290), petitioners did not provide sufficient evidence to warrant an investigation of these claims.

Since our decision not to initiate on the upstream subsidy allegations in this case, the Trade and Tariff Act of 1984 (TTA) has come into force. We have determined that there is nothing in the upstream subsidies provisions of the TTA that would cause us to change our earlier conclusions.

Comment 4. Petitioners contend that BNDES and FINAME financing are countervailable even if they are generally available, citing the Court of International Trade's decision in *Bethlehem Steel Corp.* v. *United States*, 7 CIT ——, Slip Op. 84–67 (June 8, 1984).

DOC Position. We do not consider generally available programs to be countervailable. Petitioners' reliance on *Bethlehem* is misplaced, as the Court in that case upheld our determination that a generally available tax benefit is not countervailable. The Court's further comments on general availability are pure *dicta* and do not affect the Court's earlier approval of our general availability test in *Carlisle Tire and Rubber Co.* v. *United States*, 564 F. Sup. 834 (1983).

Comment 5. Petitioners further contend that BNDES and FINAME loans are not generally available, citing BNDES annual reports which allegedly reveal that its funds are channeled to particular sectors targeted by the government. Furthermore, the financial statements of the respondents show that they have received BNDES and FINAME financing. Consequently, the Department should investigate the financial assistance respondents have received from these programs and countervail any benefits provided under the programs.

DOC Position. When this case was initiated, we dismissed the allegation that BNDES and FINAME loans are not generally available because of evidence in the record of prior Brazilian cases, including *Certain Carbon Steel Products from Brazil* (49 FR 17988), that the opposite was true. In their pre-hearing brief filed on October 17, 1984, after the verification had taken place, petitioners cited certain excerpts from a BNDES annual report they allege constitute evidence that BNDES and FINAME loans are targeted and not generally available. We believe the actual meaning of these excerpts is unclear. In any event, this information was supplied at too late a date for us to act upon it. We will take this allegation into account in any administrative review that may occur under section 751 of the Act.

Comment 6. Petitioners disagree with the Department's determination that Mannesmann is creditworthy, because the company's financial statements indicate that Mannesmann has experienced negative operating income. Petitioners contend the Department must consider Mannesmann's cash flow position and examine its financial history in order to determine the company's creditworthiness.

DOC Position. We consider several economic and financial measurements in determining whether a company is creditworthy. Mannesmann has operated at a profit and experienced a favorable rate of return on equity, except in 1979 and 1983. Cash flow was positive in all years except 1979. The adverse performance in 1983 was caused in part by a maxi-devaluation of the cruzeiro. Mannesmann's financial statements are presented in accordance with generally accepted accounting principles and practices.

Comment 7. Petitioners allege that Confab has received subsidies for the development of calculation methods, manufacturing processes, and materials for application in production lines through the FUNTEC program. Petitioners contend the Department should countervail any subsidies which Confab received under this program.

DOC Position. We disagree. The petition contained no allegations concerning this program. Petitioners brought this program to our attention in its pre-hearing brief filed on October 17, 1984, after the verification had taken place and only a month before this final determination. We will take this allegation into account in any administrative review that may occur under section 751 of the Act.

Comment 8. Petitioners allege that the FINEP program provides subsidized financing to encourage the development of high technology. Confab's 1983 Annual Report states that it has received financing under FINEP. Accordingly, the Department should countervail any subsidies which Confab has received from this program.

DOC Position. See response to Comment 7 above.

Comment 9. Petitioners contend that the Department erred in calculating its benchmark for short-term loans by taking an arithmetic mean of the monthly discount rates and then calculating the effective annual interest

rate based on that number. Petitioners argue that we should have calculated the effective annual interest rate for all of 1983 (including compensating balances) and then taken an arithmetic mean.

DOC Position. We disagree. Petitioners have not convinced us that their method is better than the method we have employed.

Respondents' Comments

Comment 1. Respondents argue that the Department must take the phased reduction of the IPI export credit premium into account in calculating the subsidy rate for this program in its final determination.

DOC Position. We cannot take into account program-wide changes that have not yet been implemented. When the phaseout of the IPI export credit premium actually takes place, we will take it into account in any administrative review that may occur under section 751 of the Act.

Comment 2. Respondents contend the Department failed to recognize the time value of money by not discounting the IPI export credit premium to reflect the delay between the date a credit is earned and the date it is actually received.

DOC Position. Under section 771(6)(B) of the Act, an offset is allowed for "any loss in the value of the subsidy resulting from its deferred receipt if the deferral is mandated by Government order." In the case of the IPI export credit premium, no such government mandate exists. Delays in a company's receipt of IPI credits are purely administrative, frequently the result of a company's tardy application for the benefit. No offset is allowed in such a case.

Comment 3. Counsel for the government of Brazil contends, with respect to IPI tax rebates under Decree-Law 1547, that the value-added tax or IPI is not generally applicable in Brazil and that the rebate of this tax does not confer a countervailable benefit.

DOC Position. We disagree. Although the same amount of IPI tax is applied to all steel products, only companies producing certain priority products and whose expansion projects are government-approved may receive the rebates. Fabricators of steel products, such as welded pipe and tube manufacturers who purchase coil, are not eligible for the rebates. Therefore, the rebates are not generally available and constitute a benefit to selected producers.

Comment 4. Respondents argue that since IPI tax rebates under Decree-Law 1547 are paid only on goods sold in the domestic market, no products exported to the United States benefit from the rebate and therefore no subsidy is conferred.

DOC Position. We are countervailing these rebates because receipt thereof is tied to investment in government-approved projects. Although the amount of rebate any firm receives may increase along with domestic sales, the existence of domestic sales does not guarantee that a rebate will be received.

Comment 5. Counsel of Mannesmann contends that the government of Brazil's equalization of the steel companies' tax liability in a manner that encourages them to invest in and modernize their plants is not a reason for viewing Decree-Law 1547 as a subsidy mechanism, and cites in support of this contention Article 14 of the Subsidies Code, which recognizes that domestic subsidies in developing countries should be countervailed only where the nature of the net benefit is clear and "unless nullification or impairment of tariff concessions or other GATT obligations is found to exist as a result of such subsidy."

DOC Position. The Subsidies Code, including Article 14, does not preclude us from assessing countervailing duties against domestic subsidies, when the products benefiting from those subsidies are causing material injury to a domestic industry.

Comment 6. Counsel for Mannesmann also claims that government intervention in the economy is not *per se* a countervailable subsidy and cites Article 11 section 3 of the Subsides Code in support of this view.

DOC Position. We agree; however, government intervention that benefits exports over domestic sales, or selected industries or firms within an economy, may confer a countervailable subsidy and does in this case.

Comment 7. Respondents claim the Department has overstated the benefit from the income tax exemption for export earnings by using the nominal tax rate as opposed to the effective tax rate applicable to the respondents. brazilian tax law allows corporations to invest 26 percent of taxes owed into certain specified corporations of funds. Respondents argue this provision results in an effective reduction of the corporate income tax rate, which decreases the benefit from the income tax exemption.

DOC Position. We disagree. We could only consider an adjustment if these tax provisions resulted in a lower benefit. In this case, the amount a company invests does not decrease the amount of the tax exemption available for export revenue. Therefore, no offset is appropriate.

Comment 8. Respondents argue that the department erred in valuing the subsidy arising from the income tax exemption for export earnings on the basis of export sales rather than total sales. Because the determining factor in a firm's eligibility for this benefit is its overall profitability for a given year, the benefit accrues to the entire operations of the firm and not just to exports. Further, an income tax exemption calculated on this basis does not affect the price of the exported product only; rather, it must have a general effect on all prices, both domestic and export.

DOC Position. We disagree. When a firm must export to be eligible for benefits under a subsidy program, and when the amount of the benefit received is tied directly or indirectly to the firm's level of exports, that program confers an export subsidy. The fact that the firm as a whole must be profitable to benefit from the program does not detract from the program's basic function as an export subsidy. Therefore, the Department will continue to allocate the benefits under this program over export revenue instead of total revenue.

Comment 9. Counsel for the government of Brazil argues the CIC-CREGE 14–11 circular is not a government program and, therefore, does not bestow a government subsidy on the exportation of oil country tubular goods. Respondents argue further that the CIC–CREGE 14–11 program is consistent with commercial considerations, since the costs of the program are covered by charges payable by the recipients; therefore, under Annex A of the subsidies Code, paragraphs (j) and (k), this program does not confer a subsidy.

DOC Position. We disagree. Our determination that the CIC–CREGE 14–11 program provides countervailable benefits is based on (1) the fact that under Brazilian law the Banco do Brasil, which administers this program, acts as the government of Brazil's financial agent, and (2) respondents' failure to demonstrate that the program does not provide preferential loans to exporters. Our uniform practice has been to calculate a subsidy provided under a preferential loan program by comparing the preferential rate to the benchmark interest rate, rather than to the cost of the funds to the lender.

As previously stated in our notice of "Final Affirmative Countervailing Duty Determination" regarding *Ceramic Title from Mexico* (47 FR 20012), "[r]egardless of what effects the Illustrative List of Export Subsidies may have on U.S. law otherwise, the uniform past practice on this issue in comparison with the legislative history of the Trade Act requires us to calculate the bounty or

grant provided under a preferential loan program on the basis of a comparison between the preferential rate and the commercially available rate rather than on the basis of a comparison with the cost of funds to the government."

Comment 11. Respondents claim that the Department, in calculating the subsidy benefit deriving from preferential short-term loans, inappropriately used a benchmark based on the 1983 national average discount rates of accounts receivable as published in *Analise/Business Trends.* Counsel contends that the 1982 interest rates in effect on the date of the loan should be used in calculating the benchmark instead.

DOC Position. We have amended our calculations by using the 1982 benchmark for loans taken out in 1982 and the 1983 benchmark for loans taken out in 1983.

Comment 12. Respondents contend that the Impôsto sôbre Operações Financeiras (IOF) is an indirect tax on the production of goods for export, that the exemption of loans under Resolution 674 from this tax is not a subsidy, and that if we determine that Resolution 674 financing provides a subsidy, we should not consider this exemption as part of that subsidy.

DOC Position. We disagree. The fact that the IOF is an indirect tax paid on domestic financial transactions is irrelevant. Since we are considering the discounting of a cruzeiro-denominated receivable, a transaction upon which the IOF is paid, as the commercial alternative to Resolution 674 loans, it is entirely appropriate that we include the exemption of Resolution 674 loans from the IOF as part of the subsidy in order to measure the full benefit provided under this program.

Comment 13. Respondents contend the Department improperly used an arithmetic mean rather than a weighted-average mean to establish its average benchmark, which does not reflect commercial reality because it fails to relate specific discount rates to specific loans.

DOC Position. We disagree. We have calculated the national average commercial short-term benchmark rate in such a way that it can be used as a benchmark throughout the period of investigation, because the loans we are examining were taken out throughout the period. Calculating the average benchmark by weighing each of the rates by the volume of loans taken out at that rate could lead to understating the value of the preferential loans.

Comment 14. Respondents argue that the Department, in its preliminary determination, improperly compared an annualized benchmark with loans of less than one year in valuing the subsidy benefit received from preferential short-term loans.

DOC Position. We disagree. For purposes of the preliminary determination, we adjusted the benefit to reflect the actual duration of each loan. We see no reason to modify our calculations for purposes of this final determination.

Comment 15. Respondents contend the Department should take into account in its final determination Resolution 950 of the Banco Central do Brasil, which changed the interest rate applicable to Resolution 882 loans from monetary correction plus three percent to monetary correction plus 10–15 percent. Counsel claims this would be consistent with our policy to recognize program-wide changes occurring after the period of investigation but prior to our preliminary determination.

DOC Position. See response to Petitioner's Comment 2

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making our final determinations.

Suspension of Liquidation

In accordance with section 703(d) of the Act, on September 12, 1984, we instructed the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Brazil (49 FR 35827). As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries, or withdrawals from warehouse, for consumption of this merchandise will continue to be suspended and the Customs Service shall require an *ad valorem* cash deposit or bond for each such entry of this merchandise as follows:

Manufacturer/producer/exporter	*Ad valorem* rate (percent)
Confab Industrial S.A.	24.97
Mannesmann S.A. or Mannesmann Comercial S.A.	25.24
Persico-Pizzamiglio S.A.	11.35
All Other Manufacturers/Producers/Exporters	22.41

This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening material injury to, a U.S. industy within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess a countervailing duty on oil country tubular goods from Brazil entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

William T. Archey,

Acting Assistant Secretary for Trade Administration.

November 20, 1984.

[FR Doc. 84-31042 Filed 11-26-84; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting and Public Hearing

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The New England Fishery Management Council will convene a public meeting and a public hearing.

Public Meeting: Discuss reports of the enforcement, foreign fishing, and groundfish oversight committees; reports on the Mid-Atlantic Council meeting, the Anchorage conference, Chairmen's planning session, Federal assistance programs, and other fishery management and administrative matters.

Public Hearing: Discuss and consider the redefinition of the portion of the New England area to which the 200,000 bushel surf clam quota will apply.

The meeting will convene on December 11, 1984 at 10 a.m. and will adjourn at approximately 2 p.m. The hearing will convene also on December 11, 1984 at approximately 11:30 a.m. and will adjourn at approximately noon.

The meeting and hearing will take place at the King's Grant Inn, Danvers, MA. For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Rte. 1), Saugus, MA 01906; telephone: (617) 231–0422.

Dated: November 20, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–31037 Filed 11–26–84; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska Groundfish Plan Team has tentatively scheduled a public meeting for December 13–14, 1984, in Juneau, AK, at the Regional Office of the National Marine Fisheries Service, Room 461, beginning at 11 a.m. on December 13. The Team will review and prioritize 1985 management proposals for the Gulf of Alaska. A conference call may be used instead of this meeting if, due to the number and variety of proposals, a team meeting is not warranted. For further information, contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK; telephone: (907) 274–4563.

Dated: November 15, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–31038 Filed 11–26–84; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Restraint Limit for Certain Man-Made Fiber Apparel Products, Produced or Manufactured in the Republic of Korea

November 20, 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 20, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea provides for 10 percent shift between the parts of Category 640, i.e., man-made fiber dress shirts in Category 640–D and man-made fiber shirts, other than dress shirts in Category 640–O, produced or manufactured in Korea and exported during 1984. Under the terms of the bilateral agreement, as amended, and at the request of the Government of the Republic of Korea, shift in the amount of 227,459 dozen is being applied to increase the limit for Category 640–O to 2,615,450 dozen. The limit for Category 640–D is being decreased by 227,459 dozen to 3,539,214 dozen to account for the shift.

A description of the textile categories in terms of TSUSA numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

November 20, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 13, 1983, which established import restraint limits on certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1984.

Effective on November 20, 1984, the directive of December 13, 1984 is hereby further amended to include the following amended restraint limits for man-made fiber textile products in parts of Category 640:

Category	Amended 12-mo restraint limit[1]
640–D[2]	3,539,214 dozen.
640–O[3]	2,615,450 dozen.

[1] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1983.

[2] In Category 640, only TSUSA numbers 379.3130, 379.3342, 379.9535, 379.9540, 379.9660.

[3] In Category 640, all TSUSA numbers in the category except those listed in footnote 2 above.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–30957 Filed 11–26–84; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows.

DATE: 10 December 1984, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Major Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, D.C. 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on future initatives in emergency planning.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30963 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Reference Contact Letter; DIS FL 4

The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSI's) to determine an individual's suitability for a position of trust. This form is used to contact references not readily available for interview so that an appointment may be made to personally interview the reference to elicit information concerning the loyalty, character, and reliability of the person being investigated to determine his or her suitability for such a position.

Individuals

Responses 22,500

Burden hours 1,800

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Office, WHS/DIOR, Room IC535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred A. Schonert, Defense Investigative Service, Administrative Services Division, V0240, 1900 Half Street, SW, Washington, DC 20324–1700, telephone (202) 693–0881.

Patricia H. Means, ,

OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1984.

[FR Doc. 84–30964 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Soviet Imprecisely Located Targets for Strategic Systems will meet in closed session on 3–4 January 1985 in the Pentagon, Arlington, Virginia and on 28–29 January 1985 at Strategic Air Command, Omaha, Nebraska.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue their study on how to hold Soviet imprecisely located targets at risk.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30971 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Chemical Warfare and Biological Defense; Meetings

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Warfare and Biological Defense will meet in closed session on 20–21 December 1984 at the ANSER Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review progress in chemical warfare and biological defense since the 1980 DSB Summer Study on Chemical Warfare and Changes in the chemical/biological threat environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, 1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 30970 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if Applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revision

DIS Courtesy Letter; DIS FL 2a and 2b

The Defense Investigative Service (DIS) is responsible for conducting personnel security investigations (PSI's) to determine an individual's suitability for a position of turst. This form is sent to references interviewed by the agent as a follow-up device to ascertain the professionalism and integrity of the investigator workforce. The information collected serves to identify problem areas, the investigation of which may lead to administrative, disciplinary, or additional training actions.

Individuals

Response 12,000

Burden hours 1,200

ADDRESS: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred A. Schonert, Defense Investigative Service, Administrative Services Division, V0240,

1900 Half street, SW, Washington, DC 20324–1700, telephone (202) 693–0881.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1984.

[FR Doc. 84–30965 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement to OMB for Review

ACTION: Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

AFROTC Preapplicant Questionnnaire (AFROTC Form 61)

The questionnaire is needed to gather information necessary to identify potentially qualified applicants for an AFROTC scholarship. By serving as an initial screening device, this questionnaire will enable the Air Force to lower the number of scholarship application booklets being printed from 400,000 to 50,000. This will result in an estimated annual savings of $66,000.

High School Students or Graduates between the Ages of 16 and 21

Responses 40,000

Burden hours 4,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 10535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Major J.D. Hogan, HQ USAF/MPPE, The Pentagon, Washington, DC 20330–5060, telephone (202) 695–0318.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1984.

[FR Doc. 30969 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Need Assessment Survey

Opinions and attitudes of soldier's dependents toward the facilities and services provided on the military base at Panama will be surveyed. Survey results will be used to improve base facilities and services.

Individuals or households

Responses 500

Burden hours 100

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20301, telephone (202) 695–5111.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense..

[FR Doc. 84–30968 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

International Military Student Information, DD Form 2339

Information required by U.S. Military Schools in advance of and during attendance to assure integration of International Military Students into U.S. Military Academic environment.

Individuals

Responses 15,000

Burden hours 7,500

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20301, telephone (202) 695–5111.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30967 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the use to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Application for the US Army Health Professions Scholarship Program, DA Form 4628

The application for the US Army Health Professions Scholarship Program is part of the information reviewed in the competitive selection process.

Individuals

Responses 2,000

Burden hours 2,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, DC 20301–1155, telephone (202) 694–0187.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. David O. Cochran, DAIM–ADI, Room 1D667, The Pentagon, Washington, DC 20301, telephone (202) 695–5111.

Dated: November 20, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 84–30966 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Proposed U.S. Navy Carrier Battle Group Homeporting in the Puget Sound Area, Washington State; Public Hearing and Availability of the Draft Environmental Impact Statement (EIS)

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 Carrier Battle Group homeporting in the Puget Sound Area, Washington. The DEIS has been distributed to various Washington state and local agencies, Federal agencies, affected Indian tribal organizations, interest groups, media, interested individuals and public libraries. Copies of the DEIS may also be viewed during weekdays (12:00 noon—6:00 p.m.) in the lobby of the Snonomish County Administration Building, 3001 Rockefeller Avenue, Everett, Washington through January 14, 1985.

A public hearing to inform the pubic of the study's findings and to solicit comments on the Navy's proposed homeport facility will be held at the following location:

Snonmish County Administration Building Auditorium, 3001 Rockefeller Avenue, Everett, Washington

Dates and Times: Tuesday, December 14, 1984, 7:00 p.m. to approximately 12:30 A.M.

The hearing will be chaired by the U.S. Navy in accordance with the National Environmental Policy Act, Council of Environmental Quality regulations.

The U.S. Navy will apply for construction permits following the decision by the Secretary of the Navy on the proposed action. All interested parties are invited and urged to be present or represented at this meeting. This includes representatives of Federal and non-Federal agencies; commericial, 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 8 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.

Commander
Naval Base, Seattle
Code 02 Homeporting Office
Seattle, WA 98115

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.

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 21, 1984.

Questions concerning this pubic notice may be directed to Mr. Ed Likjanowicz at 206–526–3073/4/5.

Dated: November 20, 1984.

William F. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 84–31000 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–AE–M

Hampshire Instruments, Inc.; Intent To Grant Limited Exclusive Patent License

The Department of the Navy hereby gives notice of intent to grant to Hampshire Instruments, Inc., a corporation of the State of New York, a revocable, nonassignable, limited exclusive license for ten (10) years to practice the Government-owned invention described in U.S. Patent No. 4,184,078 entitled "Pulsed X-Ray Lithography" issued January 15, 1980; inventors: David J. Nagel and Martin C. Peckerar.

This license will be granted unless within 60 days from the date of this notice written objections to this grant along with supporting evidence, if any, are received by the Office of Naval Research (Code 302), Arlington, VA 22217.

For further information concerning this notice, contact: Dr. A. C. Williams,

Staff Patent Adviser, Office of Naval Research (Code 305), Ballston Tower No. 1, 800 N. Quincy Street, Arlington, VA 22217, Telephone No. (202) 696–4005.

Dated: November 21, 1984.

Dennis Gonzalez,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Oficer.

[FR Doc. 84–31009 Filed 11–26–84; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

International Research and Studies Program; Application Notice for New Awards and for Noncompeting Continuations for Fiscal Year 1985

Applications are invited for new awards and for noncompeting continuation awards under the International Research and Studies Program for Fiscal Year (FY) 1985.

Authority for this program is contained in section 605(a) of Title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1125(a)).

The International Research and Studies Program provides funds to qualified public and private agencies, organizations, institutions, and individuals to conduct research designed to improve and strengthen instruction in modern foreign languages, area studies, and other related fields needed to provide full understanding of the places in which those languages are commonly used.

Closing dates for transmittal of applications: 1. An application for a NEW grant must be mailed or hand delivered by January 25, 1985. (84.017A)

2. An application for a NONCOMPETING CONTINUATION grant, to be assured of consideration for funding, should be mailed or hand delivered by February 15, 1985. If an application is late, the Secretary may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it. (84.107B)

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, *Attention:* 84.017A or 84.017B, International Research and Studies Program, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailng stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Eligible applicants: for the International Research and Studies Program eligible applicants include public and private agencies, organizations, and institutions, as well as individuals.

Program information: Continuation awards. Information regarding the continuation of a noncompeting award is contained in the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253.

Program information: New awards. Applications for new awards will be evaluated in accordance with the selection criteria contained in the regulations for this program (34 CFR 660.31 through 660.35). New projects may be proposed for a period of from one to three years. An applicant requesting support for more than one year must provide a budget breakdown and proposed scope of work for each additional year.

Funding priorities: The regulations governing the International Research and Studies Program (34 CFR 660.34) provide for the establishment of funding priorities by the Secretary in any given year. For FY 1985, the Secretary has established funding priorities for new awards for research in the following areas:

(1) The use of computers for improving foreign language instruction.

(2) Foreign language acquisition.

(3) Improved teaching methodologies for foreign languages.

(4) Foreign language proficiency testing.

(5) Instructional materials development for uncommonly taught languages.

In preparing an application in the area of instructional materials development for uncommonly taught languages, applicants for new awards should consult the report, *A Survey of Material Development Needs in the Less Commonly Taught Languages in the United States,* published by the Center for Applied Linguistics, 3520 Prospect Street, NW. Washington, D.C. 20007. Telephone: (202) 298–9292. The Secretary consults this report in determining priorities for instructional materials development for uncommonly taught languages. The report is also available through the Educational Resources Information Clearinghouse (ERIC), Telephone: (202) 254–5500.

Available funds: It is anticipated that approximately $1,500,000 will be available for the International Research and Studies Program in FY 1985. In addition, it is expected that approximately $60,000 in funds from the Fiscal Year 1984 special foreign currency appropriation, which are available until expended, will be available for this program in Fiscal Year 1985. These funds could support approximately 25 new grants and 10 noncompeting continuation awards at an average cost of $45,000.

These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be available for mailing by December 5, 1984. They may be obtained by writing to the Center for International Education, Office of Postsecondary Education, U.S. Department of Education, (Room 3923, ROB–3), Mail Stop 3308, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with regulations, instructions, and forms included in the program information package.

(Approved under Office of Management and Budget Control Number 1840–0068)

The program information package is intended to aid applicants applying for

assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the International Research and Studies Program, 34 CFR Parts 655 and 660.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

Further information: For further information contact Robert R. Dennis, Program Manager, International Research and Studies Program, Center for International Education, (Room 3928, ROB–3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–9425.

(20 U.S.C. 1125)

(Catalog of Federal Domestic Assistance No. 84–017, International Research and Studies Program)

Dated: November 20, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84–30950 Filed 11–26–84; 8:45 am]

BILLING CODE 4000–01–M

College Housing Program; Closing Date for Transmittal of Proposals for a Prepayment Discount Under the College Housing Program

Educational institutions that have outstanding college housing loans and that wish to apply for a prepayment discount under the College Housing Program are invited to submit a proposal for a discount to the Secretary of Education.

This program is authorized under Title IV of the Housing Act of 1950 (12 U.S.C. 1749–1749d). Under section 306 of the Department of Education Organization Act (Pub. L. 96–88), administration of the College Housing Program was transferred from the Secretary of Housing and Urban Development to the Secretary of Education (20 U.S.C. 3446).

Section 308 of the Department of Education Appropriation Act, 1985 amended section 402(c) of the Housing Act of 1950 to allow the Secretary to accept, prior to October 1, 1985, discounted prepayments on outstanding loans.

Closing Date for Transmittal of Proposals

Proposals must be mailed or hand delivered in accordance with the following schedule:

By 4:30 PM on closing date of	For interest rate in the month of
December 28	December 1984.
January 16	January 1985
February 13	February 1985
March 13	March 1985
April 17	April 1985
May 15	May 1985
June 12	June 1985
July 17	July 1985
August 14	August 1985
September 18	September 1985.

Prepayment must be made by close of business (COB) on the last business day of the month if the institution wishes to use the interest rate for that month in the proposal. Further information about prepayments is included under "Supplemental Information".

Proposals Delivered by Mail

A proposal sent by mail must be addressed to the U.S. Department of Education, Attention: Division of Grants and Loans Management, L'Enfant Plaza, P.O. Box 23471, Washington, DC 20026.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service Postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If a proposal is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Institutions are encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its proposal will not be considered in that month. Unless the institution notifies the U.S. Department of Education of its intent to withdraw from the discount program, the proposal will be considered during the following month.

Proposals Delivered by Hand

A proposal that is hand delivered must be taken to the U.S. Department of Education, Division of Grants and Loan Management, Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C. between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily except Saturday, Sunday or Federal Holidays. Proposals will not be accepted after 4:30 p.m. on the closing date.

Program Information

This limited invitation is solely for prepayment of outstanding college housing loans. The applicable regulations specify requirements for prepayment of outstanding loans and for determining the actual amount that must be prepaid under a formula. The Secretary determines whether to award a discount based on these requirements, including the requirement, that the discount be in the best financial interests of the Government.

Supplemental Information

There is no standard form for a proposal. However, a proposal for a prepayment discount should be submitted and signed by an authorized official of the institution, should reflect the information necessary for the Secretary to award a discount under the applicable regulations, and should also contain the following information—

- If the institution intends to use funds on deposit in reserve accounts that were established for the building originally financed by the loan or for loan payments, it must also request that the Department grant the institution permission to use such funds for prepayment;
- For loans that are evidenced by bonds issued under a trust indenture (or similar instrument), a statement that the trustee under the indenture (or similar instrument) has verified the outstanding balance of the loan to be discounted;
- The exact date the institution will submit its prepayment to the Secretary; and,
- The construction project number for the loan and a description of the building financed by the loan.

The Department encourages each institution that proposes to submit a discounted prepayment for loans that are evidenced under a trust indenture (or similar instrument) to consult directly with the trustee institution with respect to the execution of appropriate forms for releasing or cancelling mortgages or liens that secure payment of the loan. In addition, to the extent that several loans are evidenced by the

issuance of one bond under a trust indenture, an institution that wishes to prepay only one of the loans should seek the advice of the trustee as to the appropriate documents and forms for separating the loans for prepayment pruposes. The Department anticipates that separating loans for prepayment purposes will necessitate the execution of collateral documents such as a supplemental to an indenture. All appropriate forms that the Department might require a Trustee, as bondholder, to execute should be submitted with the proposal.

Each institution that submits a proposal should calculate the amount it must prepay under the formula reflected in the applicable regulations. The Department encourages prepayment directly to the Department of Treasury by electronic transfer but will accept prepayment by a certified check to the Federal Reserve Bank in Richmond, Virginia. Institutions are advised that full prepayment is required. Applicable interest rates for prepaying college housing loans are determined by the certified Treasury interest rate for the month in which the prepayment is made. If an institution wishes to use a Treasury interest rate for any given month, the institution has until 4:45 PM Eastern Standard Time on the last business day of that month to submit its prepayment.

No partial payments may be used to receive a prepayment discount under the legislation. Institutions that do not prepay in full or undercalculate the prepayment do so at the risk of rejection of the proposal. If time and resources permit, the Secretary notifies institutions that have submitted underpayments.

The Secretary reviews all prepayment calculations done by institutions. If an institution overcalculates and submits an overpayment, the overpaid amount will be returned to the institution unless the institution wishes the Secretary to apply the overpaid amount to other indebtedness to the Department. Once a proposal has been tentatively accepted, the Department will execute an agreement with the institution. The agreement would principally reiterate the statutory and regulatory requirements for a prepayment discount; however, it is possible that terms of the agreement may vary from institution to institution depending on the particular facts involved.

Applicable Regulations

The final regulations applicable to discounted prepayments of College Housing Loans (34 CFR 614.63) were published in the July 17, 1984 issue of the Federal Register. (49 FR 29018–29022).

This program is listed in other regulations promulgated by the Secretary (34 CFR Part 79) as subject to intergovernmental review requirements imposed by section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. The objective of these requirements and Executive Order 12372, which implements these requirements, is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program. However, the limited discount program offered by the Secretary is not subject to section 204 because no financial assistance for capital construction is awarded.

Further Information: For further information contact John K. Uchima, Chief, Loan Management Branch, Division of Grants and Loan Management, Department of Education, P.O. Box 23471, Washington, D.C. 20026, Telephone: (202) 755–1843.

(12 U.S.C. 1749–1749d)

(Catalog of Federal Domestic Assistance No. 84.142 College Housing program)

Dated: November 21, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84–31120 Filed 11–26–84; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of meeting of the National Advisory Council on Women's Educational Programs Executive Committee. The agenda will include planning Council activities for the upcoming forums on women in non-traditional fields and personnel matters. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend and that a portion of the meeting will be closed.

DATE: December 3, 1984, 7:30 p.m. to 8:00 p.m. open session; closed from 8:00 p.m. until business is completed.

ADDRESS: The meeting will be held at the Chase Park Plaza Hotel, Kingshighway at Lindell Blvd., St. Louis, MO 63108.

FOR FURTHER INFORMATION CONTACT: Sally Todd, Deputy Director, National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C., 20004, (202) 376–1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on December 3, 1984, from 7:30 p.m. to 8:00 p.m. to open session, and from 8:00 p.m. until business is completed the meeting will be closed. The agenda will include planning Council activities for the upcoming forums on women in non-traditional fields. The Executive Committee will meet in closed session at 8:00 p.m. to discuss personnel matters and continue until business is completed. These discussions would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b (c) of Title 5 U.S.C.

The public is being given less than fifteen days notice of this closed session due to difficulty of arranging the meeting because of the unavailability of some Executive Committee members. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs. A summary of the activities of the closed sessions and related matters which

would be informative to the public consistent with the policy of section 552b (c) of Title 5 U.S.C. will be available to the public within 14 days of the meeting at the Council's office, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on November 23, 1984.

Sally A. Todd,

Acting Executive Director.

[FR Doc. 84-31153 Filed 11-26-84; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement on a Process Facility Modifications Project for Existing Chemical Processing Facilities at the Hanford Site Near Richland, Washington

AGENCY: Department of Energy.

ACTION: Notice of Intent (NOI) to prepare an environmental impact statement (EIS) pertaining to a planned Process Facility Modifications (PFM) Project for the existing chemical processing facilities at the Hanford Site near Richland, Washington.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an EIS, in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA), to provide environmental input into the decision to construct and operate additional spent nuclear fuel disassembly and dissolution facilities at the Hanford Site near Richland, Washington. These facilities would modify the existing chemical processing facilities at the Hanford Site to provide additional nuclear fuel chemical processing capabilities. These additional capabilities are required for the processing of spent Fast Flux Test Facility (FFTF) fuel and other DOE-owned fuel. FFTF fuels are clad in stainless steel which is virtually insoluble in conventional solvents and must be removed or breached mechanically prior to dissolution of the fuel. This modification effort is called the "Process Facility Modifications Project." This action will provide improved capability for recovering plutonium (Pu) and uranium (U) for national defense and for research and development activities. Because it is not weapons grade, the Pu obtained from processing FFTF fuels in the PFM will be added to other Pu or will be processed further to meet DOE requirements. The PFM project (Project No. 84-D-135) was authorized by Congress based on recommendations from the Armed Services Committees.

The purpose of this NOI is to present pertinent background information on the proposed scope and content of the EIS and to solicit comments and suggestions for consideration in its preparation. Agencies, organizations, and individuals desiring to submit comments or suggestions for consideration in the preparation of this EIS are invited to do so. No public scoping meeting is scheduled; should DOE determine after it reviews public comments in response to this Notice of Intent that a scoping meeting is appropriate, one will be scheduled. Upon completion of the draft EIS, the document will be made available to the public for review; comments received will be used in preparing the final EIS. Written comments or suggestions on the scope of the EIS may be submitted to:

Mr. Roger K. Heusser, Director, Materials Processing Division, DP-132, GTN, U.S. Department of Energy, Washington, DC 20545, Telephone: (301) 353-5496

For general information of DOE's EIS process, contact:

Office of Environmental Compliance, Office of the Assistant Secretary for Policy, Safety, and Environment, U.S. Department of Energy, ATTN: Dr. Robert Stern, PE-25, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 252-4600

DATE: Written comments postmarked within 30 days of publication of this NOI in the Federal Register will be considered in the preparation of the EIS.

Background Information: The capability for processing spent FFTF and other DOE-owned fuels is necessary to recover the Pu and U for national defense and for research and development activities. FFTF fuels currently are not amenable to processing in existing facilities in the United States due to their cladding material, size, and other technical and economic considerations. FFTF fuel will be available for processing in the early 1990's. By this time, the existing chemical processing facilities could be modified to be capable of processing these fuels.

The PFM would modify the existing chemical processing facilities to provide the capability for processing FFTF and other DOE-owned fuels. The proposed modifications would encompass the initial phases of fuel processing, including fuel element disassembly, segmentation, dissolution, and feedstock preparation. The dissolved fuel then would enter the existing chemical process just prior to the first solvent extraction cycle. Because the existing chemical processing facilities will be utilized in processing the FFTF and other DOE-owned fuel, the EIS's on the operation of the existing chemical processing facilities and waste management will serve as principal references in the preparation of this EIS. These referenced EIS's are: (1) "Operation of PUREX and Uranium Oxide Plant Facilities," February 1983 (DOE/EIS-0089); (2) "Double-Shell Tanks For Defense High-Level Waste Storage," April 1980, DOE/EIS-0063); and (3) "Waste Management Operations, Hanford Reservation, Richland, Washington," December 1975 (ERDA-1538). This EIS will analyze and evaluate the environmental impacts of constructing and operating the PFM, and the alternatives thereto, as well as mitigating actions to minimize potential environmental impacts from the proposed action. Environmental impacts analyzed in DOE/EIS-0089, DOE/EIS-0063, and ERDA-1538 that are not affected by the proposed action will not be reevaluated in this EIS. The EIS will contain, however, sufficient information to evaluate whether such impacts already discussed in DOE/EIS-0089, DOE/EIS-0063, and ERDA-1538 will be affected.

Proposed Action: The proposed action is to construct and operate the PFM to enable recovery of Pu and U from DOE-owned fuels (including stainless steel-clad fuels). Construction of the PFM is assumed to start in FY 1986. The PFM could be operational in FY 1992.

Stainless steel cladding is virtually insoluble in conventional solvents and must be removed or breached mechanically prior to dissolution of the fuel. In the PFM, the fuel would be segmented mechanically, thus exposing the fuel on the cut segment ends to the dissolver solution; the exposed fuel would be dissolved from the fuel segments; and the resulting solution would be transferred to the existing chemical processing facilities for chemical separation, purification, and conversion of the contained Pu and U to solid form. In addition to these steps, the proposed action also includes onsite transportation to the fuel; fuel receipt and interim storage at the PFM; mechanical disassembly of the fuel assembly into elements as required; and post-dissolution treatment, interim storage, blending of the dissolver solution, waste handling and off-gas treatment.

Identification of Environmental Issues: The following issues will be analyzed for the proposed action and

alternatives during the preparation of the EIS. This list is intended neither to be all-inclusive nor a predetermination of the impacts:

- Effects on the general population from emissions of radiologic and nonradiologic releases caused by normal operations
- Magnitude of exposure of operating personnel to radiologic and nonradiologic releases during normal operations
- Offsite (general population) effects resulting from potential accidents
- Effect on air and water quality and other environmental consequences during construction and normal operations
- Applicable regulations and guidelines
- Incremental differences in environmental impacts between operation of the existing chemical processing facilities with and without the proposed modifications
- Cumulative effects of operations at the Hanford Site, including changes in support operations
- Construction impacts
- Onsite and offsite transportation impacts of products and irradiated fuel
- Decontamination and decommissioning
- Short-term versus long-term land use
- Irretrievable and irreversible commitment of resources
- Socioeconomic impacts to surrounding communities
- Mitigation measures

Alternatives to the Proposed Action: The reasonable alternatives which will be addressed in the EIS include:

Process fuel at the Savannah River Plant in South Carolina

This alternative will analyze shipping the irradiated fuels for processing and separation, purification and conversion of Pu and U to solid form. The only other facility capable of processing irradiated fuel containing significant quantities of Pu now operating in the United States is located at the DOE Savannah River Plant (SRP), Aiken, South Carolina. The SRP also would require modifications comparable to the proposed action to process FFTF-type fuels.

Process fuel in other existing facilities

This alternative will analyze the use of one or more other existing facilities to provide part or all of the capability required for processing the fuel. This alternative will include facilites not designed for nuclear fuel processing but which could be modified to achieve the mission objectives.

No action

The no-action alternative is a "no change" alternative. Discharged FFTF spent fuel would be stored for eventual disposal without recovery of its Pu and U.

Related NEPA Documentation: NEPA documents are being prepared for another activity at Hanford that is related to, but is not within the scope of the PFM. This EIS is on "Disposal of Hanford High-Level and Transuranic Wastes." The NOI for this EIS was published in the **Federal Register** on April 1, 1983 (48 FR 14029). This EIS will provide environmental input into the decision to select and implement a Hanford site-wide final disposal strategy for high-level and TRU wastes generated as a result of national defense and research activities at Hanford.

Comments and Scoping: All interested parties are invited to submit written comments or suggestions to be considered by DOE in preparing this EIS. Written comments or suggestions on the scope of the EIS may be submitted to Mr. Roger K. Heusser (address given above). Written comments postmarked within 30 days of the publication of this Notice of Intent will be considered in the preparation of this EIS. Comments postmarked after that date will be considered to the extent practicable. Those who wish to receive a copy of the draft EIS for review and comment when it is issued also should notify Mr. Heusser. Those seeking further information on the proposal or the EIS process should contact Dr. Robert Stern (address given above).

Copies of background documents currently planned to be used in preparing the EIS are available for inspection at the following DOE offices:

Public Reading Room, Room E–190, 1000 Independence Avenue, SW., Washington, DC 20585
Chicago Operations Office, 9800 South Cass Avenue, Argonne, IL 60639
Chicago Operations and Regional Office, 175 West Jackson Boulevard, Chicago, IL 60604
Idaho Operations Office, 550 Second Street, Idaho Falls, ID 83401
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, NV 89114
Albuquerque Operations Office, National Atomic Museum, 2358 Wyoming Avenue, Kirtland Air Force Base East, Albuquerque, NM 87715
Oak Ridge Operations Office, Federal Building, 200 Administration Road, Oak Ridge, TN 37830
Richland Operations Office, Federal Building, 825 Jadwin Avenue, Richland, WA 99352
Energy Information Center, 215 Freemont Street, San Francisco, CA 94105
Savannah River Operations Office, Federal Building, 211 York Street, NE, Aiken, SC 29801
Regional Energy/Environmental Information Center, Denver Public Library, 1357 Broadway, Denver, Colorado 80210

Dated at Washington, D.C., the 16th of November, 1984, for the United States Department of Energy.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84-31084 Filed 11-26-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Sweden Concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/SW(EU)–129, for the transfer of 550 Kilograms of uranium, enriched to 3.8% in U–235, from Kernkraftwerk Philippsburgh GmbH, in the Federal Republic of Germany to ASEA–ATOM, in Sweden, for conversion from UF_6 and fuel fabrication.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 16, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-31081 Filed 11-26-84; 8:45am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement; Spain

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Spain Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/SP(EU)-4, 26,405.9 Kilograms of uranium, containing 871.395 Kilograms of uranium-235 (3.3% enrichment), from British Nuclear Fuels, Ltd., in the United Kingdom, to Spain, for use in the ASCO-1 power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 16, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-31080 Filed 11-26-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 6889-001]

Alabama Municipal Electric Authority; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Alabama Municipal Electric Authority, Permittee for the proposed Gainesville Hydro Project No. 6889, has requested that its preliminary permit be terminated. The permit was issued on May 11, 1983, and would have expired April 30, 1985. The project would have been located on the Tombigbee River near Gainesville, Greene County, Alabama. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 25, 1984, and the preliminary permit for Project No. 6889 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31028 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6890-001]

Alabama Municipal Electric Authority; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Alabama Municipal Electric Authority, Permittee for the proposed Coffeeville Hydro Project No. 6890, has requested that its preliminary permit be terminated. The permit was issued on July 29, 1983, and would have expired June 30, 1985. The project would have been located on the Tombigbee River near Coffeeville, Clarke County, Alabama. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 25, 1984, and the preliminary permit for Project No. 6890 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31029 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6891-002]

Alabama Municipal Electric Authority; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Alabama Municipal Electric Authority, Permittee for the proposed William Bacon Oliver Lock and Dam Hydro Project No. 6891, has requested that its preliminary permit be terminated. The permit was issued on July 8, 1983, and would have expired June 30, 1986. The project would have been located on the Black Warrior River in Tuscaloosa County, Alabama. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on October 25, 1984, and the preliminary permit for Project No. 6891 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31030 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-41-000]

American Petrofina Co. of Texas and Petrofina Delaware, Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Blanket Limited-Term Partial Abandonment Authorization

November 20, 1984.

Take notice that on November 13, 1984, American Petrofina Company of Texas (APCOT) and Petrofina Delaware, Incorporated (PDI), P.O. Box 2159, Dallas, Texas 75221 (either or both of whom are referred to herein as "Fina"), filed an application pursuant to section 7 of the Natural Gas Act (NGA) and section 311 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 717f, 3371 (1982), and Parts 157 and 284 of the Commission's Regulations, 18 CFR Parts 157, 284 (1983), requesting blanket limited-term partial abandonment authorization and a blanket limited-term certificate of public convenience and necessity authorizing the Fina Spot Market Gas Sales Program (FinaGas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval of the requested blanket authorization and certificate would (1) permit the limited-term partial abandonment of certain sales of gas by Fina and its working interest co-owners in interstate commerce for resale; (2) authorize certain sales of gas in interstate commerce for resale by Fina and its working interest co-owners; (3) confer pre-granted abandonment authorization for sales made pursuant to the requested certificate; (4) permit the transportation of gas pursuant to certificate or authorization by any transportation or distribution company able and willing to participate in FinaGas; (5) confer pre-granted abandonment authorization for transportation conducted pursuant to the requested certificate; and (6) waive the reporting requirements of §§ 157.24, 157.25, and 157.30 of the Commission's Regulations, 18 CFR 157.24, 157.25, 157.30 (1983).

Fina proposes to sell on the spot market certain volumes of gas qualifying for prices higher than the maximum lawful price prescribed under section 109 of the NGPA. To be eligible for sale in FinaGas, the volumes must be owned by Fina or by Fina's working interest co-owners and must be contractually committed to an interstate pipeline purchaser under a long-term contract containing take-or-pay provisions. On behalf of itself and such co-owners, Fina will seek temporary releases of eligible volumes from the various pipeline purchasers. All volumes released, sold, and delivered in FinaGas will be credited against the releasing pipeline's take-or-pay obligation.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before November 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31043 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-705-000]

Boston Edison Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions to Reject, Denying Motion for Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued: November 21, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On September 27, 1984, Boston Edison Company (Boston Edison) submitted for filing a proposed two-step increase in its rates for full requirements service to the Towns of Concord, Norwood, and Wellesley, Massachusetts (Towns), and for partial requirements contract demand service to the Town of Reading, Massachusetts (Reading).[1] Step A of the proposed rates would increase revenues to Boston Edison by about $2.2 million (5.7%), based on the 12 month test period ending on September 30, 1985. Step B would provide an additional increase in revenues of about $750,000, representing a total increase of approximately $3 million (7.0%). The company requests that the Step A rates become effective on November 27, 1984, and the Step B rates become effective on November 28, 1984. However, in the event that the Commission suspends the Step A and Step B rates for the same period, Boston Edison requests that the Step A rates be deemed withdrawn.

Boston Edison's filing also includes rate schedule supplements which reflect the termination, as of March 1, 1985, of the provision of a 1980 settlement agreement that wholesale rate increases may not become effective sooner than the company's retail rate increases.[2] The company states that it gave its customers notice of its intent to terminate that provision on January 13, 1984, and proposes that the supplements become effective as of November 27, 1984.

Notice of Boston Edison's filing was published in the **Federal Register**, with comments due on or before October 23, 1984. 49 FR 41090. The Towns and Reading filed timely motions to intervene. Both the Towns and Reading request rejection of the filing on the basis of alleged deficiencies. The Towns allege a failure to provide cost support for the company's proposed computational errors in the filing as well as improper accountings for fuel charges. Claiming that Boston Edison has, in the past, improperly included terminal charges for fuel for the Mystic Generating Station in Account No. 151, rather than Account No. 152, Reading also requests that the Commission institute an investigation of this issue. Alternatively, both the Towns and reading request maximum suspension of the proposed rates.[3]

The Towns further request summary dismissal of four items included in the company's proposed rates: (1) The Pilgrim Stabilizing Line, which the Towns claim is related to the carrying charges for the Pilgrim 2 abandonment costs disallowed in Docket No. ER82-625-000; (2) allegedly unsupported amounts for depreciation expense and decommissioning allowance; (3) donations, which the Towns claim are traditionally below-the-line expenses; and (4) an allegedly unsupported amount associated with nuclear outage amortization. In further support of their request for maximum suspension, the Towns allege that the multiple step nature of the proposed increase is merely an attempt to circumvent the Commission's suspension policy. The Towns also allege price squeeze.

Boston Edison responded to the pleadings of the Towns and Reading by answer filed on November 7, 1984. The company opposes the requests for rejection or summary dismissal and for a five month suspension of its proposed rates, denying the claims of filing deficiencies, the cost of service

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[1] *See* Attachment for rate schedule designations.

[2] The provision, which was incorporated into Boston Edison's rate schedules by a letter order accepting the 1980 settlement between the company and its customers, in Docket No. ER79-216, would have been automatically renewed, absent notice of termination. We note that Boston Edison's most recent retail rate increase became effective on June 29, 1984. Thus, the instant filing is in conformance with the existing provision.

[3] In support of their request for a five month suspension, the Towns raise several cost of service issues, including: (1) The amount of Pilgrim 2 abandonment costs; (2) nuclear fuel disposal costs; (3) claimed depreciation charges; (4) Period II operation and maintenance expenses; (5) cash working capital allowance; (6) the claimed extraordinary property loss related to Edgar Station; (7) the increase in decommissioning costs; (8) the purchase of Canadian nuclear power; (9) allocation of transmission costs; and (10) the proposed rate of return on common equity. Reading raises issues, including: (1) Income tax expense; (2) rate of return on equity; (3) calculation of cash working capital; (4) the amount and amortization of spent nuclear fuel disposal costs; (5) the increase in wages; and (6) adjustment for the Pilgrim outage.

allegations, and the Towns' allegation of price squeeze. Boston Edison further argues that its two-step rate filing format is now standard Commission policy and has been approved by the courts. With respect to Reading's request for an investigation regarding fuel charges for the Mystic Generating Station, Boston Edison contends that its proposed rate design change does not warrant a five month suspension.

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make the Towns and Reading parties to this proceeding.

Notwithstanding the customers' challenges to the sufficiency of the cost support supplied by Boston Edison, we find that the company's submittal substantially complies with the Commission's filing requirements. We further find that the matters raised by the Towns in connection with their request for summary disposition and Reading's allegations of computational errors and improper fuel charges present issues of law or fact most appropriately resolved in the context of an evidentiary hearing. Accordingly, we shall deny the intervenor's request for rejection or summary disposition.

Our preliminary review of Boston Edison's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the proposed rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. In the instant proceeding, our review suggests that the Step A rates may not produce substantially excessive revenues. Accordingly, we shall suspend the Step A rates for one day, to become effective, subject to refund, on November 28, 1984. By contrast, our preliminary review indicates that the Step B rates may produce substantially excessive revenues. Accordingly, we shall suspend those rates for five months, to become effective, subject to refund, on April 28, 1985.[4]

In accordance with the Commission's policy and practice established in *Arkansas Power and Light Company*, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the Towns.

The Commission Orders:

(A) The intervenors' motions to reject are hereby denied.

(B) The Towns' motion for summary disposition is hereby denied.

(C) Boston Edison's submittal is hereby accepted for filing; the Step A rates are suspended for one day, to become effective on November 28, 1984, subject to refund; the Step B rates are suspended for five months, to become effective on April 28, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Boston Edison's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment A

BOSTON EDISON COMPANY RATE SCHEDULE DESIGNATIONS

[Docket No. ER84-705-000]

Designation and other party	Description
Town of Concord	
(1) Supplement No. 13 to Rate Schedule FPC No. 47 (Supersedes Supplement No. 5).	Revises § 3.4.
(2) Supplement No. 14 to Rate Schedule FPC No. 47 (Supersedes Supplement No. 12).	Rates S-8, Step A.
(3) Supplement No. 15 to Rate Schedule FPC No. 47.	Rate S-8, Step B.
Town of Norwood	
(4) Supplement No. 12 to Rate Schedule FPC No. 48 (Supersedes Supplement No. 4 as supplemented).	Revises § 3.4.
(5) Supplement No. 13 to Rate Schedule FPC No. 48 (Supersedes Supplement No. 11).	Rate S-8, Step A.
(6) Supplement No. 14 to Rate Schedule FPC No. 48.	Rate S-8, Step B.
Town of Wellesly	
(7) Supplement No. 13 to Rate Schedule FPC No. 51 (Supersedes Supplement No. 5).	Revises § 3.4.
(8) Supplement No. 14 to Rate Schedule FPC No. 51 (Supersedes Supplement No. 12).	Rate S-8, Step A.
(9) Supplement No. 15 to Rate Schedule FPC No. 51.	Rate S-8, Step B.
Town of Reading	
(10) Eighth Revised Sheet No. 1 and Seventh Revised Sheet No. 2 to Exhibit B of FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventh Revised Sheet No. 1 and Sixth Revised Sheet No. 2).	Contract Demand, Service, Step A.
(11) Ninth Revised Sheet No. 1 and Eighth Revised Sheet No. 2 to Exhibit B of FPC Electric Tariff, Original Volume No. 1 (Supersedes Eighth Revised Sheet No. 1 and Seventh Revised Sheet No. 2).	Contract Demand, Service, Step B.

[FR Doc. 84-31031 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-122-000]

Boston Edison Co.; Cancellation

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Boston Edison Company (Edison) tendered for filing a notice of cancellation of Rate Schedule FPC No. 26 between Edison and Connecticut Light and Power Company (CL&P).

Edison requests an effective date of November 16, 1984, and therefore

[4] With respect to the Towns' opposition to a two-step increase, we find that Boston Edison's submittal substantially complies with our regulations. Furthermore, the Commission has permitted such phased rate filings on a number of occasions.

requests waiver of the Commission's sixty notice requirement.

According to Edison a copy of this filing has been served upon Connecticut Light and Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31044 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7477-000]

Burt Dam Associates; Suspending 120-Day Period for Action on Small Hydro Exemption

November 21, 1984.

Burt Dam Associates filed an application for exemption for the proposed Burt Dam Project No. 7477, to be located on the Eighteenmile Creek, in Niagara County, New York. The application was filed pursuant to section 408 of the Energy Security Act of 1980 and § 4.101 et seq. of the Commission's regulations.

Additional time is necessary for action on the application in order to ensure full consideration of all information and comments that have been received. The 120-day period for Commission action is suspended pursuant to 18 CFR 4.105(b)(5)(iv).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31032 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7116-001]

China Flat Co.; Surrender of Preliminary Permit

November 21, 1984.

Take notice that China Flat Company, Permittee for the proposed Kirkham Creek Project No. 7116, has requested that its preliminary permit be terminated. The preliminary permit was issued on November 3, 1983, and would have expired on April 30, 1984. The project would have been located on Kirkham Creek, near the town of Willow Creek, in Humboldt County, California.

China Flat Company filed its request on September 27, 1984, and the surrender of its permit for Project No. 7116 is deemed accepted effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31033 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-70-000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

November 20, 1984.

Take notice that on October 26, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-70-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on behalf of Cosden Oil and Chemical Company (Cosden) under the certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport for Cosden up to 3,000 Mcf of gas per day on a best-efforts basis from supplies in Natrona County, Wyoming, to an existing interconnection of the facilities of CIG and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) in Moore County, Texas. CIG indicates that Northern would then transport the gas to Westar Transmission Company for transportation to Cosden's plant.

CIG estimates that the annual volume, peak day volume and average day volumes would be 1,000,000 Mcf, 3,000 Mcf and 3,000 Mcf, respectively. CIG states that the end-user would use the gas for process furnances and fuel gas in the manufacture of chemicals. CIG indicates it would charge Cosden a transportation charge of 36.08 cents per Mcf plus a 2-cent per million Btu added incentive charge. CIG states that the transportation charge is CIG's systemwide transportation rate based upon the settled cost-of-service in Docket No. RP82-54-000 and as stated in CIG's Rate schedule AIC-1.

CIG has submitted a letter from Westar indicating that it has sufficient capacity to transport the gas without detriment to its other customers. CIG states that the proposed transportation would be rendered through the use of its existing facilities. CIG also submitted a statement indicating that the sales price of $2.70 per million Btu does not exceed the maximum lawful price provisions of the Natural Gas Policy Act of 1978 and that the gas was not committed or dedicated to interstate commerce on November 8, 1978.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31045 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7067-001]

Conway Ranch Partnership; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Conway Ranch Partnership, Permittee for the proposed Mill Creek Project No. 7067, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 29, 1983, and would have expired on December 31, 1984. The project would have been located on Mill Creek, near Lee Vining, in Mono County, California.

Conway Ranch Partnership filed its request on September 24, 1984, and the surrender of its permit for Project No. 7067 is deemed accepted effective 30 days from the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31034 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-98-000]

CP National; Filing

November 20, 1984.

Take notice that on November, 1984, CP National submitted for filing a notice of cancellation for Rate Schedule FPC–1. This rate schedule expired by its own terms on December 31, 1966, and CP national does not intend to extend the terms of the contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31046 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-123-000]

Dayton Power and Light Co.; Filing

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Versailles (Versailles), Ohio.

The proposed Agreement allows Versailles to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Versailles.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective December 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31047 Filed 11-16-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-124-000]

Dayton Power and Light Co.; Filing

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Dayton Power and Light Company (DP&L) tendered for filing an executed Purchase and Resale Agreement (Agreement) between DP&L and the Village of Minster (Minster), Ohio.

The proposed Agreement allows Minster to purchase energy requirements from third parties who will use existing Interconnection Agreement Rate schedules to deliver the energy requirements to DP&L for delivery to Minster.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Agreement to become effective December 1, 1984.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commisson and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31048 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-125-000]

Delmarva Power & Light Co.; Filing

November 20, 1984.

The filing Company submits the following:

Take notice that on November 14, 1984, Delmarva Power & Light Company (Delmarva) tendered for filing Fourth Revised Leaf No. 38, to Delmarva's FERC Electric Transmission Service Rate Schedules 56, 58, 59, 60, 64 and 65.

Delmarva states that the revised tariff leaf incorporates changes to increase the "monthly contracted demands" under "Section G" for the six resale customers of the Company who are taking service under these Transmission Service Rate Schedules.

Delmarva requests an effective date of January 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31049 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6796-001]

Great Northern Hydro Corp.; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Great Northern Hydro Corporation, Permittee for the St. Regis Hydro Station Project No. 6796, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 6796 was issued on August 26, 1983, and would have expired on January 31, 1985. The project would have been located on the St. Regis River in Franklin County, New York. The Permittee states that the project is no longer feasible.

Great Northern Hydro Corporation filed the request on April 6, 1984, and

the surrender of the preliminary permit for Project No. 6796 is effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31035 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-121-000]

Montana-Dakota Utilities Co.; Filing

November 20, 1984.

The filing company submits the following:

Take notice that on November 13, 1984, Montana-Dakota Utilities Company (MDU) tendered for filing Supplement 11, dated May 28, 1971; Supplement 12, dated July 7, 1971; Supplement 13, dated April 26, 1972; Supplement 14, dated November 21, 1977; Supplement 15, dated September 28, 1978; Supplement 16, dated March 12, 1979; Supplement 17, dated June 16, 1980; and Supplement 18, dated August 19, 1983; to its Interconnection Agreement, dated November 21, 1956, with United States Department of Energy, Western Area Power Administration.

MDU requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the supplements be made effective as of the date shown in each agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31050 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-90-000]

Northeast Utilities Service Co., Filing

November 20, 1984.

Take notice that on November 2, 1984, Connecticut Light and Power Company (CL&P) submitted for filing notices of termination for the following rate schedules:

CL&P's Rate Schedule FPC No. 21
CL&P's Rate Schedule FPC No. 41
CL&P's Rate Schedule FPC No. 69

CL&P's Rate Schedule FPC No. 21 provided for transmission service in connection with purchases made under CL&P's Rate Schedule FPC No. 22 which was terminated effective on April 27, 1968. Transmission service under CL&P's Rate Schedule FPC No. 21 ended with the termination of CL&P's Rate Schedule FPC No. 22. CL&P hereby requests that CL&P's Rate Schedule FPC No. 21 be terminated effective as of April 27, 1968, the date on which service under that rate schedule ended.

CL&P's Rate Schedule FPC No. 41 provided for transmission service in connection with an agreement for purchases of power from New Brunswick, Canada which terminated on June 30, 1975. Transmission service under CL&P's Rate Schedule FPC No. 41 ended with the termination of the New Brunswick purchase agreement. CL&P hereby requests that CL&P's Rate Schedule FPC No. 41 be terminated effective as of June 30, 1975, the date on which service under that rate schedule ended.

CL&P's Rate Schedule FPC No. 69 provided for a termination date of October 31, 1974. CL&P hereby requests that CL&P Rate Schedule FPC No. 69 be terminated effective as of October 31, 1974, the date on which the rate schedule ended in accordance with its own terms.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31051 File 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP78-124-009]

Northern Border Pipeline Co.; Petition to Amend

November 21, 1984.

Take notice that on November 16, 1984, Northern Border Pipeline Company (Petitioner), 224 South 108th Avenue, Omaha, NE 68154, filed in Docket No. CP78-124-009, a petition to amend pursuant to section 7(c) of the Natural Gas Act and Section 9 of the Alaskan Natural Gas Transportation Act of 1976, the Commission's orders issued April 28, 1980, and June 20, 1980, in Docket No. CP78-124 authorizing an extension in the term of its currently authorized transportation services on behalf of certain importers of Canadian natural gas through October 31, 1996, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by orders issued April 28 and June 20, 1980, the Commission authorized it to construct and operate interstate pipeline facilities and to transport up to 800,000 Mcf of natural gas per day for Northern Natural Gas Company, Division of InterNorth Inc., Panhandle Eastern Pipe Line Company and United Gas Pipe Line Company (U.S. Shippers). It is stated that the gas transported on behalf of the U.S. Shippers is imported from Canada. Petitioner states that its currently existing authorization to transport extends through October 31, 1988. Petitioner further states that (1) on July 25, 1984, Pan-Alberta Gas Ltd. (Pan-Alberta) requested of the National Energy Board of Canada (NEB) an extension of the term of its export authorizations to the U.S. Shippers through October 31, 1996, rather than October 31, 1992, as is currently authorized; and (2) Northwest Alaskan Pipeline Company (Northwest Alaskan) filed applications with the Commission and with the Economic Regulatory Administration for authorization to extend the term of its import authorization from October 31, 1992 to October 31, 2001, or, in the alternative, through October 31, 1996, which would correspond with the term of the export authorization sought from the NEB. Petitioner requests an extension of the term of its authorization to transport these imported volumes through October 31, 1996, to correspond with the extensions of term requested by Pan-Alberta and Northwest Alaskan.

Petitioner states that it believes that the Commission's approval of its requested extension of term would be the foundation upon which a meaningful

reduction in its cost of service to the U.S. Shippers may be implemented. Petitioner has filed a separate docket, Docket No. RP85–25–000, to effectuate this so-called meaningful reduction, principally through a rescheduling of its depreciation expenses to reflect the proposed extension of term through October 31, 1996.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 30, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31027 Filed 11–26–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–73–000]

Northern Natural Gas Co., Division of InterNorth, Inc.; Application

November 20, 1984.

Take notice that on October 29, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP–85–73–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation of natural gas by Applicant for Northern States Power Company (NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it transports 25,600 Mcf of vaporized liquefied natural gas (LNG) per day during the winter season from NSP's Wescott plant to the Lake Elmo, Minnesota Town Border Station No. 1B (Lake Elmo TBS). Such transportation service, it is stated, is reflected in Rate Schedule T–13 of Applicant's FERC Gas Tariff, Original Volume No. 2, and was authorized May 24, 1977, in Docket No. CP75–126. It is further indicated that the transportation volumes have been used to meet NSP's firm and small volume customers' requirements during the winter season.

Applicant avers that it has entered into an agreement with NSP to reassign a portion of NSP's contract demand from the St. Paul, Minnesota, Town Border Station No. 1P, where it is no longer required, to the Lake Elmo TBS. As a result of the shift in contract demand, it is explained that the transportation of the revaporized LNG to the Lake Elmo TBS is no longer required. Applicant therefore proposes to abandon such transportation service. Applicant further explains that it has concurrently filed a request pursuant to § 157.205 of the Commission's Regulations to implement thr transfer of contract demand to the Lake Elmo TBS.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–31052 Filed 11–26–84; 8:45 am]

BILING CODE 6717–01–M

[Docket No. ER85–95–000]

Otter Tail Power Co.; Filing

November 20, 1984.

Take notice that on November 2, 1984, Otter Tail Power Company (Otter Tail) submitted notices for the following rate schedules:

FPC Electric Tariff, Orig. Vol. No. 1
Rate Schedule No. 128
Rate Schedule No. 165

FPC Electric Tariff, Orig. Vol. No. 1 was a schedule that was filed on September 10, 1947. The schedule provided rates for wholesale power sales to REC's and Municipals. This schedule has not been in effect for many years and therefore Otter Tail is requesting cancellation of the schedule.

Rate Schedule No. 128 is an interconnection agreement between Minnesota Power and Otter Tail Power Company that was effective on August 20, 1963. The original expiration date was December 31, 1982. Supplement No. 2 to this agreement filed by Minnesota Power on September 23, 1969 extended the expiration date to March 31, 1990, so no action is required of Schedule No. 128.

Rate Schedule No. 165 is an interconnection agreement with Mountrail Electric Cooperative Inc. and Otter Tail Power Company. This agreement was filed on June 24, 1971 and had an effective date of February 15, 1971. Date of expiration was February 15, 1981.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31053 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-94-000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Filing

November 20, 1984.

Take notice that on November 2, 1984, PacifiCorp, during business as Pacific Power & Light Company (PacifiCorp) submitted for filing a notice of cancellation. PacifiCorp states that Rate Schedule FERC No. 207, effective date of March 1, 1981 and filed with the Commission on September 1, 1981 by Pacific Power & Light Company, has expired by its own terms and is to be cancelled.

Notice of the proposed cancellation has been served upon the Washington Water Power Company and Washington Utilities and Transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 6, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31054 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8054-001]

Pacific Hydropower Co.; Surrender of Preliminary Permit

November 21, 1984.

Take notice that Pacific Hydropower Company, Permittee for the proposed Starview Water Power Project No. 8054, requested by letter dated October 1, 1984, that its preliminary permit be terminated. The preliminary permit was issued on August 3, 1984, and would have expired on July 31, 1986. The project would have been located on the Yaak River in Lincoln County, Montana.

The Permittee filed the request on October 1, 1984, and the preliminary permit for Project No. 8054 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31036 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES85-13-000]

Westchester Resco Co.; Application

November 20, 1984.

Take notice that on November 15, 1984, Westchester Resco Company, ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") seeking authority pursuant to section 204 of the Federal Power Act to incur liability for the payment of up to $42,000,000 of Industrial Development Bonds to be issued by the County of Westchester Industrial Development Agency ("Agency"), which will be used by the Agency for the refinancing of the Agency's outstanding $31,500,000 Letter of Credit Bonds (Westchester Resco Company Project—1982 Series A) and for financing a portion of certain costs (not to exceed $10,500,000) associated with the solid waste disposal, resource recovery and electric generating facilities located in the City of Peekskill, New York.

Any person desiring to be heard or to make any protest with reference to said Application should on or before December 5, 1984, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file motions to intervene in accordance with the Commission's rules. The Application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31055 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-3-000]

Witt Oil Production, Inc.; Petition for Adjustment

Issued November 20, 1984.

On October 1, 1984, Witt Oil Production, Inc. (Witt) filed with the Federal Energy Regulatory Commission a petition for an adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Rules 1101 through 1104 of the Commission's rules.[1]

Witt seeks to be excused from a portion of the refund obligations required by a May 3, 1984, interim rule issued by the Commission to implement the decision of *Interstate Natural Gas Association of America* v. *FERC* [2] which vacated Commission Order Nos. 93 and 93A. Witt states that the refunds are due from a well which is plugged and no longer producing any income. Additionally, several of the working interest owners are bankrupt. Accordingly, Witt states that it cannot collect all the funds necessary to satisfy the refund obligation.

Subpart K of Part 385 of the Commission's rules sets out the procedures that apply to this adjustment proceeding. Any person who wishes to participate in this proceeding shall file a petition to intervene in accordance with Subpart K. All such petitions must be filed within 15 days after this notice is published in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-31056 Filed 11-26-84; 8:45 am]

BILLING CODE 6717-01-M

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[1] 15 U.S.C. 3301, 3412(c) and 18 CFR 385.1101 through 1104 (1984), respectively.

[2] 716 F.2d 1 (D.C. Cir. 1983), *cert. den.*, U.S. (March 19, 1984).

ENVIRONMENTAL PROTECTION AGENCY

[A-1-FRL-2723-8]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs); States of Connecticut, Maine, New Hampshire, Rhode Island, and Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources, (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs). The EPA hereby notifies the public that it has delegated authority over certain New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) to the State Air Pollution Agencies in Region I. This notice announces delegations granted since February 14, 1983. In addition, the above listed States' delegation agreements provide that authority over future revisions to previously delegated standards will automatically be redelegated to the State agency. In addition, these state delegation agreements provide for automatic delegation of new standards. These delegations do not create any new regulatory requirements affecting the public. The effect of the delegations is to shift primary program responsibility for the affected NSPS and NESHAPS source categories from EPA to State governments. Some States do not have full authority over the programs; limitations are noted where appropriate.

DATES: Effective immediately.

ADDRESSES: Applications and/or reports required under all NSPS/NESHAPs source categories for which EPA has delegated authority to respective states should be addressed to:

State of Connecticut: Division of Air Compliance, Department of Environmental Protection, 165 Capitol Avenue, Hartford, Connecticut 06115.

State of Maine: Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333.

State of Massachusetts: Massachusetts Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, Massachusetts 02108.

State of New Hampshire: New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

State of Rhode Island: Rhode Island Department of Environmental Management, 204 Cannon Building, 75 Davis Street, Providence, Rhode Island 02908.

FOR FURTHER INFORMATION CONTACT: Thomas A Elter, EPA Region I, Air Management Division, J.F. Kennedy Federal Building, Boston, MA 02203. Telephone (617) 223-4877.

SUPPLEMENTARY INFORMATION: The States of Region I were delegated authority over the General Provisions of the New Source Performance Standards and various source categories in letters from EPA dated September 30, 1980. These letters established a mechanism of automatic delegation of new standards when specifically requested by the States. In accordance with this mechanism, requests for delegation were submitted to EPA and subsequently granted by the Regional Administrator Michael R. Deland.

Delegations for each State are listed below:

State of Connecticut

Limitations: None; full enforcement delegated.

Delegations: NSPS Subparts:

Effective date: April 3, 1984.

WW—Beverage Can Surface Coating.

XX—Bulk Gasoline Terminals.

VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.

RR—Pressure Sensitive Tape and Label Surface Coating Operations.

State of Maine

Limitations: None; full authority delegated.

Delegations: NSPS Subparts:

Effective date: April 25, 1984.

WW—Beverage Can Surface Coating.

XX—Bulk Gasoline Terminals.

VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.

RR—Pressure Sensitive Tape and Label Surface Coating Operations.

Commonwealth of Massachusetts

Limitations: None; full authority delegated.

Delegations: NSPS Subparts:

Effective date: October 1, 1984.

XX—Bulk Gasoline Terminals.

WW—Beverage Can Surface Coating.

RR—Pressure Sensitive Tape and Label Surface Coating Operations.

State of New Hampshire

Limitations: None; full authority delegated.

Delegations; NSPS Subparts:

Effective date: February 14, 1983.

KK—Lead Acid Battery Manufacturing.

EE—Surface Coating of Metal Furniture.

QQ—Graphic Arts—Publication Rotogravure.

Effective date: May 5, 1984.

RR—Pressure Sensitive Tape and Label Surface Coating Operations.

WW—Beverage Can Surface Coating.

XX—Bulk Gasoline Terminals.

VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.

Effective Date: July 18, 1984.

HHH—Synthetic Fiber Production Facilities.

GGG—Equipment Leaks of VOC in Petroleum Refineries.

LL—Metallic Mineral Processing Plants.

NESHAPs Subparts:

Effective date: July 18, 1984.

J—National Emission Standards for Equipment Leaks (Fugitive Emission Sources) of Benzene.

V—Equipment Leaks (Fugitive Emission Sources) of Volatile Hazardous Air Pollutants.

State of Rhode Island

Limitations: Administrative delegation, only.

Delegations: NSPS Subparts:

Effective date: September 11, 1984.

EE—Surface Coating of Metal Furniture.

LL—Metallic Mineral Processing Plants.

QQ—Graphic Arts: Publication Rotogravure.

RR—Pressure Sensitive Tape and Label Surface Coating Operations.

SS—Industrial Surface Coating: Large Appliances.

TT—Metal Coil Surface Coating.

VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.

WW—Beverage Can Surface Coating.

XX—Bulk Gasoline Terminals.

GGG—Equipment Leaks of VOC in Petroleum Refineries.

HHH—Synthetic Fiber Production Facilities.

NESHAPs Subparts:

Effective date: September 11, 1984.

J—National Emission Standards for Equipment Leaks of Benzene.

V—National Emission Standard for Equipment Leaks.

Effective immediately, all applications, reports, and other correspondence required under these NSPS and NESHAPs standards should be sent to the above State addresses, and to the EPA.

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

(Sec. 111(c) and 112(d) of the Clean Air Act, 42 U.S.C. 7411(c) and 7412(d))

Dated: October 19, 1984.

Michael R. Deland,

Regional Administrator.

[FR Doc. 30840 Filed 11-26-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0009

Title: Disaster Assistance Registration Form (Test)

Abstract: Form used to apply for disaster assistance benefits. Filled out by FEMA interviewers only in Presidentially-declared major disasters. (See supporting statement.)

Type of respondents: Individuals or Households

Number of respondents: 20,000

Burden hours: 13,333

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 287-9906, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: November 19, 1984.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 84-30955 filed 11-26-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.	Name/address	Date revoked
312	Blue Star Shipping Corporation, 701 SE. 24th Street, Ft. Lauderdale, FL 33316.	Nov. 1, 1984.
2760	Queen's Maritime, Ltd., 238 Montevista Lane, Daly City, CA 94015.	Nov. 2, 1984.
2596	Intership, Inc., 2216 Coral Way, Miami, FL 33145.	Nov. 3, 1984.
1753	Earl R. Sauls & Associates, 10910 La Cienega Blvd., Inglewood, CA 90304.	Nov. 5, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-30951 Filed 11-26-84 8:45 am]

BILLING CODE 6730-01-M

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.: 221-004165-001.

Title: Savannah Terminal Agreement.

Parties:

Georgia Ports Authority (Authority)

Hapag Lloyd A.G. (HL)

Intercontinental Transport, BV (ICT)

Compagnie General Maritime (CGM)

Synopsis: Agreement No. 221-004165-001 amends the basic agreement between the Authority and HL by making the agreement applicable to ICT and CGM. The leased premises are located at the Authority's Garden City Terminal, Savannah, Georgia. The premises consist of paved acreage containing container parking slots assigned to the parties of the agreement. The parties have requested a shortened review period for the agreement.

Agreement No.: 202-007540-043.

Title: U.S. Atlantic & Gulf/Southeastern Caribbean Conference.

Parties:

Concorde/Nopal Lie

Puerto Rico Maritime Management, Inc. (PRMSA)

Sea-land Service, Inc.

Shipping Corporation of Trinidad and Tobago, Inc. (SCOTT)

Synopsis: The purpose of this modification is to delete from the geographic scope of the agreement, United States Atlantic Coast ports in the range from West Palm Beach, Florida to and including Key West, Florida. The amendment provides that it will not become effective until the Florida/Caribbean Lines Association agreement becomes effective, and the parties to that agreement file a tariff with the Commission.

Agreement No.: 202-010414-004.

Title: PRC-USA Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.

Lykes Bros. Steamship Co., Inc.

Sea-Land Service, Inc.

United States Lines, Inc.

Waterman Steamship Corp.

Synopsis: The proposed amendment would eliminate the agreement's current neutral body policing provisions as of the end of the current calendar year and would add new provisions authorizing the retention of a neutral body policing authority if requested by a member line.

Agreement No.: 202-010637-002.

Title: North Europe/U.S. Atlantic Conference.

Parties:

Atlantic Container Line (G.I.E.)

Dart-ML Limited

Hapag-Lloyd AG

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

United States Lines, Inc.

Synopsis: The modification revises article 3 of the basic agreement by adding the names, addresses and nationality of two new members, i.e., Compagnie Generale Maritime ("CGM") and Intercontinental Transport (ICT) BV. The parties have requested a shortened review period for the agreement.

Agreement No.: 207-010680.

Title: Forest Product Carriers (International) Joint Service Agreement.

Parties:

Mitsui O.S.K. Lines Ltd.

The East Asiatic Company Ltd. A/S

Synopsis: The proposed agreement would establish a joint service between the parties for the carriage of forest products, neobulk and project cargoes in the trade between ports on the Pacific Coast of the United States and Western Canada, and ports in the United Kingdom, Europe, Scandinavia and the Baltic Sea and inland points from such ports.

Agreement No.: 224–010681

Title: New Orleans Terminal Agreement.

Parties:

The Board of Commissioners of the Port of New Orleans (Board)

Coordinated Caribbean Transport, Inc. (CCTI)

Synopsis: Agreement No. 224–010681 provides for the lease by the Board to CCTI to tracts of land and mooring area at the Jourdan Road Terminal, New Orleans. CCTI will conduct at the premises, its business of transporting and handling containerized, breakbulk and RO/RO cargoes, and other activities related to vessels controlled by them or affiliated companies. The term of the agreement is for 5 years, with the option of 5 additional 1-year extensions. The parties have requested a shortened review period for the agreement.

Agreement No.: 217–010683.

Title: Transnave/Ecuadorian Line Cross Space Charter and Rationalization Agreement.

Parties:

Transportes Navieros Ecuatorianos—Transnave Ecuadorian Line, Inc.

Synopsis: The agreement covers the trade between Miami and points on the Gulf Coast of the United States and ports and points in Ecuador, Panama and other areas of South and Central America, Mexico and the Caribbean. The agreement would permit the parties to cross charter vessel space, to lease or sublease between themselves container and other equipment, to rationalize and coordinate sailings and to enter into joint use agreements for terminal facilities, stevedoring and other shoreside services.

By Order of the Federal Maritime Commission.

Dated: November 21, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84–31083 Filed 11–26–84; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Report on Revised System of Records Under the Privacy Act of 1984

AGENCY: General Services Administration.

ACTION: Notification of new routine use.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent to propose a new routine use for the General Services Administration's system of records, Travel Charge Card Program, GSA/GOVT–3. The routine use will permit the disclosure of information from this system of records to GSA contract travel agents assigned to participating agencies for billing of transportation and accommodations of Federal employees on travel.

DATES: Any interested party may submit written comments about this revised system. Comments must be received on or before the 30th day following publication of this notice. The routine use will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. William Heibert, GSA Privacy Act Officer, telephone (202) 535–7647.

SUPPLEMENTARY INFORMATION: One agency has voiced a problem with using the Travel Charge Card Program system of records. Instead of the contract charge card company billing the employee, they will bill the travel agent who in turn will bill the agency. For the travel agent to receive the money, they require the traveling employee's social security number, charge card number, and any other needed information. Presently there is no provisions for this information to be disclosed. GSA proposes to add a new routine use to the system of records in order that such identifying information can be released.

The following routine use will be added to GSA's system of records, Travel Charge Card Program GSA/GOVT–3. The current notice of this system was published on September 29, 1983, in 48 FR 44655 thru 44657.

GSA/GOVT–3

SYSTEM NAME:

Travel Charge Card Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

i. To disclose information to GSA contract travel agents assigned to participating agencies for billing of travel expenses.

* * * * *

Dated: November 19, 1984.

Frank J. Sabatini,

Director, Information Management Division.

[FR Doc. 84–30952 Filed 11–26–84; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Mine Health Research Advisory Committee, X-Ray Surveillance Subgroup; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

X-Ray Surveillance Subgroup of the Mine Health Research Advisory Committee

Date: December 13, 1984.

Time: 9:00 a.m. to 4:30 p.m.

Place: Second Floor, Amfac Hotel, 1380 Bayshore Highway, Burlingame, California 94010.

Purpose: This Committee subgroup is charged with determining if the Committee should recommend to NIOSH that the Institute conduct the entire x-ray surveillance program for coal miners. If so, the subgroup is to consider what criteria should be met to justify the initiation and continuation of this program by NIOSH in terms of factors such as participation rate, detection rate of disease, and transfer rate to less dusty jobs. Other issues, such as quality of films and linkage of the surveillance program with a compensation program, may also be discussed.

Viewpoints and suggestions from manufacturers of x-ray equipment, industry, labor, academia, other government agencies, and any other interested parties are invited. Interested parties wishing to participate in the meeting are requested to contact Dr. Roy Fleming at the address below in order to be assured appropriate time for presentation. Four copies of the text of the presentation should be provided to

the subgroup chairperson, Dr. Nicholas Sargent, University of Southern California, School of Medicine, Department of Radiology, 1200 North State Street, Los Angeles, California 90033, prior to or at the subgroup meeting.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, MHRAC, NIOSH, CDC, Building 1, Room 305, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Phone: (404) 329–3343.

The Mine Health Research Advisory Committee (MHRAC) was established by the Federal Mine Safety and Health Act of 1977. The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research. The subgroup, composed of members of the MHRAC, will provide a report to the full Committee at a future meeting and will give a status report on its activities to the NHRAC at the next meeting.

Dated: November 19, 1984.

Donald R. Hopkins,

Acting Director, Centers for Disease Control.

[Doc. 84–30972 Filed 11–26–84; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Presidential Commission on Indian Reservation Economies

AGENCY: Presidential Commission on Indian Reservation Economies, Interior.

ACTION: Notice of Briefing Sessions on Final Report.

SUMMARY: The Presidential Commission on Indian Reservation Economies announces the forthcoming briefing sessions at which time the Commission will review its findings and recommendations in connection with its final report.

December 10, 1984 (Monday)

Radisson St. Paul, 11 East Kellogg Boulevard, St. Paul, Minnesota 55101

Lincoln Plaza Hotel, 4445 North Lincoln, Oklahoma City, Oklahoma 73105

December 12, 1984

Seattle Marriott Hotel, Sea-Tac, 3201 S. 176 Street, Seattle, Washington 98188

Scottsdale Hilton, 6333 N. Scottsdale Road, Scottsdale, Arizona 85253

The proposed agenda for each briefing will be as follows:

8:30–9:30 AM—Registration

9:30–12 Noon—Briefing of Commission Findings and Recommendations

12:00–1:00 PM— Recess for Lunch

1:00–3:30 PM—Continuation of Commission Findings and Recommendations

This notice is intended to notify the general public of their opportunity to attend.

FOR FURTHER INFORMATION CONTACT: Erci Rudert, Deputy Director, Presidential Commission on Indian Reservation Economies, 1717 H Street, Northwest, Suite 765, Washington, D.C. 20006. Telephone (202) 653–2436.

SUPPLEMENTARY INFORMATION: The Presidential Commission on Indian Reservation Economies was created by Executive Order 12401 on January 14, 1983, and amended by Executive Order 12442 on September 21, 1983. The purpose of the Commission is to promote the development of a strong private sector economy on Federally recognized Indian reservations. Upon completion of its work, the Commission will submit its final report to the President and the Secretary of the Interior.

Eric Rudert,

Deputy Director, Presidential Commission on Indian Reservation Economies.

[FR Doc. 84–31101 Filed 11–26–84; 8:45 am]

BILLING CODE 4310–02–M

National Park Service

San Antonio Missions Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the San Antonio Missions Advisory Commission will be held at 1:00 p.m., Friday, December 14, 1984, at the Federal Building, Room A–206, 727 E. Durango Boulevard, San Antonio, Texas.

The San Antonio Missions Advisory Commission was established pursuant to Pub. L. 95–629, Title II, November 10, 1978. The purpose of the commission is to advise the Secretary of the Interior or his designee on matters relating to the park and with respect to carrying out the provisions of the statute establishing the San Antonio Missions National Historical Park.

Matters to be discussed at this meeting include:

—Introduction of Recently Appointed Advisory Commission Chairperson and Members

—Introduction of Remaining Members

—Minutes of Previous Meeting

—Comments by Chairperson and Designation of Committee Appointments

—Park Operations Update

—Los Compadres Update

—Archdiocesan Report

—City Report

—Open Remarks

The meeting will be open to the public, however, facilities and space for accommodating members of the public will be limited and persons will be accommodated on a first-come, first-serve basis.

Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, San Antonio Missions National Historical Park.

Persons wishing further information regarding this meeting or who wish to submit a written statement may contact Jose A. Cisneros, Superintendent, 727 E. Durango, Room A612, San Antonio, Texas 78206, telephone (512) 229–6009.

Minutes of the meeting be available for public review approximately four weeks after the meeting at the office of the San Antonio Missions National Historical Park.

Dated: November 16, 1984.

Robert I. Kerr,

Regional Director, Southwest Region.

[Doc. 84–31008 Filed 11–26–84; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 17, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 12, 1984.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Hartford County

Hatford, *Asylum-Trumbull-Pearl Streets Historic District (Hartford Downtown MRA)*, Roughly bounded by Asylum, Main, Trumbull and S. Pearl Sts.

Hartford, *B.P.O. Elks Lodge (Hartford Downtown MRA)*, 34 Prospect St.

Hartford, *Batterson Block (Hartford Downtown MRA)*, 26–28 High St.

Hartford, *Capital Building (Hartford Downtown MRA)*, 402–418 Asylum St.

Hartford, *First Banking Building (Hartford Downtown MRA)*, 50 State St.

Hartford, *Footguard Hall (Hartford Downtown MRA)*, Footguard and High Sts.

Hartford, *Hartford Club (Hartford Downtown MRA)*, 46 Prospect St.
Hartford, *Hartford Times Building (Hartford Downtown MRA)*, 10 Prospect St.
Hartford, *Judd and Root Building (Hartford Downtown MRA), 175–189 Allyn St. and 5–23 High St.*
Hartford, *Main Street Historic District No. 1 (Hartford Downtown MRA)*, Roughly bounded by Talcott, Market, Kinsley, Main, Asylum and Pratt Sts.
Hartford, *Main Street Historic Distric No. 2 (Hartford Downtown MRA)*, W. Main, N. Central Row, E. Prospect Sts., and N. Atheneum Sq.
Hartford, *Stone Bridge (Hartford Downtown MRA)*, 500 Main St.

Litchfield County

Winchester vicinity, *Gilbert Clock Factory*, Wallens St.

Windham County

Putnam, *Israel Putnam School*, School and Oak Sts.

INDIANA

Marion County

Indianapolis, *Jackson Building*, 419–425 E. Washington St.

LOUISIANA

Rapides Parish

Gardner, *Hope (Frank Dunnam House) (Neo-Classical Architecture Of Bayou Rapides TR)*, Off Hwy 121 and Mill Race Rd.

NEBRASKA

Banner County

Harrisburg vicinity, *Hampton, C. C., Homestead*

Dodge County

Uehling vicinity, *Uehling, Frank, Barn*, Off U.S. 77

Hall County

Grand Island, *Hotel Yancey (The)*, 123 N. Locust St.

Jefferson County

Diller, *People's State Bank*, NE 103

Saline County

Wilber vicinity, *Telocvicna Jednota Sokol (Brush Creek Hall)*,

Seward County

Garland *Germantown State Bank Building*, Main St.

NEW HAMPSHIRE

Belknap County

Meredith, *Meredith Public Library*, 50 Main St.
New Hampton, *Dana Meeting House*, Dana Hill Rd.

Cheshire County

Westmoreland, *High Tops School*, Reynolds and River Rds.

Grafton County

Ashland, *St. Mark's Episcopal Church*, 6–8 Highland St.
Holderness, *Holderness Inn*, Rt. 3

Hillsborough County

Antrim, *Flint Estate (The)*, Old Keene and Old Center Rd.
Bedford, *Bedford Town Hall*, 70 Bedford Center Rd.
Nashua, *Nashville Histroic District*, Roughly bounded by Nashua River, Merrimack River, and Rt. 3
New Ipswich, *New Ipswich Town Hall*, Main St.

Rockingham County

Exeter, *Exeter Waterfront Commercial Historic District*, Roughly along Chestnut St., Chestnut Hill Ave., Water, Franklin, Pleasant, and High Sts.
Hampton Falls vicinity, *Unitarian Church*, Exeter Rd.
Portsmouth, *Porter, General, House*, 32–34 Livermore St.

South Dakota

Bon Homme County

Tabor, *St. Wenceslaus Catholic Church and Parish House*, Yanktown and Lidice Sts.
Tyndall, *Bon Homme County Courthouse*, Walnut and Washington Sts.
Tyndall, *Carnegie Public Library of Tyndall*, State and Main Sts.

Union County

Beresford, *Reedy, J. W., House*, 309 N. 2nd.

TENNESSEE

Giles County

Pulaski, *Hewitt, Austin, Home*, 322 E. Washington St.

Maury County

Mt. Pleasant, *Breckenridge Hatter's Shop*, N. Main St.

Moore County

Tullahoma vicinity, *Ledfords Mill*, Ledford Mill Rd.

WISCONSIN

Sauk County

Reedsburg, *Chicago and North Western Depot (Reedsburg MRA)*, Railroad St.
Reedsburg, *City Hotel (Reedsburg MRA)*, 125 Main St.
Reedsburg, *Hackett, Edward M., House (Reedsburg MRA)*, 612 E. Main St.
Reedsburg, *Harris, Abner L., House (Reedsburg MRA)*, 226 N. Pine St.
Reedsburg, *Main Street Commercial Historic District (Reedsburg MRA)*, roughly bounded by N. Park, S. Park, N. Walnut, and S. Walnut Sts. on Main
Reedsburg, *Park Street Historic District (Reedsburg MRA)*, On N. Park St. roughly bounded by 6th, Locust, N. Pine and Main Sts.
Reedsburg, *Reedsburg Brewery (Reedsburg MRA)*, 401 N. Walnut St.
Reedsburg, *Reedsburg Woolen Mill Office (Reedsburg MRA)*, 26 Main St.
Reedsburg, *Riggert, William, House (Reedsburg MRA)*, 547 S. Park St.
Reedsburg, *Stolte, William, Jr., House (Reedsburg MRA)*, 432 S. Walnut St.
Reedsburg, *Stolte, William, Sr., House (Reedsburg MRA)*, 444 S. Walnut St.

Walworth County

Whitewater, *East Wing (Old Main)*, University of Wisconsin

The 15-day commenting period for the following property is to be waived in order to assist the building's preservation funding.

OHIO

Franklin County

Columbus, *Welsbach Building*, 116–118 E. Chestnut St.

[FR Doc. 84–30986 Filed 11–26–84; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30563]

Burlington Northern Railroad Co., Trackage Rights Exemption, Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11343 the modification of a trackage rights agreement permitting Burlington Northern Railroad Company to operate over 21.74 miles of track of the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, between Appleton and Ortonville, MN, subject to standard employee protective conditions.

DATES: This exemption will be effective on December 27, 1984. Petitions for reconsideration must be filed by December 17, 1984. Petitions for stay must be filed by December 7, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30563 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's Representatives: Douglas J. Babb, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC metropolitan area) or toll free 424–5403.

Decided: November 15, 1984.

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

James H. Bayne,

Secretary.

[FR Doc. 84-30977 Filed 11-26-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; Pennwalt Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 12, 1984, a proposed consent decree in *United States* v. *Pennwalt Corporation*, Civil Action No. C 84-0055(J) was lodged with the United States District Court for the Western District of Kentucky. The complaint alleged violations of the Clean Water Act by Pennwalt due to its failure to meet the requirements of its NPDES permit. The complaint sought injunctive relief and civil penalties.

The consent decree provides that Pennwalt will pay a civil penalty of $50,000 and will perform work to come into compliance with its NPDES permit.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed the Assistant Attorney General of the Land and Natural Resources Division, DOJ, Washington, D.C. 20530, and should refer to *U.S.* v. *Pennwalt*, D.J. Ref. 90-5-1-1-2064.

The proposed consent decree may be examined at the office of the United States Attorney, 211 U.S. Post Office & Courthouse Bldg., 601 W. Broadway, Louisville, KY 40202 and at the Region IV Office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, GA 30365. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, 10th & Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General.

[FR Doc. 84-30991 Filed 11-26-84; 8:45 am]

BILLING CODE 4401-01-M

Drug Enforcement Administration

Importers of Controlled Substances; Registration

By Notice dated August 13, 1984, and published in the **Federal Register** on August 21, 1984 (49 FR 33186), Philadelphia Seed Company, Division of Stanford Seed Company, Muddy Creek Road, Lancaster County, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 19, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84-30993 Filed 11-26-84; 8:45 am]

BILLING CODE 4410-09-M

Supplement to Draft Environmental Impact Statement on the Eradication of Cannabis on Federal Lands in the Continental United States

The Department of Justice, Drug Enforcement Administration (DEA), will prepare a supplement to the Draft Environmental Impact Statement on the Eradication of Cannabis on Federal Lands and Intermingled Forests and Rangelands in the Continental United States.

DEA published a notice in the **Federal Register** on July 5, 1984 (49 FR 27645) that a draft Environmental Impact Statement (EIS) on the Eradication of Cannabis on Federal Lands and Intermingled Forests and Rangelands in the Continental United States had been prepared and was available for public comment. The notice provided for a 45-day public review and comment period, which was subsequently extended until September 10, 1984 (49 FR 34316).

Since the draft EIS was made available to the public, DEA has received new information. In response to this new information, DEA will prepare a supplement to the draft EIS. The supplement is expected to be filed with the U.S. Environmental Protection Agency on or about February 8, 1985 and released to the public for a 45-day review and comment period. Copies of the supplement to the draft EIS will be distributed to the same parties that received the draft EIS. Other copies are available upon request from Thomas G. Byrne, Chief, Cannabis Investigations Section, Operations Division, Drug Enforcement Administration, U.S. Department of Justice, Washington, D.C. 20537, (202) 633-1271.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-30994 Filed 11-26-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comments on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Office of Pension and Welfare Benefit Programs
Proposed Exemption and Alternative Method of Compliance for Annual Reporting of Certain Investments
1210–0016
Annually
Businesses of other for-profit; non-profit institutions; small businesses or organizations
1,150 responses; 2,897,425 burden hours

The proposal will provide an alternative method of compliance with the annual report requirements for employee benefit plans which invest in pooled entities that are considered to be holding plan assets.

Extension

Mine Safety and Health Administration
Ventilation Tests and Examinations in Underground Coal Mines
1219–0088
Daily/weekly
Businesses or other for profit; small businesses or organizations
2,075 respondents; 5,836,464 hours

Standards require that records be kept of certain tests and examinations which are required to be performed to monitor the ventilation system in underground coal mines. The information is used to insure that the integrity of the ventilation system is being maintained and that a safe working environment is being provided the miners.

Signed at Washington, D.C. this 20th day of November 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–31079 Filed 11–26–84; 8:45 am]

BILLING CODE 4510–32–M

Employment and Training Administration

Federal-State Unemployment Compensation Program; Certification Relating to Reduced Credits Under the Federal Unemployment Tax Act for 1984; Certification

Section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA) provides for the repayment, through reduced credits, of outstanding balances of repayable advances made to States under Title XII of the Social Security Act. States that meet specific criteria under subsections (f) or (g) of section 3302 may have the credit reduction limited or not applied. The certification to the Secretary of the Treasury of States subject to the credit reduction for 1984 and States that qualify for credit reduction relief is published below.

Dated: November 20, 1984.

Frank C. Casillas,

Assistant Secretary for Employment and Training.

U.S. Department of Labor

November 13, 1984.

Honorable Donald T. Regan,
Secretary of the Treasury, Washington, D.C. 20220

Dear Secretary Regan: This is to verify the States which have an outstanding balance of repayable advances under Title XII of the Social Security Act and the status of the States with regard to the reduction in credit provisions of section 3302(c)(2) of the Federal Unemployment Tax Act (FUTA).

Employers in 17 States are subject to a reduction in FUTA offset credit for taxable year 1984:

Colorado
Connecticut
District of Columbia
Illinois
Iowa
Louisiana
Michigan
Minnesota
New Jersey
Ohio
Pennsylvania
Puerto Rico
Texas
Vermont
Virgin Islands
West Virginia
Wisconsin

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) added a new subsection (f) to section 3302 of FUTA which under certain conditions limits the FUTA tax credit reduction in 1984 to an amount which does not exceed the greater of 0.6 percent of wages subject to FUTA or the percentage reduction that was in effect for the preceding taxable year.

To qualify for a full cap in taxable year 1984, a State must have taken no action in the 12 months ending September 30, 1984, unless required under State law in effect before August 13, 1981, which has resulted or will result in:

(1) A reduction in the State's unemployment tax effort;

(2) A net decrease in the solvency of the State unemployment compensation system;

and, further, that:

(3) The State unemployment tax rate for the calendar year equals or exceeds the average benefit cost ratio for calendar years in the five-calendar year period ending with calendar year 1983; and

(4) The outstanding balance of advances to the State on September 30 of calendar year 1984 was not greater than the outstanding balance for such State on September 30, 1981.

I have determined that under these criteria four States qualify for the full cap and are subject to reduced FUTA credits for 1984 as follows:

	Percent
Connecticut	0.7
New Jersey	0.6
Puerto Rico	0.6
Vermont	0.6

Section 512(a) of the Social Security Amendments of 1983 (Pub. L. 98–21) added a new paragraph (8) to section 3302(f) of FUTA which under certain conditions partially limits the FUTA tax credit reduction in 1984.

(5) If a State meets the requirements of (1) and (2), and (3) or (4), above the reduction in credits otherwise applicable to employers in the State for 1984 is reduced by 0.1 percentage point, but not below the higher of 0.6 percent and the rate for the prior year.

(6) If a State meets the requirements of (1) and (2) above, and also meets the requirements of section 1202(b)(8)(B) of the Social Security Act for 1984, the reduction in credits otherwise applicable to employers in the State for 1984 is reduced by 0.2 percentage points, but not below the higher of 0.6 percent and the rate for the prior year.

I have determined that under these criteria seven States qualify for a partial cap and are subject to reduced FUTA credits for 1984 as follows:

	Percent
District of Columbia	1.1
Illinois	0.8
Michigan	0.7
Minnesota	0.8
Ohio	0.7
Pennsylvania	0.8
West Virginia	0.7

I have determined that four States are not affected by the full or partial cap and are subject to reduced FUTA credits for 1984 as follows:

	Percent
Iowa	0.3
Louisiana	0.3
Texas	0.3
Virgin Islands	0.9

Section 272 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)

amended Section 3302 of the Internal Revenue Code of 1954 by adding subsection (g) which gives a State the option of repaying on or before November 9 a portion of its outstanding loans each year through transfer of a specified amount from its account in the Unemployment Trust Fund (UTF) to the Federal Unemployment Account (FUA) in the UTF. The transfer to FUA would be in lieu of a reduced credit in the Federal tax paid by the employers in the State. The State must meet the following criteria in order to avoid the offset credit reduction:

(7) Repay all loans for the one-year period ending on November 9, plus the additional tax due by reason of the reduced credit appliable to tax year 1984;

(8) Have or will have sufficient funds remaining after the transfer to pay benefits for at least three months from November 1 of the same year without receiving another title XII advance; and

(9) Have taken action by amendment of the State law, after the date of the first advance taken into account, to increase the net solvency of its UI system, and such net increase equals or exceeds the potential additional taxes for such taxable year.

I have determined that under these criteria two States qualifly and are thus not subject to reduced FUTA credits for 1984 as follows:

Colorado
Wisconsin

Finally, I have determined that the State of Montana has an outstanding balance of Title XII advances as of November 10, 1984, but is not subject to reduced FUTA credits for 1984.

Sincerely,

Carolyn M. Golding,

Director, Unemployment Insurance Service

[FR Doc. 84-31078 Filed 11-26-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance: Colintino Rose Fish Co., Inc. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period November 12, 1984—November 16, 1985.

In order for an affirmative determination to be made and certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,353; Colintino Rose Fish Co., Inc., Fort Bragg, CA

TA-W-15,428; Owens-Illinois, Inc., Wayne, NJ Plant

TA-W-15,426; Ladish Co., Forging Div., Cudahy, WI

TA-W-15,424; Kaiser Steel Corp., Fontana Fabrication Plant, Fontana, CA

TA-W-15,405; Oscar Schmidt, Div. of Fretted Industries, Union, NJ

TA-W-15,434; Bath Iron Works Corp., Shipyard, Bath, ME

TA-W-15,414; General Electric Co., Linton, IN

Affirmative Determinations

TA-W-15,370; Wefferling-Berry & Co., Millburn, NJ

A certification was issued covering all workers separated on or after June 14, 1983.

TA-W-15,362; Equitable Handbag Co., Inc., New Brunswick, NJ

A certification was issued covering all workers separated on or after June 12, 1983 and before November 5, 1984.

TA-W-15,310; Papst Mechatronic Corp., Middletown, RI

A certification was issued covering all workers separated on or after April 9, 1983 and before July 15, 1984.

TA-W-15,514; Star Kist Foods, Inc., Terminal Island, CA

A certification was issued covering all workers related to the production of the processing and canning of tuna fish on or after October 12, 1983.

TA-W-15,463; The Lima Electric Co., Inc., Greenville, AL

A certification was issued covering all workers separated on or after April 1, 1984.

TA-W-15,336; Chein Industries, Inc., Burlington, NJ

A certification was issued covering all workers separated on or after May 15, 1983 and before December 31, 1983.

TA-W-15,436; Casey Manufacturing Co., Casey, IL

A certification was issued covering all workers separated on or after August 17, 1983.

TA-W-15,445; Robinson Manufacturing Co., Robinson, IL

A certification was issued covering all workers separated on or after August 17, 1983.

TA-W-15,446; SMS Shoes, Greenup, IL

A certification was issued covering all workers separated on or after August 17, 1983.

TA-W-15,440; Greenup Manufacturing Co., Greenup, IL

A certification was issued covering all workers separated on or after August 13, 1983.

TA-W-15,438; Ettelbrick Shoe Co., Greenup, IL

A certification was issued covering all workers separated on or after August 13, 1983.

TA-W-15,329; Maine Woods Shoe Co., Div. of Bennett Industries, Livermore Falls, ME

A certification was issued covering all workers separated on or after January 1, 1984.

TA-W-15,318; American China Co., Williamstwon, WV

A certification was issued covering all workers separated on or after January 1, 1984 and before June 30, 1984.

TA-W-15,331; Roots Div., Dresser Industries, Inc., Connersville, IN

A certification was issued covering all workers separated on or after May 9, 1983 and before March 31, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 12, 1984—November 16, 1984. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated November 20, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 84-31077 filed 11-26-84; 8:45 am]

BILLING CODE 4510-30-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, and Information

Services, 450 5th Street NW., Washington, D.C. 20549.

Extension

Rule 24f–2 [17 CFR 270.24f–2]
File No. 270–131

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 24f–2 which allows for the registration of an indefinite number of certain investment company securities under the Securities Act of 1933.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84–31023 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Rule 24f–1 [17 CFR 270.24f–1]
File No. 270–130

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)*, the Securities and Exchange Commission has submitted for extension of OMB approved Rule 24f-1 which permits certain investment companies which have inadvertent oversales of their shares to register such shares.

Comments should be submitted to OBM Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–31024 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission; Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Rule 0–2 [17 CFR 275.0–2], File No. 270–214
Form 4–R [17 CFR 279.4], File No. 270–214
Form 5–R [17 CFR 279.5], File No. 270–214
Form 6–R [17 CFR 279.6], File No. 270–214
Form 7–R [17 CFR 279.7], File No. 270–214

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB Approval Rule 0–2, consent to service of process to be furnished by non-resident investment advisers and by non-resident general partners or managing agents of investment advisers; and Forms 4–R, 5–R, 6–R and 7–R, irrevocable appointment of agent for service of process, pleadings and other papers, by individual non-resident investment advisers, corporation non-resident investment advisers, partnership non-resident investment advisers and non-resident general partners of investment advisers, respectively.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84–31025 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form 2–E [17 CFR 239.201]
File No. 270–222

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form 2–E under the Securities Act of 1933, report pursuant to Rule 609 of Regulation E for small business investment companies.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84–30980 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form N–54A [17 CFR 274.53]
File No. 270–182
Form N–54C [17 CFR 274.54]
File No. 270–184
Form N–6F [17 CFR 274.15]
File No. 270–185

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N–54A, notification of election to be subject to Sections 55 through 65 of the Investment Company Act of 1940; Form N–54C, notification of withdrawal of election to be subject to Sections 55 through 65 of the Investment Company Act of 1940; and Form N–6F, notice of intent to elect to be subject to Sections 55 through 65 of the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

November 15, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30981 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street NW., Washington, D.C. 20549.

Extension

Form N–8A [17 CFR 274.10]
File No. 270–135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N–8A, notification of registration under the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirely E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84–30982 Filed 11–26–65; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension

Rules 8b–1 through 8b–32 [17 CFR 270.8b–1 through 8b–32]
File No. 270–135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 8b–1 through 8b–32, a family of rules under Section 8(b) which provides standard instructions to guide persons when filing registration statements under the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84–30983 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From:

Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street, NW., Washington, D.C. 20549.

Extension

Form N–17D–1 [17 CFR 274.200]
File No. 270–231

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form N–17D–1, report filed by small business development companies (SBIC) registered under the Investment Company Act of 1940 and an affiliated bank, with respect to investments by the SBIC and the bank.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Acting Secretary.

November 15, 1984.

[FR Doc. 84–30984 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 23485; 70–6811]

Associated Natural Gas Co.; Proposal to Issue and Sell Unsecured Short-Term Notes

November 19, 1984.

Associated Natural Gas Company ("Associated"), 40 West Park Street, Blytheville, Arkansas 72315, a gas utility subsidiary or Arkansas Power & Light Company, an electric utility subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its proposal with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 and Rule 50(a)(2) thereunder.

By orders dated December 15, 1982 and December 8, 1983 (HCAR Nos. 22780 and 23157), Associated was authorized to make unsecured, short-term borrowings from Farmers Bank & Trust Co., Blytheville, Arkansas ("Bank"), from time to time through December 8, 1984, in an aggregate principal amount not to exceed $3 million at any one time outstanding.

Associated now proposes to effect a similar transaction commencing on the effective date of this amended proposal ("Effective Date"). To effect such borrowings, Associated proposes to issue and sell to the Bank its unsecured promissory notes ("Notes") payable not more than 270 days from the date of issuance and which may be renewed from time to time but to mature not later than one year from the Effective Date. The Notes will bear interest, payable monthly at maturity, on the unpaid principal amount thereof at a rate per annum equal to the prime commercial loan rate (11.75% as of November 19, 1984) of The Chase Manhattan Bank (N.A.), New York, New York, from time to time in effect, with adjustments to be made effective on the first business day of the month next followig the month in which any change in such rate occurs. Such rate will not exceed the maximum rate of interest chargeable to corporate borrowers under applicable laws. The Notes will, at the option of Associated, be repayable in whole or in part, at any time without premium or penalty. Associated will not be required to maintain compensating balances with the Bank or to pay any commitment fees based upon the unused portion of its line of credit with the Bank.

The proceeds to be received from the issuance and sale of the Notes will be used by Associated to meet its working capital requirements, for the payment, in part, of construction expenditures and for other corporate purposes. Associated currently intends to repay the $3 million of borrowings proposed herein from the proceeds of permanent financing or with funds that might otherwise become available to Associated.

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 13, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified

of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as 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. 84-30988 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23487; (70-7047)]

Blackstone Valley Electric Co; Proposal for Pollution Control Financing; Exception From Competitive Bidding

November 20, 1984.

Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O Box 1111, Lincoln, Rhode Island, 02865, an electric utility subsidiary of Eastern Utilities Associates, a registered holding company, has filed a proposal with this Commission pursuant to sections 6, 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b)(2) and 50(a)(5).

Blackstone proposes to borrow the proceeds from the sale of up to $7,500,000 electric facilities revenue demand bonds ("Bonds") issued by the Rhode Island Industrial Facilities Corporation ("Issuer"), to finance the cost of reconstruction of a hydro electric generation facility on the Blackstone River in Pawtucket, Rhode Island, at an existing site ("Facilities").

The Bonds will be issued under an indenture of trust ("Indenture") between the Issuer and a bank as trustee ("Trustee"). Pursuant to a loan agreement ("Loan Agreement") between the Issuer and Blackstone, the Issuer will loan the proceeds of the Bonds, and Blackstone will agree to make payments corresponding to the amounts needed to pay the principal, interest and premium on the Bonds as they become due. The Bonds will not be general obligations of the Issuer or State of Rhode Island. Blackstone will pay the fees of the Issuer and Trustee.

The Bonds will have a variable interest rate and mature in 30 years or may be accelerated. Interest will be payable quarterly in arrears unless the bonds are converted to a fixed interest rate. The variable interest rate shall not exceed 20% per annum determined by a remarketing agent ("Remarketing Agent"), appointed pursuant to the terms of the Indenture. If the variable interest rate cannot be established, the Remarketing Agent shall establish it at 65% of the yield of 13-week United States Treasury Bills. If the Remarketing Agent fails to establish the variable interest rate, it shall be deemed to be 60% of the prime lending rate of the Trustee.

Each bondholder will have the option of tendering its Bonds to the Trustee on at least 7 days' prior notice. Pursuant to a remarketing agreement ("Agreement"), the Remarketing Agent, upon notice of a bondholder's intention to present its Bonds for purchase, shall be obligated to use its best efforts to secure repurchasers. The proceeds from a resale will be used to pay tendering bondholders the principal amount of the Bonds plus accrued interest. If the Remarketing Agent is unable to secure a purchaser prior to the date on which the Bonds are tendered the Trustee may draw upon a letter of credit ("Letter of Credit") to pay the tendering bondholders. For its services, the Remarketing Agent will be paid for each Bond remarketed $0.25 per $1,000 principal amount up to one eighth of one percent of the outstanding principal amount of the Bonds per annum, plus out-of-pocket expenses.

On a one-time basis, the Bonds may be automatically converted from a variable to a fixed interest rate upon the termination of the Letter of Credit or at Blackstone's request. At the time of the conversion the fixed rate shall be determined by the Remarketing Agent and Blackstone will consider the necessity of procuring a Letter of Credit or alternative credit arrangements for the remaining term of the Bonds. If the Bonds are to be converted, this proposal will be amended to seek the Commission's approval of the fixed interest rate.

So long as the Bonds have a variable interest rate they will be redeemable, at the election of the Issuer (pursuant to the direction of Blackstone), in whole or in part, at a price of 100% of the principal plus accrued interest, on any interest payment date, and provided that the Trustee has given bondholders 25 to 40 days prior notice. The Trustee will draw on the Letter of Credit for the funds required to redeem the Bonds. If converted to a fixed interest rate, the Bonds will be redeemable at the election of the Issuer (pursuant to the direction of Blackstone) in whole or in part between 103% and 100% of the principal amount plus accrued interest. If certain extraordinary events occur after conversion to a fixed interest rate, the Bonds may be redeemed in whole and not in part, at Blackstone's option, with accrued interest but without premium. Under certain circumstances Blackstone may purchase all or a portion of the Bonds drawing on the Letter of Credit to do so.

Blackstone's obligations under the Financing Agreement are to be secured by an irrevocable Letter of Credit issued by Citibank, N.A. ("Bank") in favor of the Trustee in the principal amount of the Bonds, plus four months' interest up to an assumed maximum 20 percent interest rate. Pursuant to a separate agreement ("Reimbursement Agreement"), Blackstone will agree to pay the Bank all amounts drawn under the Letter of Credit as well as certain fees and expenses. The Letter of Credit will terminate five years from the date of issuance but may be extended for a period of one to three years. When terminated (unless Blackstone has arranged alternatively) the Bonds must be redeemed except those which the holders have elected to retain and those which the Company has elected to purchase. Upon the issuance of the Letter of Credit, Blackstone will pay the Bank a one-time fee equal to ½ of 1% per annum on the maximum amount available to be drawn for the period from December 1, 1984 to the date of the issuance of the Letter of Credit. So long as the Letter of Credit remains outstanding, Blackstone will be obligated to pay a letter of credit commission at a rate of 0.80% per annum payable quarterly.

Blackstone requests that with respect to its borrowings under the Financing Agreement a finding be made by the Commission that competitive bidding is inappropriate.

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 14, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 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 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. 84-31026 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14242; 812-5849]

Seven Star Partners, Ltd.; Application for an Order Granting Exemption

November 19, 1984.

Notice is hereby given that Seven Star Partners, Ltd. ("Applicant"), 180 Park Avenue North, Suite 2-B, Winter Florida, 32789, a Florida limited partnership, filed an application on September 20, 1984, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting Applicant from all provisions of the Act and rules and regulations thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant statutory provisions.

Applicant represents that it was formed primarily for the purpose of participating in the distribution of seven designated motion pictures (the "Pictures") through the acquisition of a limited partnership interest in Warner Bros. Seven Distributing Company, a California limited partnership (the "Venture"). Allen J. Schwalb is the general partner of Applicant ("General Partner"), and Warner Bros. Distributing Corporation ("Warner") is the general partner of the Venture, and will contribute the Pictures to the Venture as its capital contribution.

Applicant states that it intends to offer a minimum of 25 and a maximum of 200 units of limited partnership interest (the "Units") pursuant to Regulation D promulgated under the Securities Act of 1933 ("Securities Act") at a price of $240,000 per Unit (the "Offering"). The total purchase price per Unit is payable, generally speaking, through a "subscription capital contribution" of $88,000, and an "additional capital contribution" of $152,000. The former is to be payable either entirely in cash; or, $40,000 in cash and $48,000 (plus interest and a loan fee of $7,780 per Unit) by delivery of an irrevocable, transferable, standby letter of credit satisfactory to the General Partner and Central Penn National Bank of Philadelphia, Pennsylvania ("Central Penn") (the "Letter of Credit"), which is to secure principal and interest in the same amount under a loan from Central Penn to each investor-limited partner who provides a letter of credit (the "Subscription Loan"). The additional capital contribution of $152,000 per Unit is to be payable through the proceeds of a loan from Bank of America, Los Angeles, California (the "Loan"), under which each investor-limited partner will be primarily liable for a proportionate amount of the principal, interest thereon, and related costs, expenses and charges. The maximum aggregate principal amount of the Loan would thus be $30,400,000.

Applicant represents that the Units will be offered through Applicant and various members of the National Association of Securities Dealers ("NASD"). Each investor will receive a private placement memorandum fully describing the Offering, prepared in accordance with Regulation D. Applicant will file with the Commission a Notice of Sales of Securities pursuant to Regulation D or section 4(6), on Form D, relating to the sale of the Units.

Applicant represents further that it will only sell Units to investors who have a net worth (exclusive of house, furnishings and automobiles) of at least $400,000 per Unit purchased (or $250,000 if a half Unit is purchased), and taxable income for federal income tax purposes subject to tax at the 50% marginal rate.

Applicant states that the purpose of the Venture is to own, distribute and exploit the Pictures. Warner, as the general partner of the Venture, must use the funds contributed by Applicant to distribute and exploit the Pictures. Warner will contribute to the Venture all of its right, title and interest in and to each Picture necessary to exploit the Pictures in all media in the United States in perpetuity (to the extend owned by Warner). Applicant's contribution to the Venture will be used primarily to fund certain advertising and releasing costs incurred by the Venture in connection with the Pictures. All of the Pictures are scheduled to be released between August and December of 1984.

Applicant states that although the First Amended and Restated Certificate and Agreement of Limited Partnership of the Venture ("Venture Agreement") contains no requirements concerning how Warner should advertise or release the Pictures, or how much of the Venture's assets Warner shall expend with respect to any Picture, Warner, as the general Partner of the Venture, has a fiduciary duty to exercise its business judgment in good faith, and Applicant expects that Warner will distribute the Pictures in accordance with the customary standards and practices of Warner and the motion picture industry.

Warner, which with its predecessors has been engaged in the production and distribution of motion pictures for more than 60 years, is responsible for the day-to-day operation of the Venture, having sole and complete authority to make all decisions as to the distribution and exploitation of the Pictures. Warner, however, is obligated to devote only such time to the Venture as it, in its sole discretion, determines to be necessary and appropriate, and Applicant is entitled to participate in certain major decisions regarding the Venture's business. In particular, Warner would need Applicant's consent to revise the Venture Agreement or to dispose of substantially all of the Venture's assets.

Applicant represents that it will be entitled to allocations of items of gross income and gain measured by certain percentages of adjusted gross receipts of the Pictures, as well as by certain fixed amounts. "Adjusted Gross Receipts" is defined as "gross receipts" (as defined, in turn, in the Venture Agreement) from all United States media and (after January 31, 1986) from foreign media, minus off-the-tops (i.e., checking and collection charges, taxes, residuals and certain dues, assessments and contributions payable to trade associations and other industry groups) and agreed third-party participations. Applicant will be allocated 99 percent of all items of Venture loss and deductions (unless other limited partners are admitted to the Venture, in which case the allocations will be adjusted proportionately) attributable to the Venture's cash expenditures (primarily advertising expenses and the management fee payable to Warner), until Applicant has been allocated an amount of loss and deduction equal to its capital contribution (in excess of any cash distribution made by the Venture in 1984). Warner is allocated 100 percent of all items of deduction attributable to depreciation of the Pictures and amortization of the positive release prints (other than any such amortization allocable to Applicant, which occurs in certain circumstances), and all other deductions not allocated to Applicant.

Applicant states that the investment tax credit on the Pictures and positive release prints thereof will be allocated between Warner, and Applicant and any other limited partners proportionately in accordance with their respective amounts at risk in the Venture on the date of initial release of each Picture, pursuant to applicable Treasury Regulations.

Applicant represents that all items of Applicant's income, gain, loss and deduction will be allocated 98 percent to limited partners and 2 percent to the General Partner, with the exception of certain special allocations. Items of credit of the Applicant will be allocated 98 percent, or the maximum permitted by law, if different, to limited partners, and the balance to the General Partner. All items allocated to limited partners as a group generally will be allocated among them in accordance with the respective number of Units owned by each. In the event that all limited partners are not admitted on the same date, the allocations per Unit for 1984 may differ depending on admission dates.

Applicant further states that distributions of available cash (as defined in the First Amended and Restated Certificate and Agreement of Limited Partnership of Seven Star Partners, Ltd. ("Partnership Agreement") will be made by Applicant beginning in 1985. Distributions will generally be made 98 percent to limited partners and 2 percent to the General Partner, with the exception of permitted distributions made in return of capital, and distributions, the proceeds of which must be used to make payments of principal and interest under the Loan. It is expected that all or substantial portions of such cash distributions in 1985, 1986, and 1987 will be used to make payments of principal under the Loan. In addition, the limited partners will be entitled to receive distributions in 1984, as a return of capital, in an amount equal in the aggregate to the 1984 interest on the Loan, which will be used to make a payment of interest on the Loan. No sums retained by the Venture or distributed to Applicant will be reinvested in any other investment.

Applicant concedes that it may be classified as an investment company as defined in Section 3(a) of the Act, but submits that it is part of a unique business arrangement of a type that Congress did not intend to be regulated pursuant to the Act, and that therefore its exemption from the Act would be 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. Unlike securities held by traditional investment companies, it is asserted that Applicant's interest in the Venture will not be liquid, mobile, or readily negotiable. It is further asserted that, in fact, Applicant's interest cannot be sold for at least one year from the date of the completion of the Offering, and if it is sold, the proceeds derived from the sale will be distributed to Applicant's limited partners and not reinvested, as Applicant would be wound-up and dissolved. In addition, it is contended that, unlike traditional investment companies, Applicant will have no discretion with regard to investing the net proceeds raised in the Offering and will not be able to make any other investments. The use and application of the proceeds derived from the Offering and the proceeds to be derived from the business of the Venture, or from the sale of Applicant's interest in the Venture, have been prescribed by the Partnership Agreement and the Venture agreement. Finally, it is submitted that Applicant will participate directly in the business of distributing motion pictures in addition to its primary business engagement consisting of its interest in the Venture.

Applicant contends that investors in Applicant will be amply protected without application of the provisions of the Act to Applicant by: (a) full disclosure in the private placement memorandum for the Offering of all aspects of their investment; (b) suitability standards for prospective investors established by Applicant; (c) limitations on the discretion of the General Partner and Warner; (d) rights of limited partners provided under the Partnership Agreement and federal law; and (e) reporting requirements imposed on Applicant and Warner.

Applicant also submits that its exemption from the Act pursuant to Section 6(c) would be consistent with the purposes and policies underlying the Act and that it is necessary as a practical matter, because the requirements of the Act as applied to Applicant would be onerous, and, in fact, would result in withdrawal of the Offering, thus denying investors an opportunity, subject to the risk of loss, to derive an economic benefit by investing in the motion picture business.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 14, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-30987 Filed 11-26-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21499; SR-NXSE-84-33]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Order Approving Proposed Rule Change

November 19, 1984.

I. Introduction

On October 10, 1984, the New York Stock Exchange ("NYSE") 11 Wall Street, New York, New York, 10005, filed with the Securities and Exchange Commission a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder. Generally, the proposed rule change would permit NYSE listed companies to act as both transfer agent and register for their own securities, subject to similar conditions as unaffiliated banks and trust companies. The Commission published notice of the proposed rule change in Securities Exchange Act Release No. 21403 [1] and received comment letters from the Stock Transfer Association (the "STA") and the Corporate Transfer Agent Association (the "CTAA") supporting the proposed rule change.[2] As discussed below, the Commission is approving the proposed rule change.

II. Description

The proposed rule change modifies NYSE's securities listing standards to permit NYSE listed companies to act in a dual capacity as transfer agent and registrar for their own securities or to appoint qualified organizations (not just unaffiliated banks and trust companies [3]) to act in a dual capacity as

[1] 49 FR 41305 (October 22, 1984).

[2] Letter from Joseph Poggio, President, Stock Transfer Association, Inc. to the Commission (November 2, 1984); Letter from Peter Descovich, President, Corporate Transfer Agent Association, to the Commission (November 8, 1984).

[3] Currently, the NYSE permits only banks and trust companies that are not affiliated with the issuer to act as both transfer agents and registrars for NYSE listed securities.

transfer agent and registrar.[4] Under the proposed rule change, entities acting in a dual capacity as transfer agent and registrar would be required to perform these functions separately, establish appropriate internal controls to assure the separation of functions, and subject those controls to an annual independent audit. In addition, the proposed rule change would continue to require transfer agents and registrars for NYSE listed securities to agree to comply with NYSE rules, particularly NYSE Rule 496.[5]

III. Discussion

The NYSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act. Specifically, the NYSE believes that the proposed rule change should result in significant operational efficiencies and cost savings for listed companies. The NYSE notes, for example, that eliminating the independent registrar requirement should eliminate issuer and transfer agent expense for separate registrar facilities and reduce securities certificate handling problems that occur during the transfer and registration processes. Finally, the NYSE believes that the proposed rule change reflects recent changes in auditing standards, improved securities transfer performance and the development of corporate governance policies that guard against securities overissuances.

The STA and the CTAA submitted comment letters to the Commission concerning the proposed rule change. Those letters supported the proposed rule change and urged Commission approval. The CTAA stated that there is no longer any need for an independent registrar because of in-house audit controls, examination and review of those controls by independent accountants, and direct regulation of registered non-bank transfer agents. The STA noted that the proposed rule change would promote the economical and efficient transfer of securities and provide entities that act as transfer agents for their own securities with the same capabilities afforded bank transfer agents that perform transfer and registrar functions for other NYSE listed securities. At the same time, however, the STA recognized that entities providing transfer and registrar functions must separate those functions internally, establish sufficient internal accounting controls to assure their separation and subject those controls to an annual review by independent auditors.

The Commission agrees with the NYSE, the STA and the CTAA; as discussed below, the Commission is approving the proposed rule change. The proposed rule change represents the first modification of NYSE rules affecting transfer agents and registrars since the passage of the Securities Acts Amendments of 1975,[6] which authorized direct federal regulation of transfer agents.[7] Notwithstanding direct federal regulation of transfer agents and registrars, the Commission believes that because exchanges are obligated to maintain the operational and financial integrity of the markets for listed securities issues, exchanges appropriately may adopt rules to assure safe and efficient securities transfers. Thus, the Commission believes that the NYSE may establish standards affecting transfer agents for listed securities through rules affecting listed companies, provided those standards are consistent with section 6 of the Act and the scheme of federal transfer agent regulation established in section 17A of the Act.[8]

The Commission recognizes the NYSE's longstanding interest in preventing securities overissuances. As the Commission noted in Securities Exchange Act Release No. 19142,[9] substandard transfer agent performance, such as overissuing securities, can lead to significant financial loss, market confusion and trading suspensions.[10] Indeed, the NYSE's independent registrar requirement grew out of overissuances that occurred in the 1800's and that continued uncorrected for many years because of inadequate transfer agent internal controls.[11]

The Commission believes the NYSE's proposed requirements are reasonably designed to prevent overissuances. Although the proposed rule change would permit listed companies to act in a dual capacity, the proposed rule change appears well designed to prevent overissuances. Separating the transfer and resistrar functions internally should provide a routine check on each certificate issuance. Establishing internal controls and independently evaluating those controls on an annual basis should provide added confidence to the transfer process.

Moreover, the Commission belives that the NYSE's requirements are consistent with, and appropriately supplement, federal transfer agent regulation.[12] Since 1975, the Commission has adopted minimum standards governing transfer and registrar functions designed to ensure the prompt, safe and accurate transfer of ownership in corporate and other securities.[13] Direct federal regulation of

[4] The proposed rule change would permit listed companies to retain independent registrars, but would expand the universe of potentially qualified organizations to include any registered transfer agent. Thus, non-bank, non-issuer transfer agents would be eligible to act as either the independent registrar or the transfer agent and registrar for a NYSE listed issue.

[5] Rule 496 requires transfer agents, among other things, to maintain certain minimum insurance coverage; have a minimum amount of capital; maintain a facility in Manhattan south of Chambers Street for delivery and pick-up of securities certificates; and transfer, register and make available for pick-up all routine items within 48 hours of receipt of those items.

[6] Pub. L. 94–29, 89 Stat. 97 (1975). The Commission commends the NYSE for reexamining its rules affecting transfer agents and registrars and for modifying those rules to reflect regulatory and other changes that have materially affected or improved the securities transfer and registration processes. To this end, the Commission encourages other exchanges to reexamine and, if necessary, update their rules concerning transfer agents and registrars.

[7] Prior to 1975, the federal government did not directly regulate transfer agent activity with a view to assuring prompt and accurate securities transfers on a national basis. As a result, the NYSE established certain requirements affecting transfer agents and registrars that the NYSE believes would ensure efficient transfer of NYSE listed securities.

[8] The Commission recognizes that some NYSE transfer agent standards may establish time frames for completing securities transfers that are stricter than the time frames specified in Commission rules. The NYSE time frames were established prior to 1975 and are not part of this proposed rule change. Thus, the Commission is not addressing those time frames or other aspects of NYSE Rule 496. The Commission understands that the NYSE and transfer agent industry representatives are reexamining NYSE Rule 496 requirements in light of regulatory and operational changes affecting transfer agents. The Commisison supports those discussions.

[9] 47 FR 47269, 47270 n. 5 (October 25, 1982).

[10] *Id. See* Securities Exchange Act Release No. 18100 (September 17, 1981) (trading suspension in stock of Lewis Energy Corporation when possibility of substantial overissuance occurred).

[11] *See, e.g., New York and New Haven Railway v. Schuyler*, 34 N.Y. 30 (1865).

[12] For example, the proposed ruled change would require NYSE listed companies that perform transfer agent functions to obtain an independent evaluation of their internal accounting controls if they also elect to act as registrars, even though those companies woud be exempt from the internal accounting control report requirement of Rule 17Ad–13. *see* 17 CFR 240.17Ad–13(d)(1)(i). Given the NYSE's interest in preventing overissuances, the Commission believes the NYSE may appropriately require more extensive independent review of those controls than the minimum requirements set forth in Commission rules.

[13] *See* 17 CFR 240.17Ad–1 through 17 CFR 240.17Ad–14. For example, rule 17Ad–2 requires transfer agents to turnaround 90 percent of all routine items they receive for transfer each month within three business days. In addition, Rule 17 Ad–10 requires recordkeeping transfer agents to maintain accurate issuer security holder records and to update those records promplty to reflect transfers, purchases, redemptions and issuances of securities. Moreover, Rule 17Ad–12 establishes a

Continued

transfer agents, among other things, has substantially lessened the possibilities of securities overissuances and other errors. For example, Rule 17Ad–10 requires transfer agents to exercise diligent and continuous attention to resolving record differences that may result in securities overissuances. In addition, Rule 17Ad–11 requires transfer agents with aged record differences in excess of certain thresholds to report those record differences to issuers and, in some cases, the appropriate regulatory authority. Finally, Rule 17Ad–10(g) requires transfer agents that cause an overissuance after September 1983 to buy in securities equal to the amount of the over-issuance.

The Commission also believes that the proposed rule change will result in significant operational efficiences and cost savings for listed companies, consistent with the requirements of Section 17A of the Act. By eliminating the need for independent registrars for listed issues, the proposed rule change should permit issuers and their agents to streamline the securities transfer process and to eliminate several expenses associated with maintaining an independent registrar. For example, listed companies could eliminate fees they currently pay for independent registrar services and for shipping certificates between the transfer agent's and registrar's offices. Similarly, eliminating the independent registrar requirement should reduce the risk of lost or stolen certificates during the transfer process.

The Commission believes that the proposed rule change fosters cooperation and coordination among persons engaged in the clearing, settling and processing of securities transactions, consistent with the requirements of section 17A of the Act. First, the proposed rule change permits one entity to perform all aspects of the transfer process. Second, the proposed rule change should increase the number of NYSE listed securities that are processed through Transfer Agent Custodian ("TAC") programs. TAC programs involve sophisticated links between depositories and transfer agents that, among other things, reduce certificate handling and time-consuming data entry in connection with certificate processing, thereby expediting the entire transfer process.[14] To participate in these programs, however, transfer agents must be able to issue certificates on extremely short notice. The Commission understands that by eliminating the outside registrar and streamlining the certificate issuance process in response to the proposed rule change, several listed companies that perform their own transfer agent functions will be able to participate in the Depository Trust Company's TAC program.[15]

The Commission notes finally that the proposed rule change eliminates disparate treatment among banks, issuers and others that perform transfer and registrar functions for NYSE listed securities. Current NYSE listing standards permit only unaffiliated banks and trust companies to act as both transfer agent and registrar for NYSE listed securities, provided those organizations meet certain capital, insurance and audit requirements.[16] Under the proposed rule change, however, issuer and other non-bank transfer agents will be permitted to act as transfer agents and registrars in a dual capacity for NYSE listed issues, provided they meet similar conditions. Thus, the proposed rule change helps further the goal of equal regulation.

IV. Conclusion

For the reasons stated above, the Commission finds the proposed rule change consistent with the Act, particularly sections 6(b)(5) and 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–84–33) be and hereby is appproved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–30989 Filed 11–26–84; 8:45 am]

BILLING CODE 8010–01–M

general requirement that transfer agents safeguard securities and funds relating to their transfer agent activity. Finally, Rule 17Ad–13 requires certain transfer agents to obtain an independent report concerning the adequacy of the transfer agent's system of internal accounting control.

[14] For example, The Depository Trust Company ("DTC") operate a TAC program known as Fast Automated Securities Transfer ("FAST"). Under that program, the transfer agent safekeeps one or more balance certificates reflecting DTC's securities position in a particular issue. Thus, the depository can reduce the number of certificates held in its vault and transfer turnaround can be automated and expedited. In fact, users can effect customer name transfer through the TAC program on a same day basis.

[15] *See* Securities and Exchange Commission, Report of the Division of Market Regulation 1984 Securities Processing Roundtable, 38–39 (May 1984).

[16] The NYSE adopted its current policy in 1971. Prior to 1971, NYSE rules required that the registrar function for NYSE listed securities be performed independent of the transfer agent, whether the transfer agent was the issuer or an independent bank or trust company.

SMALL BUSINESS ADMINISTRATION

[License No. 09/09–0349]

Camden Investments, Inc.; Issuance of a Small Business Investment Company License

On September 6, 1984, a notice was published in the **Federal Register** (35281) stating that an application has been filed by Camden Investments, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)) for a license as a small business investment company.

Interested parties were given until close of business October 5, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09–0349 on November 7, 1984, to Camden Inivestments, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84–31015 Filed 11–26–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5474]

Monsey Capital Corp.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company (SBIC) under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), has been filed by Monsey Capital Corporation, 125 Route 59, Monsey, New York 10952, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1984).

The officers, directors and shareholders of the Applicant are as follows:

Name and address	Title or relationship	Pct of ownership
Shmuel a Myski, 4 Fern Court, Monsey, New York 10952.	president, director & general manager.	0
Chaim Zev Weiss, 10 Elyon Road, Monsey, New York 10952.	Secretary, treasurer & director.	0
Jack G. Klein, 78 Rupert Avenue, Staten Island, New York 10314.	Director	50

Name and address	Title or relationship	Pct of ownership
Keren Hachesed of Monsey, Inc., 4 Blauvelt Road, Monsey, New York 10952.		50

The Applicant will begin operations with a capitalization of $1,000,000 and will conduct its operations principally in the State of New York.

As an SBIC licensed to operate under section 301(d) of the Act, the Applicant will provide financial and management assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Monsey, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 10, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31018 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-0262]

Round Table Capital Corp.; Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that Round Table Capital Corporation (Round Table), 601 Montgomery Street, San Francisco, California 94111, a Federal Licensee under the Samll Business Investment Act of 1958, as amended, has filed an application with the Small Business Administration pursuant to § 107.903 of the Regulations governing small business investment companies (13 CFR 107.903 (1984)) for approval of conflict of interest transaction.

Round Table proposes a $175,000 equity investment as the sole limited partner in Harlan Limited Partnership (Harlan), 601 Montgomery Street, Suite 500, San Francisco, California 94111. Mr. James F. Harlan would be the general partner. Harlan would be created solely for the purpose of purchasing a Shakey's Pizza Restaurant in Martinez, California and converting and operating the same as a Round Table Pizza Restaurant.

The conflict of interest arised because Mr. Harlan is currently a senior vice president of Round Table Franchise Corporation, another subsidiary of Round Table Pizza, Inc., parent of Round Table. Thus, Mr. Harlan is deemed as an Associate of Round Table under § 107.3(c) of SBA Rules and Regulations. Because Mr. Harlan is a control person of Harlan, Harlan is considered an Associate of Round Table. Therefore, the proposed transaction falls within the purview of § 107.903(b)(3) of the Regulations and requires prior written approval of SBA.

Notice is hereby given that any person may, not later than fifteen (15) days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC. 20416.

A copy of this notice will be published in a newspaper of general circulation in the San Francisco and Martinez, California areas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 20, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31019 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 03/03-0176]

Sovran Funding Corp.; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing SBIC's [13 CFR 107.102 (1984)] under the name of Sovran Funding Corporation, Sovran Center, One Commercial Place, Norfolk, Virginia 23510 for a license to operate in the State of Virginia under the provisions of the Small Business Investment Act of 1958 (Act) as amended, (15 U.S.C. 661 *et seq.*).

The applicant will begin operations with private capital of $5,000,000.

The officers, directors and stockholders of the applicant are:

John B. Bernhardt, Sovran Financial Corp., One Commercial Place, Norfolk, Virginia 23510—Director

Page D. Cranford, Sovran Financial Corp., One Commercial Place, Norfolk, Virginia 23510—Vice President and Secretary

David A. King, Jr., Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—President (General Manager) and Director.

Jerome O. Guyant, Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Director

L. Ralph Hicks, Jr., Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Director

Robert M. Schonk, Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Treasurer

C. Lee Wilkinson, Jr., Sovran Bank, N.A., One Commercial Place, Norfolk, Virginia 23510—Director

The applicant will be wholly owned by Sovran Financial Corporation. Both are located at One Commercial Place, Norfolk, Virginia 23510.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the new company, in accordance with the Act and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit to SBA in writing, relevant comments on the proposed licensing of this company. Any such communications should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the Norfolk area.

(Catalog of Federal and Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31017 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

[License No. 10/10-0185]

Trendwest Capital Corp.; Issuance of a Small Business Investment Company License

On May 30, 1984, a notice was published in the **Federal Register** (49 FR 22585) stating that an application has been filed by Trendwest Capital Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1984)) for a license as a small business investment company.

Interested parties were given until close of business June 29, 1984, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 10/10-0185 on November 9, 1984, to Trendwest Capital Corporation to operate as a small business investment company.

Dated: November 15, 1984.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 84-31016 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2173; Amendment No. 2]

Disaster Loan Areas; Texas

The above numbered declaration (49 FR 44258) and amendment No. 1 (49 FR 45516) are amended in accordance with the amendment to the President's declaration of October 30, 1984, to include Precinct four in Harris County as an adjacent area in the State of Texas as a result of damage from severe storms, high winds, and flooding beginning on or about October 19, 1984. All other information remains the same, i.e., the termination date for filing applications for physical damage is the close of business on December 31, 1984, and for economic injury until the close of business on July 30, 1985.

(Catalog of Federal Domestic Assistance Programs No. 59002 and 59008)

Dated: November 19, 1584.

Willis W. Allred, III,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 84-31013 Filed 11-26-84; 8:45 am]

BILING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in Casper, Wyoming, during fiscal year 1985. Currently, there are 36 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be received for a period of 60 days from the date of publication of this notice.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson (202) 653-6768.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, Specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been estblished under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The relevant proposal developer will make every effort to accommodate these comments during the 60-day period. If the comments cannot be accommodated by the relevant proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's

concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDA Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must endure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that list of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: November 19, 1984.

James C. Sanders,

Administrator.

Address of Proposed SBDC and Proposal Developer

Dr. Lloyd Loftin, President, Casper Community College, 125 College Drive, Casper, Wyoming 82601, (307) 268–2548

[FR Doc. 84-31012 Filed 11-26-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Maritime Advisory Committee; Cancellation of Meeting

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: A previous notice (49 FR 43610, October 30, 1984) announced a meeting of the Maritime Advisory Committee on November 30, 1984. The meeting is cancelled. Notice will be published once a new meeting is scheduled.

By Order of the Maritime Administrator.

Dated: November 21, 1984.
Murray A. Bloom,
Assistant Secretary.
[FR Doc. 84-30975 Filed 11-26-84; 8:45 am]
BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 37-84]

Treasury Notes of February 15, 1990. Series G-1990

Washington, November 16, 1984.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $6,750,000,000 of United States securities, designated Treasury Notes of February 15, 1990, Series G–1990 (CUSIP No. 912827 RP 9). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated December 3, 1984, and will bear interest from that date, payable on a semiannual basis on August 15, 1985, and each subsequent 6 months on February 15, and August 15 until the principal becomes payable. They will mature February 15, 1990, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The securities are subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. After January 12, 1985, the Treasury may issue, through the Federal Reserve Bank of New York, as fiscal agent of the United States, additional amounts of the securities offered in this circular in exchange for equal par amounts of the Foreign-Targeted Treasury Notes of February 15, 1990, Series H–1990 (CUSIP No. 912827 RQ 7). Such exchanges must be conducted in accordance with Section 10 of Department Circular, Public Debt Series—No. 38–84 dated November 15, 1984.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, November 28, 1984. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 27, 1984, and received no later than Monday, December 3, 1984.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue being auctioned prior to the designated closing time for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g.,

99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.5. must be made or completed on or before Monday, December 3, 1984. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, November 29, 1984. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for allotted securities for their own accounts and for account of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, December 3, 1984. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20239. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole Jones Dineen,

Fiscal Assistant Secretary.

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[Department Circular, Public Debt Series No. 38-84]

Foreign-Targeted Treasury Notes of February 15, 1990, Series H-1990

(Washington, D.C., November 15, 1984.

Section 1. Invitation for Tenders

1.1. Introduction. The Secretary of the Treasury, pursuant to the authority granted him by Chapter 31 of Title 31, United States Code, invites tenders for up to $1,000,000,000 of United States securities designated Foreign-Targeted Treasury Notes of February 15, 1990, Series H-1990 (CUSIP No. 912827 RQ7) (collectively the "Notes", individually a "Note"). The Notes will be auctioned in the United States on November 28, 1984, by competitive bidding only. Payment must be made as set forth below in United States dollars. The stated interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described in Section 6.7.

1.2 Targeted Nature of the Notes. Treasury will sell the Notes only to Bidders as defined in Section 2.1. Bidders must acquire the Notes only for themselves or on behalf of, or for sale or other transfer to, United States Aliens as defined in Section 2.19 or foreign branches of United States Financial Institutions. In addition, any transfers by Bidders after January 12, 1985, to Qualified Holders as defined in Section 2.15 that are United States Persons must be consistent with the tax certification described in Section 11.2.

1.3. Transfer Restrictions. Before January 13, 1985, the Notes may not be sold or transferred to a United States Person as defined in Section 2.20, other than a foreign branch of a United States Financial Institution. Each Bidder for the Notes must certify on the tender form for the Notes that it will not sell, contract to sell, or otherwise transfer the Notes to a United States Person, other than a foreign branch of a United States Financial Institution, before January 13, 1985. Each Bidder further agrees that, if it sells, contracts to sell, or otherwise transfers the Notes before January 13, 1985, it will confirm to such purchaser or transferee in writing that (i) there is a restriction on sale or other transfer to

United States Persons other than foreign branches of United States Financial Institutions and (ii) that such confirmation is required to be given to any subsequent purchaser or transferee that acquires the Notes before January 13, 1985. The transfer restriction of this Section 1.3 is in addition to the tax certification of a Bidder described in Section 11.2. As described in Section 11.2, the Bidder must certify that, as of the date of issuance, Notes acquired by the Bidder will not be owned by a United States Person, other than a foreign branch of a United States Financial Institution, and that the Notes are not being acquired on behalf of such a person, or for offer to resell or for resale to such a person. This tax certification requirement is independent of the transfer restriction of this Section 1.3.

1.4 Tax Treatment. The Notes are subject to United States federal income tax as provided in the Internal Revenue Code as defined in Section 2.8. Interest on the Notes paid to a United States Alien is not subject to United States federal income tax if the conditions of sections 871(h) or 881(c) of the Internal Revenue Code and the regulations related thereto are satisfied. The discussion in Section 11 is only a summary of the currently applicable tax requirements. The tax consequences of holding the Notes derive solely from the Internal Revenue Code and regulations now or hereafter promulgated thereunder.

Section 2. Definitions

The following terms, whenever used and capitalized in this offering circular, shall hae the meanings set forth below.

2.1. Bidder. (i) A United States Alien, other than an individual, or (ii) a foreign branch of a United States Financial Institution.

2.2. Definitive Notes. Notes (as defined in Section 1.1) evidenced by a certificate that is inscribed with the name of the Registered Owner.

2.3. Domestic Notes. Companion securities sold at auction on November 28, 1984, and designated Treasury Notes of February 15, 1990, Series G–1990 (CUSIP No. 912827 RP 9).

2.4. Exchange Adjustment. As defined in Section 10.3.

2.5. Financial Institution. A securities clearing organization, a bank, or other financial institution, other than an International Financial Organization, that holds customers' securities in the ordinary course of its trade or business, within the meaning of section 871(h)(4)(B) of the Internal Revenue Code.

2.6. FRB NY. The Federal Reserve Bank of New York, located at 33 Liberty Street, New York, New York.

2.7. Holding Institution. A Financial Institution or an International Financial Organization that has a book-entry account with FRB NY.

2.8. Internal Revenue Code. The United States Internal Revenue Code of 1954, as amended from time to time (Title 26 of the United States Code).

2.9. International Account. A book-entry account of a Holding Institution with FRB NY for which records are maintained by FRB NY that specifically identify a foreign Financial Institution, a foreign branch of a United States Financial Institution, or an International Financial Organization. A United States branch of a foreign Financial Institution may not establish an International Account. A United States subsidiary of a foreign Financial Institution may establish an International Account in accordance with the requirements of the first sentence of this Section 2.9.

2.10. International Financial Organization. A central bank or monetary authority of a foreign government or a public international organization of which the United States is a member that is characterized as a foreign corporation for United States federal income tax purposes to the extent that such central bank, authority, or organization holds Notes solely for its own account and is exempt from United States federal income tax under sections 892 or 895 of the Internal Revenue Code.

2.11. Note or Notes. As defined in Section 1.1.

2.12. Payment Guarantee. A guarantee of payment to Treasury for an amount equal to 5 percent of the par amount of Notes for which a tender is submitted by or on behalf of Bidder.

2.13. Paying Institution. A Financial Institution that has a reserve, clearing, or othe dollar account with FRB NY and that has been designated on the tender form to pay for the Notes or an International Financial Organization designated to pay for Notes for which it is the Registered Owner.

2.14. Primary Dealer. A dealer on the list of reporting dealers published by FRB NY.

2.15. Qualified Holder. Before January 13, 1985, a United States Alien or a foreign branch of a United States Financial Institution and after January 12, 1985, a United States Alien or a United States Person.

2.16. Registered Owner. The Financial Institution or International Financial Organization specifically identified on the records of FRB NY maintained for an International Account, or, for Notes held in a book-entry account other than an International Account, the Holding Institution, or, for a Definitive Note, the person whose name is inscribed on the Note and recorded on the books of FRB NY.

2.17. Secretary. The Secretary of the United States Department of the Treasury, the legal successor of the Secretary, and delegates of the Secretary or such legal successor.

2.18. Treasury. The United States Department of the Treasury.

2.19. United States Alien. A corporation, partnership, individual, or fiduciary that for United States federal income tax purposes, as to the United States (including its territories, possessions, all areas subject to its jurisdiction and the Commonwealth of Puerto Rico), is a foreign corporation, a nonresident alien individual, a nonresident alien fiduciary of a foreign estate or trust; a foreign partnership one or more of the members of which is, for United States federal income tax purposes, a foreign corporation, a nonresident alien individual, or a nonresident alien fiduciary of a foreign estate or trust; or an International Financial Organization.

2.20. United States Person. A citizen, national, or resident of the United States; a corporation, partnership, or other entity created or organized in or under the laws of the United States or any political subdivision thereof; or an estate or trust that is subject to United States federal income tax regardless of the source of its income.

2.21. United States-Related Person. A United States Person, a controlled foreign corporation within the meaning of section 957(a) of the Internal Revenue Code, or a foreign corporation 50 percent or more of whose gross income from all sources for the three-year period ending with the close of the taxable year preceding the subject payment was effectively connected with the conduct of a trade or business in the United States.

2.22. Withholding Agent. The United States Person that would be required to deduct and withhold United States federal income tax from interest on the Notes under sections 1441(a) or 1442(a) of the Internal Revenue Code if such interest were not portfolio interest within the meaning of sections 871(h) and 881(c) of the Internal Revenue Code.

Section 3. Fiscal Agent as Registrar

3.1. Fiscal Agent as Registrar. FRB NY is designated to act on behalf of Treasury as the exclusive fiscal agent and, as such, registrar for this issue. FRB NY is authorized to receive tender forms and payment, issue the Notes, maintain

and service securities accounts, pay principal and interest, conduct exchange and conversion transactions, redeem the Notes at maturity and otherwise act as necessary in its capactiy as fiscal agent.

Section 4. Description of the Notes

4.1. The Notes will be issued as direct obligations of the United States of America. The Notes will be issued in book-entry form on December 3, 1984, and will bear interest in accordance with the accrual formula for Notes paying annual interest set forth at Attachment D, payable on an annual basis on February 15, 1986, and on February 15 of each subsequent year through the maturity date. The Notes will mature on February 15, 1990, and are not subject to call or redemption prior to maturity. After January 12, 1985, the Notes may be converted to Definitive Notes as described in Section 9. Interest and principal on the Notes will be paid in United States dollars in accordance with the procedures set forth in Sections 8.5 and 9.3. After January 12, 1985, the Notes will be acceptable to secure deposits of public monies of the United States.

4.2. Transfer and Exchange. Ownership of the Notes is transferable as provided in Sections 8 and 9. The Notes may be exchanged for Domestic Notes as provided in Section 10. If the applicable requirements of Section 11 have been complied with, after January 12, 1985, the Notes may be acquired and owned by a United States Person and Domestic Notes acquired in exchange for the Notes may be acquired and owned by either a United States Alien or a United States Person.

4.3. No Gross-up. There will be no future increase in payments to offset any changes in tax requirements affecting these Notes.

4.4. Denominations. Definitive Notes will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts.

4.5. Governing Regulations. Treasury's general regulations governing United States securities (Part 306 of Title 31 of the Code of Federal Regulations) apply to the Notes offered in this offering circular, except as otherwise provided herein.

4.6. Long Coupon. There will be no interest payment on February 15, 1985, for the interest accrual period on the Notes from December 3, 1984, to February 15, 1985. Interest earned during this period will be added to the annual coupon payable on February 15, 1986, and paid on that date. The amount of interest earned from December 3, 1984, to February 15, 1985, will be determined using the day count conventions (as defined in Attachment D) for securities paying annual interest. Application of these conventions means that the amount of interest earned during the first interest accrual period will be computed by multiplying the amount of the regular annual coupon by the fraction $^{72}/_{360}$.

Section 5. Domestic Notes

5.1. Domestic Auction. On November 28, 1984, Treasury also will auction Domestic Notes that will be issued on the same day as the Notes and will have the same maturity date and stated interest rate as the Notes. After January 12, 1985, the Notes may be exchanged for Domestic Notes in accordance with the procedures set forth in Section 10.

Section 6. Bidding and Sale Procedures

6.1. Bidders. Tender forms may be submitted only by or on behalf of Bidders. Individuals may not be Bidders. A syndicate must be comprised only of Bidders to be considered a Bidder. Tender forms may be submitted by an agent of a Bidder if the identity of the Bidder is disclosed.

6.2. Tender Submission. Bids must be submitted on the prescribed tender form and must be received at FRB NY, First Floor, before 1:00 p.m. New York time, Wednesday, November 28, 1984. Persons submitting tender forms will receive time-stamped receipts. Beginning at 1:00 p.m. New York time on November 28, 1984, bids are irrevocable. A sample tender form is set forth at Attachment A. Tender forms may be obtained at FRB NY and at Treasury offices in Washington, D.C.

6.3. Payment Instructions. Bidders are required to make arrangements to pay for the Notes before submitting a bid. Each Bidder must designate a Paying Institution on the tender form. Except as set forth below, each Paying Institution must advise FRB NY no later than 12:00 noon New York time on November 27, 1984, that it has agreed to serve as a Paying Institution for a named Bidder. That advice must be given in the form set forth at Attachment B to this offering circular. The Attachment B notice is not required if (i) the Bidder and its designated Paying Institution are the same legal entity or (ii) the Paying Institution is submitting the tender form as agent for a Bidder, and if the signature of the authorized signer of the Paying Institution on the tender form is on file with FRB NY as an authorized signature of the Paying Institution. The Paying Institution may withdraw or modify its agreement to serve as Paying Institution by notifying FRB NY in accordance with Attachment B. The withdrawal of a Paying Institution after a bid has been accepted does not relieve the Bidder of its obligation to pay for the Notes in funds available to Treasury at FRB NY no later than 9:00 a.m. New York time on December 3, 1984. FRB NY will retain paying instructions on file and, if not revoked by the Paying Institution, Bidders may use such instructions in subsequent auctions of Treasury foreign-targeted securities.

6.4. Payment Guarantees. A Payment Guarantee is required unless (i) the Bidder and its designated Paying Institution are the same legal entity or (ii) the Bidder is a foreign branch (not a subsidiary) of a Primary Dealer. A Payment Guarantee may be provided by a Paying Institution or by a Primary Dealer. If the Payment Guarantee is provided by a Paying Institution or a Primary Dealer that is signing the tender form, it must be provided on the tender form. If the Payment Guarantee is provided by a Paying Institution that is not signing the tender form, it must be provided in a letter in the form of Attachment C. If the Payment Guarantee is provided by a Primary Dealer that is not signing the tender form, it must be submitted in a letter in the form of Attachment C. Payment Guarantees in the form of Attachment C must be received by FRB NY no later than 12:00 noon New York time on November 27, 1984. In addition to any other remedies available to the Secretary, the amount of this Payment Guarantee is subject to forfeiture in the Secretary's sole discretion if full payment for the Notes is not made in funds available to Treasury at FRB NY no later than 9:00 a.m. New York time on December 3, 1984. FRB NY will retain Payment Guarantees on file and, if not revoked by the Paying Institution or Primary Dealer providing the Payment Guarantee, Bidders may use such Payment Guarantee in subsequent auctions of Treasury foreign-targeted securities.

6.5. Minimum Bid. The par amount of the bid must be stated on each tender form. Multiple bids by a single Bidder are permitted. Each bid, however, must be submitted on a separate tender form. All bids must be in multiples of $1,000,000 and the aggregate amount bid at the lowest yield by each Bidder must be at least $50,000,000. A bid must show the annual yield for which it is submitted to two decimals, e.g., 7.10%, based on an annual interest payment. Fractions may not be used.

6.6. Maximum Awards. A Bidder, whether bidding individually or as a member of one or more syndicates, will not be awarded Notes with a par value

in excess of $350,000,000. A syndicate will not be awarded Notes in excess of $500,000,000. If a Bidder submits one or more bids with a total par value in excess of such maximum awards, the excess (starting at the highest yield bid) will be disregarded for purposes of the prorated calculations referred to in Section 6.8. A syndicate must disclose: (i) The identity of any syndicate member that is submitting one or more other bids (either individually or as a member of another syndicate) if that member's total bids exceed $350,000,000, and (ii) the amount of Notes included in the syndicate bid for such disclosed syndicate member. Apart from such disclosures, the identity of syndicate members other than the head of the syndicate need not be disclosed.

6.7. Interest Rate and Price of Notes. The stated interest rate established in the auction of the Domestic Notes also will be applied to the Notes. That rate of interest, payable on an annual basis, will be paid on all of the Notes. Based on such interest rate, the price for each accepted yield (on an annual payment basis) will be determined and each successful Bidder will be required to pay the price equivalent to the yield bid. Price calculations will be based on a 360-day year using the formula set forth at Attachment D for Treasury notes paying annual interest. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923. The determinations of the Secretary shall be final.

6.8. Announcement of Auction Results. On November 28, 1984, a public announcement of the amount and yield range of accepted bids for the Notes will be made by 5:00 p.m. New York time or as soon thereafter as possible. Bids for the Notes at yields equal to or greater than the highest accepted yield in the auction of the Domestic Notes (adjusted to an annual payment basis) will not be accepted. Subject to the limitations and reservations set forth in this Section 6, bids will be accepted starting with those at the lowest yield through successively higher yields until the total par amount of Notes offered has been awarded. Bids at the highest accepted yield will be prorated on a percentage basis, if necessary, taking into account the maximum award limitations of Section 6.6. For example, assume that in a $1 billion offering, bids totaling $900 million have been accepted and that three Bidders have submitted bids totaling $250 million at the next yield above those already accepted. Each of the three Bidders would then receive 40% ($100,000,000 divided by $250,000,000) of the amount of its bid at that yield.

6.9. Notification to Bidders. FRB NY will mail to each successful Bidder notification that its bid has been accepted. This notification will contain the confirmation described in Section 11.3. Copies of the written notification also will be available for pick-up by each successful Bidder and by its Paying Institution (and its Holding Institution, if different) at FRB NY, First Floor, by 12:00 noon New York time on November 29, 1984.

6.10. Reservations. It is the intent of the Secretary to issue $1,000,000,000 of the Notes. The Secretary expressly reserves the right to accept or reject any or all of the bids in whole or in part. If acceptable bids of less than $500,000,000 are submitted, no bids will be accepted. The Secretary's action under this Section 6.10 is final.

Section 7. Payment for Notes

7.1. Payment. Payment for the Notes will be made on December 3, 1984, by FRB NY debiting the account of each successful Bidder's Paying Institution.

Section 8. Book-Entry Notes

8.1. Notes Held in Book-Entry Form. On the books of FRB NY, Notes may be held only by a Holding Institution. Before January 13, 1985, Notes may be held only in a Holding Institution's International Account. After January 12, 1985, Notes may be held in any book-entry account of a Holding Institution. Holding Notes in an account other than an International Account may affect the certifications required for tax purposes. See Section 11. A Holding Institution that has more than one available book-entry account with FRB NY may have more than one International Account. Each Bidder must identify on its tender form a Holding Institution with an International Account.

8.2. Transfer of Book-Entry Notes. Before January 13, 1985, FRB NY will transfer the Notes only between International Accounts. After January 12, 1985, the Notes may be transferred between any book-entry accounts of any Holding Institutions.

8.3. Book-Entry System. Book-entry records at FRB NY will reflect the aggregate holdings of Notes of each Holding Institution by account. The Holding Institution, and each subsequent holder in the chain to the ultimate beneficial owner, will have the responsibility of establishing and maintaining accounts for its customers. FRB NY will be responsible only for maintaining the book-entry accounts in its system, effecting transfers on its books, and ensuring that payments are made to the Holding Institution identified in its book-entry system. With respect to the Notes, FRB NY will act upon instructions of the Holding Institution holding the Notes.

8.4. FRB NY as Fiscal Agent. FRB NY acts as fiscal agent of Treasury. All other holders in the chain between FRB NY and the ultimate beneficial owner act as agents of the beneficial owner or as agents of intermediary Financial Institutions and not as agents of Treasury.

8.5. Payment of Interest and Principal. Interest on Notes in book-entry form will be paid on the interest payment date, and Notes will be redeemed at par on the maturity date. Funds for interest or redemption payments will be credited to the Holding Institution. In the case of a Holding Institution that is an International Financial Organization, interest and redemption payments will be made at a foreign office of such International Financial Organization. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other day on which Treasury in Washington, D.C. or FRB NY is not open for business, the interest or principal is payable (without additional interest) on the next day that both the Treasury in Washington, D.C. and FRB NY are open for business.

Section 9. Definitive Notes

9.1. Definitive Notes. After January 12, 1985, book-entry Notes held at FRB NY may be converted to Definitive Notes. Each Definitive Note will contain on its face the following legend: "This obligation has been sold at original issuance in accordance with procedures reasonably designed to ensure that it will be sold only to a person that is not a United States person, other than a foreign branch of a United States financial institution, pursuant to sections 871(h) and 881(c) of the Internal Revenue Code of 1954, as amended."

9.2. Requests for Conversion to Definitive Notes. The request for conversion of book-entry Notes to Definitive Notes may be made to FRB NY only by a Holding Institution and must provide the name and address of the Registered Owner. The Registered Owner of a Definitive Note may be the beneficial owner or an entity (other than an International Financial Organization) holding the Note on behalf of a beneficial owner. Upon receipt of the appropriate certification, as described in Section 11, FRB NY will deliver the Definitive Note either over the counter or via registered mail in accordance with the instructions provided by the

Holding Institution submitting the request for a Definitive Note.

9.3. Payment of Interest and Principal. Interest and maturity payments will be made by check payable to the Registered Owner or by credit to the reserve, clearing, or other dollar account of a Financial Institution that is the Registered Owner, if that Financial Institution maintains such as account with FRB NY. Interest and maturity payments will be mailed or credited on the date such payments are due. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other day on which Treasury in Washington, D.C. or FRB NY is not open for business, the interest or principal is payable (without additional interest) on the next day that both the Treasury in Washington, D.C. and FRB NY are open for business. Definitive Notes will be redeemed by FRB NY at par upon presentment by the Registered Owner or by a Holding Institution on behalf of the Registered Owner on or after the maturity date. Notes will not accrue interest after the maturity date.

9.4. Conversion to Book-Entry Form. A Registered Owner may convert a Definitive Note to book-entry form by submitting the Definitive Note to FRB NY through a Holding Institution. The signature of the Registered Owner must be guaranteed by the Holding Institution or certified by: (1) A United States diplomatic or consular representative; (2) a manager, assistant manager or other officer of a foreign branch of a bank or trust company incorporated in the United States, its territories or possessions, or the Commonwealth of Puerto Rico; or (3) a notary public or other officer authorized to administer oaths, provided that the official position and authority of any such officer is certified by a United States diplomatic or consular representative under seal of office. An International Financial Organization may convert a Definitive Note to book-entry form by submitting the Definitive Note, duly executed by an authorized official of such International Financial Organization, to FRB NY.

9.5. Transfer of Ownership. Ownership of Definitive Notes may be transferred by assignment. In order to reflect the change of ownership on the books of FRB NY, assigned Definitive Notes must be submitted for reregistration to FRB NY, together with the name and address of the new Registered Owner. The signatures of all assignors must be guaranteed by an institution that at the time of transfer is eligible to serve as a Paying Institution or certified by an individual who may certify signatures for purposes of Section 9.4 above.

9.6. Closed-Book Periods. Transactions involving Definitive Notes will not be accepted by FRB NY during closed-book periods. Such transactions include conversions between book-entry and Definitive Notes and changes in the registration of Definitive Notes. Books for Definitive Notes will be closed for one calendar month prior to and ending on an interest payment date and the maturity date. The Definitive Note books will be reopened on the next day that FRB NY is open for business following an interest payment date. No conversions or changes in registration will be allowed after the maturity date. During periods when the books for Definitive Notes are open, conversions and changes in registration of Definitive Notes generally will be processed by FRB NY within one week of receipt.

9.7. No Fees Imposed. FRB NY will not impose any fee for the issuance, transfer, exchange or redemption of Definitive Notes.

Section 10. Exchange for domestic notes

10.1. Exchange Provision. After January 12, 1985, Notes issued under this offering circular may be exchanged for Domestic Notes. Definitive Notes or Notes in book-entry form may be exchanged at FBR NY for an equal par amount of Domestic Notes in either book-entry or definitive form. Exchanges of Domestic Notes for Notes will not be permitted.

10.2. Taxation. Upon exchange for Domestic Notes, the holder of such Domestic Notes will be required to comply with the tax requirements (including certification requirements) applicable to Domestic Notes. See also Section 11.

10.3 Adjustment Upon Exchange. At the time of the exchange of Notes for Domestic Notes, an adjustment will be made for the difference between the present value of the Notes based on the formula in Attachment D for Treasury notes paying annual interest and the present value of the Notes based on the formula in Attachment D for Treasury notes paying semiannual interest. This net adjustment consists of the Exchange Adjustment and accrued interest, if applicable. As used in this offering circular, "Exchange Adjustment" means the difference in the present values of the Notes resulting from applying the formulas in Attachment D, after adjusting for the difference in accrued interest. In determining present values, the future payments of interest and principal will be discounted by using the weighted average yield of the Notes at the time of auction in applying the annual formula and by using the semiannual equivalent of that yield in applying the semiannual formula. Calculation of the present values will be made using the formulas shown in Attachment D hereto. In the event the present value of the Notes based on semiannual interest payments exceeds the present value of the Notes based on annual interest payments, the holder must pay to Treasury an amount equal to the excess before the exchange will be processed. In the event the present value of the Notes based on the annual interest payments exceeds the present value of the Notes based on the semiannual interest payments, the holder will receive on the exchange an amount equal to the excess. The net adjustment will not reflect or take into account any market-based factor.

10.4 Closed-Book Periods. Exchange transactions involving Notes or Domestic Notes in definitive form will not be accepted during closed-book periods that will be in effect during the period of one calendar month prior to and ending on an interest payment date and the maturity date. Exchange transactions involving only Notes and Domestic Notes in book-entry form may not be accepted on the day on which FBR NY is open for business preceding an interest payment date and the maturity date. The registration books for Notes and Domestic Notes in definitive form will be reopened on the first day following an interest payment date on which FRB NY is open for business. Except for the closed-book periods, exchange transactions involving only book-entry securities normally will be processed within one day; all other exchange transactions normally will be processed within one week of receipt by FBR NY. No exchanges will be allowed after the maturity date of the Notes.

Section 11. United States Taxation

11.1 Taxation of Interest and Principal to United States Aliens. Payments of interest and principal on the Notes to a United State Alien will not be subject to withholding of United States federal income tax if the Withholding Agent receives an effective certificate under Sections 11.4, 11.5, 11.6, or 11.7, and the other requirements described in the applicable section are satisfied. Failure to satisfy the requirement described in this Section 11.1 may result in imposition of a withholding tax.

11.2 Certification at Initial Issuance. A Bidder will be required to provide a written certification on the tender form that, as of the date of issuance, none of the Notes acquired by the Bidder will be beneficially owned by a United States

Person, other than a foreign branch of a United States Financial Institution, or is being acquired on behalf of such a person, or for offer to resell or for resale to such a person. This certification is in addition to and not limited by the transfer restriction in Section. 1.3. A certification made by a clearing organization must be based on such statements provided to the clearing organization by its member organizations. (Alternatively, a member organization of a clearing organization may provide the written certification directly to FBR NY.)

11.3. Confirmations. FBR NY will include a confirmation in the notification described in Section 6.9 that it is understood that the purchaser represents that it is not a United States Person or that if it is a United States Person it is a foreign branch of a United States Financial Institution. If the sale is to a dealer, the confirmation will state that the dealer is required to send a similar confirmation to its purchaser. Financial Institutions buying on behalf of or for resale to others are considered to be dealers and will be required to send confirmations to their customers.

11.4 Interest Certification: Financial Institutions. A Withholding Agent may make a payment of interest on a Note at an address outside of United States to a Registered Owner that is a Financial Institution without withholding United States federal income tax if(i) the Withholding Agent does not have actual knowledge that the beneficial owner of the Note is a United States Person (other than a foreign branch of a United States Financial Institution), (ii) the Note was sold in accordance with the precedures described in Sections 11.2 and 11.3, and (iii) the Financial Institution provides a certificate to the Withholding Agent in writing that states that the beneficial owner of the Note is not a United States Person (other than a foreign branch of a United States Financial Institution). No particular form is required for the certificate. If the Financial Institution does not hold Notes for a beneficial owner that is a United States Person (other than a foreign branch of a United States Financial Institution), a single certificate may be provided with respect to all of the Notes held by the Financial Institution. If a Financial Institution that is a Registered Owner transfers a Note and ceases to be the Registered Owner of such Note, then, except as described in Section 11.10, the Financial Institution will not be required to provide a certificate under this Section 11.4 with respect to such Note (unless the Financial Institution subsequently becomes the Registered Owner of the Note). Interest will be considered paid to a Registered Owner outside the United States if the Note is either recorded in a Holding Institution's International Account and interest is credited for that account or interest on a Definitive Note is delivered to the holder outside the United States.

11.5. Interest Certification: Clearing Organizations. A certificate described in Section 11.4 may be provided by a Financial Institution acting in its capacity as a clearing organization only if the clearing organization has received such a certificate from the member organization to which the interest is paid.

11.6. Interest Certification For Beneficial Owners That Are United States Persons. A Withholding Agent may make a payment of interest on a Note to a Registered Owner that is a Financial Institution at an address outside the United States without withholding United States federal income tax if the Withholding Agent receives an effective statement, as described below, from the Financial Institution (relating to beneficial ownership by certain United States Persons), and, if the Financial Institution is not a United States-Related Person, the Withholding Agent makes the information returns described in Section 11.9. If the Financial Institution is a United States-Related Person, the statement must be signed under the penalties of perjury by an authorized representative of the Financial Institution and must state that the institution has received from the beneficial owner a certificate, as described below, and that the institution will make such information returns and otherwise comply with information reporting required under the Internal Revenue Code. If the Financial Institution is not a United States-Related Person, the statement must be signed under penalties of prejury by an authorized representative of the Financial Institution and must state (i) that the institution has received from the beneficial owner a certificate, as described below, or (ii) that it has received from another Financial Institution a similar statement that it, or another Financial Institution acting on behalf of the beneficial owner, has received a certificate, as described below, from the beneficial owner. In the case of multiple Financial Institutions between the beneficial owner and the person otherwise required to withhold, this statement must be given by each Financial Institution to the one above it in the chain. The certificate from the beneficial owner must (i) be signed by the beneficial owner under penalties of perjury, (ii) provide the name and address of the beneficial owner, (iii) provide the United States taxpayer identification number and state that it is the beneficial owner's correct number, and (iv) state that the beneficial owner is not subject to backup withholding due to notified payee underreporting. This certificate may be provided on Internal Revenue Service Form W–9 or a substitute form that is substantially similar to a Form W–9. No particular form is required for the statement provided by the Financial Institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–9 or substitute form must be attached.

11.7. Interest Certification In Other Cases. A Withholding Agent may make a payment of interest on a Note to a Registered Owner without withholding United States federal income tax if (i) the Withholding Agent does not have actual knowledge that the beneficial owner of the Note is a United States Person (other than a foreign branch of a United States Financial Institution), and if (ii) the Withholding Agent receives a certificate from the Registered Owner that (A) is signed by the beneficial owner under penalties of perjury, (B) certifies that such owner is not a United States Person, or in the case of an individual, that he is neither a citizen nor a resident of the United States, and (C) provides the name and address of the beneficial owner. The statement may be made, at the option of the Withholding Agent, on Internal Revenue Service Form W–8 or on a substitute form that is substantially similar to a Form W–8. A Withholding Agent also may make a payment of interest to a United States Alien Registered Owner without withholding United States federal income tax if an appropriate statement is provided to the Withholding Agent by a Financial Institution. In such case the statement must describe the obligation, be signed under penalties of perjury by an authorized representative of the Financial Institution and state (i) that the Financial Institution has received from the beneficial owner a Form W–8 or substitute form, or (ii) that it has received from another Financial Institution a similar statement that it, or another Financial Institution acting on behalf of the beneficial owner, has received the Form W–8 or substitute form from the beneficial owner. In the case of multiple Financial Institutions between the beneficial owner and the Withholding Agent, this certificate must be given by each Financial Institution to

the one above it in the chain. No particular form is required for the statement provided by the Financial Institutions. However, the statement must provide the name and address of the beneficial owner, and a copy of the Form W–8 or a substitute form provided by the beneficial owner must be attached. The certification procedures of this Section 11.7 may be used in lieu of the procedures in Section 11.4 with respect to a payment of interest outside the United States on a Note registered in the name of a Financial Institution.

11.8. Prospective Determination. Any determination by the Secretary with respect to certification requirements pursuant to section 871(h)(4) of the Internal Revenue Code will be published and will be effective only with respect to payment of interest made more than one month after the publication of such a determination.

11.9. Certain Information Reporting. A Withholding Agent that receives a statement described in Section 11.6 from a Financial Institution that is not a United States-Related Person must make an information return on Internal Revenue Service Form 1099 of the payment with respect to which the statement (and accompanying certificate) is required for the calendar year in which the payment is made. The return should be completed as though the payment were made to the beneficial owner of the income. A Withholding Agent that receives a certificate described in Section 11.7 must make an information return on Internal Revenue Service Form 1042S of the payment with respect to which the certificate is required for the calendar year in which the payment is made. The certificate received with respect to the payment shall be attached to the Form 1042S required to be filed with respect to the payment.

11.10. Timing of Certificates at Interest Payments. The certificates or statements described in Section 11.4 through 11.7 are required to be received by the Withholding Agent within the 90-day period prior to the interest payment date. However, if a certificate is received less than 30 days before that date, the Withholding Agent, in its discretion, may withhold tax. If the information provided on a certificate described in Section 11.4 or 11.5 changes within the 90-day period prior to the interest payment date, the person providing the statement must inform the Withholding Agent (or clearing organization) within 30 days of such change. For example, if during the 90-day period, but subsequent to furnishing a certificate, beneficial ownership of a Note is transferred to a United States Person, the person furnishing the certificate described in Section 11.4 or 11.5 is required to amend its certificate within 30 days of the transfer to inform the Withholding Agent that the obligation is being held by a United States Person. Except as provided in this Section 11.10, a certificate described in Section 11.4 or 11.5 does not have to be amended if Notes are transferred from one Financial Institution to another Financial Institution. If the information on a certificate described in Section 11.6 or 11.7 changes, the beneficial owner must notify the Withholding Agent, or a Financial Institution acting on behalf of the beneficial owner, within 30 days. The Financial Institution must promptly inform the Withholding Agent (or a Financial Institution holding an interest in the Notes on its behalf) of such notice if the Financial Institution has been informed by the beneficial owner or if it has actual knowledge of such changes.

11.11. Retention of Certificates. The Withholding Agent is required to retain the written certifications for a period of four years after the close of the calendar year in which they were, respectively, obtained.

11.12. Information Reporting and Backup Withholding. Neither information reporting under section 6049 of the Internal Revenue Code nor backup withholding will apply to interest paid on a Note to a United States Alien if (i) the conditions of Section 11.1 are satisified, (ii) the payor of the interest does not have actual knowledge that the payee is a United States Person, and (iii) if the payor is a United States-Related Person acting as a custodian, nominee or other agent of the payee, the payor has documentary evidence in its records that the payee is not a United States citizen or resident. Neither information reporting under section 6045 of the Internal Revenue Code nor backup withholding will apply to payments of principal made outside the United States on a Note to a United States Alien (i) if the payor of the principal is not a United States-Related Person; or (ii) if the payor is a United States-Related Person acting as a custodian, nominee or other agent of the payee, the payor does not have actual knowledge that the payee is a United States Person (other than a foreign branch of a United States Financial Institution) and has documentary evidence in its records that the payee is not such a person. Principal will be considered paid to a Registered Owner outside the United States if either the Note is recorded in a Holding Institution's International Account and principal is credited for that account, or principal on a Definitive Note is delivered to the holder outside the United States.

11.13. Original Issue Discount. The Secretary shall determine whether the Notes will be considered issued with original issue discount within the meaning of section 1273(a)(1) of the Internal Revenue Code. In the event the Notes are issued with original issue discount, that fact and the amount of the discount will be announced in an Internal Revenue Service publication. See also Section 11.15. A United States Alien described in Section 11.2 that is a holder of a Note will not be subject to United States federal income tax and no withholding of United States federal income tax will be required as a consequence of the Note having original issue discount if the conditions of Section 11.1 are satisfied with respect to stated interest on the Note. A holder of a Note that is a United States Person generally will be required to include in income the portion of the original issue discount allocable to each day during the year on which the Note is held. Any such income will increase such holder's tax basis for the Note, and any gain or loss on a sale of the Note, determined by comparing the amount realized in such sale with the holder's basis, as so adjusted, generally will be capital gain or loss.

11.14. Taxation of Gains to United States Aliens. A holder of a Note that is a United States Alien will not be subject to the United States federal income tax and no witholding of United States federal income tax will be required with respect to any gain realized on the sale, redemption or exchange of the Note provided such gain is not effectively connected with a United States trade or business, and further provided that: (i) If such United States Alien is a nonresident alien individual, such individual is not present in the United States for a total of 183 days or more during the taxable year in which such gain is realized, is not subject to tax under section 877 of the Internal Revenue Code as an expatriate of the United States and is not treated as a resident of the United States for the taxable year in which the gain is recognized under sections 6013(g) or 6013(h) of the Internal Revenue Code; or (ii) if such United States Alien holder is a foreign corporation, such foreign corporation will not have a past or present status as a personal holding company with respect to the United States or as a corporation which accumulates earnings to avoid United States federal income tax.

11.15. Exchange for Domestic Notes. A holder of a Note will not recognize gain or loss on the exchange of a Note for a Domestic Note under the procedures in Section 10. Upon the exchange, a holder will be considered to have received interest accrued on the Note up to the time of the exchange and to have paid to Treasury the Exchange Adjustment amount. (Actual payments will be only of the net amount. See Section 10.3.) The amount of the Exchange Adjustment will be considered an increase in the original issue price (which will reduce original issue discount, if any, with respect to the Note).

11.16. Federal Estate Taxation of United States Aliens. Any Note held by an individual who at the time of his death is not a citizen of or domiciled in the United States will not be included in the decedent's gross estate for purposes of United States federal estate tax at the time of such individual's death if interest paid on the Note to the individual at the time of his death would not have been subject to withholding of United States federal income tax because the conditions described in Section 11.1 are satisfied but without regard to whether a certificate or statement described in Section 11 has been received by the Withholding Agent since the last interest payment.

11.17. State and Local Taxation. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States or any local taxing authority, except for: (i) a non-discriminatory franchise or other nonproperty tax instead of a franchise tax imposed on a corporation, or (ii) an estate or inheritance tax. See section 3124 of Title 31 of the United States Code.

Section 12. Sanctions

12.1. Sanctions. In the Secretary's sole discretion, any person found to be in violation of any requirements or provision set forth in this offering circular may be excluded from bidding for or purchasing some or all future issues of Treasury foreign-targeted securities and may be subject to such other sanctions as determined by the Secretary.

Section 13. General Provisions

13.1. Applicable Law. The law governing all matters relating to the terms and conditions of the Notes is the federal law of the United States.

13.2. Modifications. The Secretary may supplement or amend provisions of this offering circular governing the offering if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such future changes will be promptly provided.

13.3. Monthly Information. The Secretary will publish the total amount of Notes outstanding in the Monthly Statement of the Public Debt.

13.4. Listing. The Notes will be listed on the New York Stock Exchange as of December 3, 1984.

13.5. Eligibility for Clearance. The Notes will be eligible for clearance on Euro-Clear and CEDEL.

13.6. Headings. The headings of sections and subsections in this offering circular are inserted, for convenience of reference only and shall not be deemed to be part of this offering circular.

13.7. Attachments Incorporated. Attachments A through D and any terms and conditions set forth therein are incorporated as part of this offering circular.

13.8. Waiver. The Secretary reserves the right, in his discretion, to waive any provision or provisions of this offering circular.

13.9. Sale in the United States. The Notes are offered for sale only in the United States. Resale or reoffering of the Notes outside the United States is authorized only when such resale or reoffering complies with the securities laws and other applicable laws of jurisdictions in which such resale or reoffering occurs. Bidders and their agents are responsible for ensuring compliance with the laws of such jurisdictions.

Carole Jones Dineen,

Fiscal Assistant Secretary.

BILLING CODE 4810-40-M

TENDER FOR 5- YEAR 2- MONTH FOREIGN - TARGETED TREASURY NOTES OF FEBRUARY 15, 1990, SERIES H - 1990

IMPORTANT — ONLY COMPETITIVE TENDERS WILL BE ACCEPTED AND MUST BE RECEIVED BY THE FEDERAL RESERVE BANK OF NEW YORK BEFORE 1:00 P.M. NEW YORK TIME ON NOVEMBER 28, 1984.

To: Federal Reserve Bank of New York
Fiscal Agent of the United States
33 Liberty Street
New York, New York 10045

The undersigned offers to purchase the above-described Notes in the amount indicated below and agrees to make payment therefor at FRB NY in accordance with the provisions of the official offering circular (Department Circular, Public Debt Series No. 38-84). The definitions in the official offering circular apply to this tender form.

The total par amount bid at the lowest yield must be at least $50,000,000. Par amount bid for must be a multiple of $1,000,000. Bidders may submit multiple bids but each bid must be submitted on a separate tender form.

COMPETITIVE TENDER

PAR AMOUNT

$.....(United States dollars)
(maturity value)

ANNUAL YIELD

.....
(Yield must be expressed to two decimal places, for example, 7.10%)

☐ Check here if this is a syndicate bid.

DELIVERY AND PAYMENT INSTRUCTIONS

Issue book-entry Notes to be held at FRB NY in an International Account of .....

.....
(Name and Address of Holding Institution)

Payment for Notes awarded will be made through.....
(Name and Address of Paying Institution)

☐ By charge to reserve account; ☐ By charge to clearing account; ☐ By charge to other dollar account

Authorization for such charge must be on file with FRB NY in accordance with the provisions of the official offering circular. If otherwise eligible, the Holding Institution and the Paying Institution may be, but do not have to be, the same.

Bid may be submitted only by or on behalf of Bidders as defined in the official offering circular. If the tender form is submitted by a United States Person, other than a foreign branch of a United States Financial Institution, it must be acting solely as agent for a disclosed Bidder.

TENDER FORM IS SUBMITTED BY: (Please print or type)

NAME.....

ADDRESS.....

CITY.....STATE...ZIPCODE.....

COUNTRY.....

AREA CODE..... TELEPHONE NUMBER.....

If acting as agent, Bidder must be identified below. If Bidder is a syndicate, the head of the syndicate must be identified below.

NAME.....

ADDRESS.....

.....

BIDS WILL BE CONSIDERED ONLY IF THE REVERSE SIDE IS COMPLETED AND EXECUTED.

CERTIFICATIONS AND GUARANTEE

1. WE HEREBY CERTIFY that (i) as of December 3, 1984, none of the Notes awarded to us will be beneficially owned by a United States Person, other than a foreign branch of a United States Financial Institution, and (ii) none of the Notes awarded to us is being acquired on behalf of a United States Person, other than a foreign branch of a United States Financial Institution, or for offer to resell or for resale to such a person.

2. WE FURTHER CERTIFY that we will not sell, contract to sell, or otherwise transfer Notes issued to us to a United States Person, other than a foreign branch of a United States Financial Institution, until after January 12, 1985. We further agree that if we sell, contract to sell, or otherwise transfer a Note before January 13, 1985, we will confirm to such purchaser or transferee in writing that (i) there is a restriction on sale or other transfer to United States Persons other than foreign branches of United States Financial Institutions and (ii) that such confirmation is required to be given to any subsequent purchaser or transferee that acquires the Note before January 13, 1985. We understand that this certification is independent of, and that any transfer must be consistent with, the certification of the preceding paragraph.

3. If this is a syndicate bid, WE FURTHER CERTIFY that, except as identified below, no syndicate member is bidding for Notes in excess of $350,000,000, either through this syndicate, individually, or through another syndicate. (Supply below the identity of any syndicate bidders whose total bids are in excess of $350,000,000 and the amount of Notes included in this syndicate bid for each such member.)

_____

_____

☐ Check here if entity submitting the bid is eligible to and does hereby guarantee payment to Treasury, in accordance with the terms of the official offering circular, of an amount equal to 5% of the Notes for which the tender is submitted. If this box is not checked, a payment guarantee in the form specified in the official offering circular must have been submitted previously to FRB NY unless the Bidder is exempt from such guarantee requirement.

If this tender form is submitted by an agent for a Bidder, the above certifications are made by the agent on behalf of, and are binding on, that principal.

TENDER IS SUBMITTED BY: _____

AUTHORIZED SIGNATURE: _____

NAME AND TITLE OF AUTHORIZED SIGNER: _____

DATE: _____

INSERT THIS TENDER FORM IN ENVELOPE MARKED "TENDER FOR FOREIGN - TARGETED TREASURY NOTES"

Attachment B

[Letterhead of Paying Institution]

Federal Reserve Bank of New York
33 Liberty Street, Room 835
New York, New York 10045
Attn: Mr. Stuart Zorfas
Chief, Securities Department

Gentlemen:

1. We hereby authorize you to debit our (reserve, clearing, or other dollar) account in an amount not to exceed $_____, as payment for United States Treasury securities targeted to foreign investors ("Securities") awarded to (name Bidder). Terms used herein shall have the same meaning as set forth in the official offering circular applicable to the Securities.

2. We retain the right to modify or withdraw this authority. We understand that any such modification or withdrawal must be in writing and must be delivered to FRB NY. We understand that, unless restricted to a specific auction, this letter will be retained by FRB NY and, until modified or withdrawn, may be used by (name Bidder) to pay for any Securities purchased by (name Bidder).

3. We further understand that any Securities paid for by a debit to our (reserve, clearing, or other dollar) account will be issued to our International Account. (This sentence is not required if the Paying Institution signing this letter is willing to permit the Securities paid for under this authorization to be issued to another Holding Institution's International Account.)

4. The following signature(s) is (are) a specimen of the authorized signature(s) which will appear on the tender form submitted by (name Bidder):

_____
(Authorized Signature of Bidder or Bidder's Agent)

_____
(Name of Authorized Signer)

_____
(Title of Authorized Signer)

ATTACH SEPARATE SHEET FOR ADDITIONAL SIGNATURES

_____
(Name of Paying Institution)

By: _____
(Authorized Signature)

_____
(Name of Authorized Signer)

_____
(Title of Authorized Signer)

_____
(Date)

Receipt Acknowledged:

_____
FRB NY

TERMS AND FORM OF THIS LETTER MAY NOT BE ALTERED EXCEPT AS INDICATED IN PARAGRAPH 3

Attachment C

[Letterhead of Guarantor]

Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045
Attn: Mr. Stuart Zorfas
Chief, Securities Department

Gentlemen:

This is to advise you that we guarantee payment to Treasury of an amount equal to 5% of the par amount, but not in excess of $_____, of any United States Treasury securities targeted to foreign investors ("Securities") for which _____ bids.
(name of Bidder)

We acknowledge that this guarantee may not be withdrawn during any period between the deadline for submission of bids for Securities and payment for those Securities.

_____
(Name of Guarantor)

By: _____
(Authorized Signature)

_____
(Name and Title of Authorized Signer)

_____
(Date)

Receipt Acknowledged:

_____
FRB NY

TERMS AND FORM OF THIS LETTER MAY NOT BE ALTERED

Attachment D

Formules for Calculating the Present Value (Price Plus Accrued Interest) And Yield to Maturity of Treasury Notes Paying Annual Interest 1/

Case A: Calculations during an initial "short" interest period for Treasury notes with long coupons

$$(P+A) = \frac{(r"/360)(C)(v) + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r"-r)/360](C)$

Case B: Calculations during the first "regular" interest period for Treasury notes with long coupons (for use beginning with the first coupon frequency date 2/)

$$(P+A) = \frac{(r"/360)(C) + C + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r"/360) + (360-r)/360](C)$

Case C: Calculations during an initial "short" period for Treasury notes with short first coupons

$$(P+A) = \frac{(r"/360)(C) + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(r"-r)/360](C)$

Case D: Calculations when the coupon paid on the next coupon frequency date is a regular coupon

$$(P+A) = \frac{C + (C)a_{\overline{n}|} + 100v^{n}}{(1+i)^{f}}$$

and $A = [(360-r)/360](C)$

where:

P = Price in decimals.
A = Accrued interest from original issue date or last interest payment date to valuation date.
r = Days from valuation date to next coupon frequency date calculated on a 360 days per year basis from and including the day following the valuati date up to and including the next coupon frequency date. A full month wi be counted as thirty days and a date occurring on the thirty-first calendar day of a month shall be the same as the first calendar day of the following month. If the valuation date falls on a coupon frequency date then r will be defined to be equal to 360.
f = r/360
r" = Days from the original issue date of the security to the first coupon frequency date of the security calculated using the same conventions used in calculating r.
i = Interest rate (yield to maturity), expressed in decimals and based on annual interest payments.
C = Regular annual coupon, payable annually.
n = Number of full annual periods from valuation date to maturity except that if the valuation date occurs on a coupon frequency date n will be one less than the number of full annual periods remaining to maturity.
$v = 1/(1+i)$
$v^n = 1/(1+i)^n$
$a_{\overline{n}|} = (1-v^n)/i = v + v^2 + v^3 + \ldots\ldots\ldots\ldots + v^n$ = present value of 1 per period for n periods.

1/ These formulas are specifically intended only for use with the foreign-targeted notes described in this offering circular.

2/ A coupon frequency date is a coupon payment date except for a note with an initial long coupon in which case there is no payment on the first coupon frequency date.

Note: The day count conventions used for determining short and long coupo and accrued interest and for discounting over partial periods for targeted Notes do not conform to regular Treasury practice for domestic securities. The conventions for the targeted Notes assume that each month has thirty days and that a date occurring on the thirty-first calendar day of a month is the same as the first calendar day of the following month. Unlike the convention for corporate bonds in the United States, the last day of February is not defined to be the thirtieth day of the month. Thus, application of these rules results in three days between February 28th and March 1st and zero days between March 31st and the first of April. Similarly, a strict application of these rules leads to 181 days between September 30th and March 31st.

Formulas for Calculating the Present Value (Price Plus Accrued Interest) And Yield to Maturity of Treasury Notes Paying Semiannual Interest 1/

Case A: Calculations during an initial "short" interest period for Treasury notes with long coupons

$$(P+A) = \frac{(r"/s)(C/2)(v) + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(r"-r)/s](C/2)$

Case B: Calculations during the first "regular" interest period for Treasury notes with long coupons (for use beginning with the first coupon frequency date 2/)

$$(P+A) = \frac{(r"/s")(C/2) + (C/2) + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(r"/s") + (s-r)/s](C/2)$

Case C: Calculations during an initial "short" period for Treasury notes with short first coupons

$$(P+A) = \frac{(r"/s)(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(r"-r)/s](C/2)$

Case D: Calculations when the coupon paid on the next coupon frequency date is a regular coupon

$$(P+A) = \frac{C/2 + (C/2)a_{\overline{n}|} + 100v^n}{(1+i/2)^f}$$

and $A = [(s-r)/s](C/2)$

where:

P = Price in decimals.
A = Accrued interest from original issue date or last interest payment date to valuation date.
r = Exact number of days from valuation date to next coupon frequency date.
r" = Exact number of days from the original issue date to the first coupon frequency date.
f = r'/180 where r' is the number of days from the valuation date to the next coupon frequency date calculated on a 360 days per year basis from and including the day following the valuation date up to and including the next coupon frequency date. A full month will be counted as thirty days and a date occurring on the thirty-first calendar day of a month shall be the same as the first calendar day of the following month. If the valuation date falls on a coupon frequency date then f will be defined to be equal to one.
s = Exact number of days in the current semiannual period. On a coupon frequency date s is the exact number of days to the next coupon frequency date.
s" = Exact number of days in the semiannual period containing the issue date.
i = Interest rate (yield to maturity), expressed in decimals and based on semiannual interest payments.
C = Regular annual coupon, payable semiannually.
n = Number of full semiannual periods from valuation date to maturity except that if the valuation date occurs on a coupon frequency date n will be one less than the number of full semiannual periods remaining to maturity.
$v = 1/(1+i/2)$
$v_n = v^n$
$a_{\overline{n}|} = (1-v^n)/(i/2) = v + v^2 + v^3 + \ldots\ldots\ldots\ldots + v^n$ = present value of 1 per period for n periods.

1/ These formulas will only be used for making calculations involved in exchanging targeted registered issues for companion regular Treasury issues.

2/ A coupon frequency date is a coupon payment date except for a note with an initial long coupon in which case there is no payment on the first coupon frequency date.

Note: The day count conventions used for pricing domestic Treasury notes in making exchange calculations do not conform to regular Treasury practice for domestic securities. The conventions assume that each month has thirty days and that a date occurring on the thirty-first calendar day of a month is the same as the first calendar day of the following month. Unlike the convention for corporate bonds in the United States, the last day of February is not defined to be the thirtieth day of the month. Thus, application of these rules results in three days between February 28th and March 1st and zero days between March 31st and the first of April. Similarly, a strict application of these rules leads to 181 days between September 30th and March 31st (but note the definition of f above).

SAMPLE EXCHANGE VALUES FOR A HYPOTHETICAL 5-YEAR NOTE DATED 12/ 3/1984 AND MATURING 2/15/1990

DATES OF EXCHANGE	11.375% ANNUAL COUPON @ 11.45% ANN	11.375% SEMIANNUAL COUPON @ 11.14% S/A	ACCRUED INTEREST	EXCHANGE ADJUSTMENT	NET ADJUSTMENT (TO TREASURY) TO INVESTOR
1/14/85	P= 99.526134	P=100.793646			
	A= 1.295486	A= 1.298234			
	P+A=100.821620	P+A=102.091880	(.002748)	(1.267512)	(1.270260)
2/15/85	P= 99.492191	P=100.762021			
	A= 2.275000	A= 2.287364			
	P+A=101.767191	P+A=103.049385	(.012364)	(1.269830)	(1.282194)
2/28/85	P= 99.480592	P=100.757728			
	A= 2.685764	A= 2.695859			
	P+A=102.166356	P+A=103.453587	(.010095)	(1.277136)	(1.287231)
8/15/85	P= 99.473004	P=100.814372			
	A= 7.962500	A= .000000			
	P+A=107.435504	P+A=100.814372	7.962500	(1.341368)	6.621132
12/31/85	P= 99.666960	P=100.763227			
	A= 12.259722	A= 4.265625			
	P+A=111.926682	P+A=105.028852	7.994097	(1.096267)	6.897830
10/15/87	P= 99.715801	P=100.447621			
	A= 7.583333	A= 1.885530			
	P+A=107.299134	P+A=102.333151	5.697803	(.731820)	4.965983
8/31/88	P= 99.751255	P=100.306535			
	A= 6.193056	A= .494565			
	P+A=105.944311	P+A=100.801100	5.698491	(.555280)	5.143211

FIGURES MERELY ILLUSTRATE EXCHANGE VALUE COMPUTATIONS AND ARE NOT INTENDED TO APPLY TO THE NOTES OFFERED IN THIS CIRCULAR.

[FR Doc. 84-30954 Filed 11-26-84; 8:45 am]
BILLING CODE 4810-40-C

Public Information Collection Requirements Submitted to OMB for Review

Dated: November 21, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Numver: 1545–0677
Form Number: IRS Form 599–5–325
Type of Review: Revision
Title: Personnel Processing Masterform

OMB Number: 1545–0158
Form Number: IRS Form 3491
Type of Review: Extension
Title: Consumer Cooperative Exemption Application (For Exemption from Filing Forms 1096 & 1099–PATR)

OMB Number: 1545–0609
Form Number: IRS Forms 1285C, 1285(SC) and 1285(DO)
Type of Review: Extension
Title: Problem Resolution Program Followup Letter

Clearance Officer: Garrick Shear (202) 566–6254, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Norman Frumkin (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph F. Maty,
Departmental Reports Management Officer.

[FR Doc. 84-31007 Filed 11-26-84; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 229
Tuesday, November 27, 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

November 20, 1984

Additional Item To Be Considered at Open Meeting, Wednesday, November 21st

The Federal Communications Commission will consider an additional item on the subject listed below at the Open Meeting scheduled for 9:30 A.M., Wednesday, November 21, 1984 at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

Common Carrier—8—Title: Second Report and Order, General Docket No. 80-112. Summary: The Commission will consider adopting rules to allow the use of lotteries for the selection of Multichannel Multipoint Distribution Service licensees.

The prompt and orderly conduct of Commission business requires that less than 7-days notice by given consideration of this additional item.

Action by the Commission November 20, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this item may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254-7674.

William J. Tricarico

Secretary, Federal Communications Commission.

[FR Doc. 84-31116 Filed 11-23-84; 10:25 am]

BILLING CODE 6712-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 3, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 23, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31175 Filed 11-23-84; 2:55 pm]

BILLING CODE 6210-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 26, December 3, 10, and 17, 1984

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed

MATTERS TO BE CONSIDERED:

Week of November 26

Tuesday, November 27

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 3

Tentative

Monday, December 3

2:00 p.m.
Discussion/Possible Vote on Severe Accident Policy Statement (Public Meeting)

Wednesday, December 5

10:00 a.m.
Discussion of Indian Point Order (Public Meeting) (if needed)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, December 6

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 10

Tentative

Monday, December 10

1:00 p.m.
Discussion of Adjudication Matters Related to Catawba-1 (Closed—Ex. 10) (if needed)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Catawba-1 (Public Meeting)

Tuesday, December 11

10:00 a.m.
Staff Follow-up to 11/15 DOE Briefing on High Level Waste Program (Public Meeting)
2:00 p.m.
Year End Budget Review (Public Meeting)

Thursday, December 13

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, December 14

10:00 a.m.
Discussion of 1985 Policy and Planning Guidance (Public Meeting)
2:00 p.m.
Briefing and Discussion on the Hearing Process (Public Meeting)

Week of December 17

Tentative

Monday, December 17

10:00 a.m.
Discussion of Material False Statements—Policy Options (Public Meeting)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, December 18

9:00 a.m.
Discussion of Adjudication Matters Related to Byron-1 (Closed—Ex. 10)
10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Byron-1 (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Proposed Amendments to 10 CFR Part 2 (Public Meeting)

Thursday, December 20

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "UCS Proposed Correction Regarding Its Status on Management Issues in TMI–1 Restart Proceeding" (Public Meeting) was held on November 15.

Discussion of Management-Organization and Internal Personnel Matters scheduled for November 19, *postponed.*

Briefing by OI (Closed—Ex. 5 & 7) was held on November 21.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording) (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: November 21, 1984.

George T. Mazuzan,

Office of the Secretary.

[FR Doc. 31190 Filed 11–23–84; 3:59]

BILLING CODE 7590–01–M

4

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 26, 1984, at 450 Fifth Street, NW., Washington, D.C.

Closed meetings will be held on Tuesday, November 27, 1984, at 10:00 a.m. and on Thursday, November 29, 1984, following the 3:15 p.m. open meeting. Open meetings will be held on Tuesday, November 27, 1984, at 2:30 p.m. and on Thursday, November 29, 1984, at 2:30 p.m. and 3:15 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox and Peters voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 27, 1984, at 10:00 a.m., will be:

Formal order of investigation.

Settlement of administrative proceedings of an enforcement nature.

Institution of administrative proceeding of an enforcement nature.

Institution of injunctive actions.

Freedom of Information Act requests.

The subject matters of the closed meeting scheduled for Thursday, November 29, 1984, following the 3:15 p.m. open meeting, will be:

Oral argument discussions.

The subject matter of the open meeting scheduled for Tuesday, November 27, 1984, at 2:30 p.m., will be:

1. Consideration of whether to propose for public comment an amendment to General Instruction D to Form 13F which would simplify procedures for managers requesting confidential treatment for open risk arbitrage positions. For further information, please contact Susan P. Hart at (202) 272–2098.

2. Consideration of whether to issue a release adopting an industry guide and rules relating to disclosures about reserves and reserving practices of property-casualty insurance underwriters. For further information, please contact Dorothy Walker or Jeremiah Harrington at (202) 272–2130.

The subject matter of the open meeting scheduled for Thursday, November 29, 1984, at 2:30 p.m., will be:

Oral argument in an appeal by Bruce Paul from the decision of an administrative law judge. For further information, please contact William S. Stern at (202) 272–7400.

The subject matter of the open meeting scheduled for Thursday, November 29, 1984, at 3:15 p.m., will be:

Oral argument in an appeal by Hammon Capital Management Corporation, a registered investment adviser, and Gabe Hammon, its president, from the decision of an administrative law judge. For further information, please contact Herbert V. Efron at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, it any, matters have been added, deleted or postponed, please contact: David Powers (202) 272–2091.

Shirley E. Hollis,

Acting Secretary.

November 21, 1984.

[FR Doc. 84–31152 Filed 11–23–84; 12:39 p.m.]

BILLING CODE 8010–01–M

5

UNITED STATES INTERNATIONAL TRADE COMMISSION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 44974 (11–13–84).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, November 28, 1984.

CHANGES IN THE MEETING: Addition of agenda items as follows:

2. Investigation 751–TA–9 (Drycleaning Machinery From West Germany)—briefing and vote.

3. Service Awards Recognition.

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes and Lodwick determined by unanimous vote that Commission business requires the change in subject matter by addition of the agenda items, affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time. Commissioner Rohr did not participate in the vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[FR Doc. 84–31216 Filed 11–23–84; 4:31 pm]

BILLING CODE 7020–02–M

federal register

Tuesday
November 27, 1984

Part II

Department of Transportation

Research and Special Programs Administration

Hazardous Materials; Inconsistency Rulings IR-7 Through IR-15

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Nos. IRA-20 Through IRA-27 and IRA-30]

Hazardous Materials; Inconsistency Rulings IR-7 Through IR-15

General Preamble

I. *Introduction:* The Materials Transportation Bureau (MTB) announces rulings as to the consistency of regulations or actions taken by the following States, local governments, or political subdivisions, with the Hazardous Materials Transportation Act (HMTA) or the Hazardous Materials Regulations (HMR) adopted thereunder:

IR-7. State of New York; Letter from Governor's Designated Representative Advising Suspension of Spent Fuel Shipments (Docket IRA-20).

IR-8. State of Michigan; Radioactive Materials Transportation Regulations of the State Fire Safety Board and the Department of Public Health (Docket IRA-21).

IR-9. State of Vermont; Letter from Governor Concerning Highway Shipment of Spent Fuel through Vermont (Docket IRA-22).

IR-10. State of New York; New York State Thruway Authority Restrictions on the Transportation of Radioactive Materials (Docket IRA-23).

IR-11. State of New York; Ogdensburg Bridge and Port Authority, Radioactive Materials Transportation Rules (Docket IRA-24).

IR-12. State of New York; St. Lawrence County Local Law Regulating the Transportation of Radioactive Materials Through the County (Docket IRA-25).

IR-13. State of New York; Thousand Islands Bridge Authority Restrictions on the Transport of Radioactive Materials (Docket IRA-26).

IR-14. State of New York; Jefferson County Local Legislative Stipulation Regulating Radioactive Materials Transportation through the County (Docket IRA-27).

IR-15. State of Vermont; Rules for the Transportation of Irradiated Reactor Fuel and Nuclear Waste (Docket IRA-30).

II. *Applicable Federal Requirements:* Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 *et seq.*); and the Hazardous Materials Regulation (HMR) (49 CFR Parts 170–179).

III. *Issue Date:* November 20, 1984.

IV. *General summary:* Each ruling identified in Section I above, represents the opinion of the MTB concerning whether the regulations or other specified actions of the entities identified therein are consistent, in whole or in part, with the HMTA or the HMR. Each ruling was initiated and is issued under 49 CFR 107.201–107.209.

V. *For further information contact:* Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (Telephone: (202) 755–4972).

VI. *Procedural summary:* The information, discussion, and citations provided in Sections I–X of this General Preamble constitute a part of each of the nine Rulings identified in Section I. Where information or statements in the General Preamble address a specific Ruling, that information is relevant only to that Ruling. This General Preamble includes a discussion of statutory preemption under the HMTA; a description of the Federal routing regulations; a chronology of the events leading up to the issuance of these inconsistency rulings; and a brief discussion of the comments received. It is followed by the nine inconsistency rulings, each of which represents a separate administrative proceeding.

VII. *General authority and preemption under the HMTA:* With certain exceptions, the HMTA imposes obligations to act only on the Secretary of Transportation. Obligations are imposed on members of the public only by substantive regulations issued under the HMTA. Known as the Hazardous Materials Regulations (HMR), they are codified at 49 CFR Parts 170–179, and mostly predate the HMTA. The HMR previously were authorized by the Explosives and other Dangerous Articles Act (18 U.S.C. 831–835), which was repealed in 1979 (Pub. L. 96–129, November 30, 1979). The HMTA was enacted on January 3, 1975 and the HMR were reissued under its authority, effective January 3, 1977 (41 FR 39175, September 9, 1976). Subsequent amendments to the HMR have been issued under the authority of the HMTA and with the preemptive effect granted by that Act.

The HMR apply to persons who offer hazardous materials for transportation in commerce (shippers), those who transport the materials in commerce (carriers), and those who manufacture and retest the packagings and other containers intended for use in the transportation of the materials in commerce. The scope of transportation activity affected includes the packaging of shipments of hazardous materials, package markings (to show content) and labeling (to show hazard), vehicle placarding (to show hazard), handling procedures, such as loading and unloading requirements, routing, care of vehicle and lading during transportation, and the preparation and use of shipping papers to show the identity, hazard class and amount of each hazardous material being shipped. The HMR also require carriers to report in writing to DOT any unintentional release of a hazardous material during transportation.

The HMTA at section 112(a) (49 U.S.C. 1811(a)) preempts ". . . any requirement of a State or political subdivision therof, which is inconsistent with any requirement set forth in (the HMTA) or regulations issued under (the HMTA)." This express preempting provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any State or local action. The HMTA preempts only those State and local requirements that are "inconsistent."

Absent Federal occupation of the field, a State may take certain measures, in the exercise of its police power, to safeguard the health, safety and welfare of its citizens. Section 112(a) of the HMTA provides that such State (or local) action may not be inconsistent with the HMTA or the regulations issued thereunder. The legislative history of this provision indicates that Congress intended it "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." (S. Rep. No. 1192, 93d Cong. 2d Sess. 37(1974)).

In 49 CFR Part 107, the Materials Transportation Bureau (MTB) has published procedures which implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings. At the time that these procedures were published, MTB observed that "(t)he determination as to whether a State or local requirement is consistent or inconsistent with the Federal statute or Federal regulations is traditionally judicial in nature." (41 FR 38167, September 9, 1976). There are two principal reasons for providing an administrative forum for such a determination. First, an inconsistency ruling provides an alternative to litigation for a determination of the relationship between Federal requirements and those of a State or political subdivision thereof. Second, if a State or political subdivision requirement is found to be inconsistent, such a finding provides the basis for application to the Secretary of Transportation for a determination as to

whether preemption will be waived (49 U.S.C. 1811(b); 49 CFR 107.215–107.225).

Since these proceedings are conducted pursuant to the HMTA, only the question of statutory preemption will be considered. A Federal court may find a non-Federal requirement not statutorily preempted, but, nonetheless, preempted by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, the Department of Transportation does not make such determinations.

Given the judicial character of the inconsistency ruling proceeding, MTB has incorporated into it case law criteria for determining the existence of conflicts:

(1) Whether compliance with both the (non-Federal) requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the (non-Federal) requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act. (49 CFR 107.209(c)).

The first criterion, commonly called the "dual compliance" test, concerns those non-Federal requirements which are incongruous with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, in a sense, subsumes the first and concerns those non-Federal rules that, regardless of conflict with a Federal requirement, stand as "an obstacle to the accomplishment and execution of the (HMTA) and the regulations issued under the (HMTA)." In determining whether a non-Federal requirement presents such an obstacle, it is necessary to look at the full purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through the MTB's regulatory program.

In enacting the HMTA, Congress recognized that the Department's efforts in hazardous materials transportation regulation lacked coordination by being divided among the various transportation modes, and lacked completeness because of gaps in the Department's authority, most notably in the area of manufacturing and preparation of packagings used to transport these materials. (S. Rep. No. 1192, 93d Cong., 2d Sess. 1–2, 7–9 (1974).) In order to "protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce" (49 U.S.C. 1801), Congress consolidated and expanded the Department's regulatory and enforcement authority.

There is a longstanding Federal-State relationship in the field of highway transportation safety which recognizes the legitimacy of State action taken to protect persons and property within the State, even where such action impacts upon interstate commerce. However, certain areas of transportation safety demand a strong, predominant Federal role. In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation and, by enactment of the HMTA, gave the Department the authority to promulgate such standards. While the HMTA did not totally preclude State or local action in this area, it is the MTB's opinion that Congress intended, to the extent possible, to make such State or local action unnecessary. The comprehensiveness of the HMR severely restricts the scope of historically permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

There are certain areas where the need for national uniformity is so crucial and the scope of Federal regulation is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder. Cargo containment systems is one area where the MTB believes this to be true. The HMR contain extensive requirements for the packagings necessary for safe transportation of hazardous materials. MTB has studied specific commodities and determined what type of container must be used to move them, as well as, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, and what other steps must be taken to ensure the integrity of the container. Uniform standards in this area ensure safe, efficient interstate transportation. State and local governments may not issue requirements which differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations.

Another area where MTB perceives the Federal role to be exclusive is that of hazard warning systems, including the hazard class definitions on which these systems are based. MTB has thoroughly considered this subject and has issued regulations on marking and labeling of packages and placarding of vehicles in order to communicate the hazards of the materials contained therein. The effectiveness of these systems depends to a large degree on educating the public, especially emergency response personnel. Recognizing the special needs of emergency response personnel, MTB has developed and distributed hundreds of thousands of copies of its "Hazardous Materials Emergency Response Guidebook" (DOT P 5800.2) which provides instructions, based on the hazard warning systems, for initial actions to be taken in the event of an accident involving hazardous materials. Among other efforts to widely disseminate information on its systems, MTB conducts and supports educational programs, sponsors demonstration projects, and distributes informational literature. Additional, different hazard warning requirements imposed by States or localities detract from the Federal systems and may confuse those to whom the Federal systems are meant to impart information.

Despite the dominant role that Congress contemplated for Departmental standards, there are certain aspects of hazardous materials transportation that are not amenable to exclusive nationwide regulation. One example is traffic control. Although the Federal Government can regulate in order to establish certain national standards promoting the safe, smooth flow of highway traffic, maintaining this in the face of short-term disruptions is necessarily a predominantly local responsibility. Another aspect of hazardous materials transportation that is not amenable to effective nationwide regulation is the problem of safety hazards which are peculiar to a local area. To the extent that nationwide regulations do not adequately address an identified safety hazard because of unique local conditions, State or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard. The mere claim of uniqueness, however, is insufficient to insulate a non-Federal requirement from the preemption provisions of the HMTA.

Moreover, even when there is an unquestionably unique local safety hazard, a State or local government may not resolve the problem by effectively exporting it to another jurisdiction. (*Kassel* v. *Consolidated Freightways*, 450 U.S. 662, 1981.) For example, in a previous inconsistency ruling dealing with a hazardous materials routing rule issued by the City of Boston (IR–3, 46 FR 18918, March 26, 1981), MTB stated that

consistency with the HMTA requires a State or local government to "act through a process that adequately weighs the full consequences of its routing choices and ensures the safety of citizens in other jurisdictions that will be affected by its rules." (46 FR 18922).

Section 112(b) of the HMTA (49 U.S.C. 1811(b)) authorizes the Secretary of Transportation to waive preemption of an inconsistent non-Federal requirement upon finding that such requirement:

(1) Affords an equal or greater level of protection to the public than is afforded by the requirements of (the HMTA) or of regulations issued under (the HMTA) and

(2) Does not unreasonably burden commerce.

These criteria apply to the question of whether Federal preemption of an inconsistent non-Federal rule should be waived. They are irrelevant to the issue of whether a non-Federal rule is inconsistent. Therefore, to the extent that comments submitted as part of an inconsistency proceeding address these criteria, they are, as stated in the notice initiating this proceeding, premature and have not been considered in the development of the nine rulings published herein.

VIII. Federal routing regulations: On January 19, 1981, the Department issued a final rule entitled, "Radioactive Materials; Routing and Driver Training Requirements," commonly known by its docket number, HM–164. In relevant part, HM–164 provided that highway carriers of "large quantity" radioactive materials (such as spent nuclear fuel) are required to use "preferred routes," which are defined as Interstate System highways or alternative highway routes designated by the States that provide an equal or greater level of safety as compared with the Interstate System (49 CFR 177.825(b)).

The term "large quantity" was subsequently changed to "highway route controlled quantity" in a Final Rule published on March 10, 1983 under docket number HM–169. The revision was necessary to ensure the compatibility of the HMR with the latest revised international standards for transport of radioactive materials. While there are some differences between the old values for "large quantity" and the new values for "highway route controlled quantity", the differences are relevant to the following inconsistency rulings only insofar as the challenged non-Federal rules have incorporated by reference the definition of "large quantity" in 49 CFR 173.389 which was deleted by HM–169.

In addition to the routing rules, HM–164 contained an Appendix A to Part 177 of the HMR which set forth the Department's views regarding the preemptive effects of the routing rules. The Appendix provides that the Department generally regards State and local requirements to be inconsistent if they:

- Prohibit the highway transport of large quantity radioactive materials without providing for an alternative highway route for the duration of the prohibition;
- Require additional or special personnel, equipment, or escort;
- Require additional or different shipping paper entries, placards, or other hazard warning devices;
- Require filing route plans or other documents containing information that is specific to individual shipments;
- Require prenotification;
- Require accident or incident reporting other than as immediately necessary for emergency assistance; or
- Unnecessarily delay transportation.

Appendix A is not a regulation which imposes obligations to act. It is the Department's interpretation of the general premptive effect of its regulation on State and local requirements. It was not intended to replace the two-prong test for determining the inconsistency of an existing State or local rule. Rather, it was intended to advise State and local governments contemplating rulemaking action as to the likelihood of such actions being deemed inconsistent. Therefore, while references to Appendix A are not determinative in these rulings, they serve to illustrate the basis for the Departmental policy set forth therein.

IX. Background and chronology: Nuclear Assurance Corporation (NAC), under a contract with Atomic Energy of Canada, Ltd. (AECL), arranges for the transportation of spent nuclear fuel from Chalk River, Ontario, to a U.S. Department of Energy (DOE) facility at Savannah River, South Carolina. AECL has a contract with DOE for reprocessing nuclear fuel which is part of an overall agreement between the United States and Canada for the assured supply of enriched uranium for Canadian research reactors. In the process of arranging for the transportation of spent fuel, NAC has encountered a variety of State and local transportation regulations which have impacted its routing options.

NAC's description of these regulations and their impacts is as follows:

Until 1979, the spent fuel was shipped to the DOE reprocessing facility by truck entering the U.S. by way of the Ogdensburg (NY) Bridge across the St. Lawrence River. In 1980, the Ogdensburg Bridge and Port Authority adopted rules and regulations which banned shipments of radioactive materials. Concurrently, St. Lawrence County, at the foot of the bridge, enacted a ban on commercial spent fuel shipments. The bridge authority has since amended its rules to incorporate the provisions of the St. Lawrence County Law.

Subsequently, in 1981 and 1982, NAC requested and received Nuclear Regulatory Commission (NRC) approval for five routes entering the U.S. in Michigan, New York and Vermont. After the Michigan route was approved, rules governing the transportation of radioactive materials were adopted by both the Michigan State Fire Safety Board and Department of Public Health. NAC alleges that the rules established packaging, planning, information and equipment requirements more stringent than those required by Federal agencies for spent fuel shipments. Moreover, NAC asserts that the net effect of the Michigan requirements was to prevent spent fuel shipments from entering Michigan by way of the approved routes.

As a result of the Michigan requirements, a ban by the New York Thruway Authority, and a permit requirement based on substantial insurance coverage imposed by the Thousand Islands Bridge Authority and incorporated in a Jefferson County (NY) Resolution on regulating the transport of radioactive materials, NAC turned to the use of a land crossing in Vermont. This route was used without incident for eight of eleven planned shipments. However, when confidential information regarding transport schedules was released, the Governor of Vermont called upon NAC to interrupt the series of shipments in order to preclude possible civil action. Shortly thereafter, NAC was notified by the Governor that Vermont did not intend to permit further through shipments of spent fuel "until such time as the responsible Federal agencies establish(ed) and enforce(d) a uniform national policy regarding such shipments."

Following the prohibition in Vermont, NAC established a sixth route through New York. This route was intended to accomplish the remaining three shipments in the series. Prior to NAC's use of this route, however, the Governor of New York directed his representative to send a notice advising NAC to suspend spent fuel shipments through New York "pending development of a policy applied uniformly, nationwide, covering transportation of radioactive materials."

As a result of the actions described above, NAC was forced to halt shipments of spent fuel from Canada.

Therefore, in October of 1982, NAC filed separate applications for inconsistency rulings seeking preemption of: (1) the regulations of the Michigan State Fire Safety Board and Department of Public Health affecting radioactive materials transportation; (2) the radioactive materials transportation ban on the New York State Thruway; (3) the suspension order issued by letter of the Governor of Vermont; and (4) the suspension order issued by letter of the representative of the Governor of New York.

NAC did not seek inconsistency rulings with regard to the applicable regulations of the Ogdensburg Bridge and Port Authority, St. Lawrence County, the Thousand Islands Bridge Authority, or Jefferson County. However, the aggregate effect of all these regulations has been to significantly affect the ability of carriers, such as NAC, to transport radioactive materials in accordance with the nationally uniform system of highway routing which the Department sought to achieve by promulgation of regulations under HM–164. Therefore, the Department has elected, in accordance with 49 CFR 107.209(b), to consider the issue of inconsistency with regard to these regulations, notwithstanding that application for a ruling has not been filed under 49 CFR 107.203. Under the same authority, the Department initiated a ninth inconsistency proceeding concerning the radioactive materials transportation regulations which the Vermont Agency of Transportation adopted shortly after initiation of the above-described proceedings.

X. *Public comment:* A public notice and invitation to comment on Docket Nos. IRA–20 through IRA–27 was published in the **Federal Register** on May 12, 1983 (48 FR 21496). A similar notice inviting comment on Docket No. IRA–30 and reopening the comment period on the other eight dockets was published on August 4, 1983 (48 FR 35550). Comments were received from twenty parties including Federal, State and local government agencies, private industry, public interest groups and private citizens. Where appropriate in IR's 7–15, these comments as well as prior administrative decisions are discussed.

Although the above-described invitations for comment repeatedly directed that comments be restricted to the stated issues, many commenters chose to ignore the question of inconsistency, or to touch upon it only tangentially. Such comments contained lengthy, but irrelevant, discourses on either the need to ensure the free flow of interstate commerce without regard to the role of State and local governments, or the need to suspend all transportation of radioactive materials until the allegedly inadequate Federal safety standards are revised. Those comments which addressed only the question of interstate commerce ignored the essential question of the proper role of State and local governments in hazardous materials transportation safety which the two-prong test is designed to address. Since the HMTA does not preclude all State and local actions, but only those which are inconsistent, comments which failed to address the issue of State and local government action are necessarily irrelevant and have not been considered in these proceedings. Those comments which took issue with the adequacy of the Federal safety standards ignored the fundamental purpose of these proceedings, that is, the determination of whether certain identified State and local requirements are inconsistent with the Federal regulations now in effect. Concern over the adequacy of existing Federal regulations may be properly expressed through the Department's established procedures for submission of petitions for rulemaking (49 CFR 106.31). Inconsistency ruling proceedings are not the appropriate forum for consideration of such matters. Therefore, comments concerning the adequacy of the Federal regulations now in effect are irrelevant to these proceedings and have not been considered.

Issued in Washington, D.C. on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–7—New York State; Letter From Governor's Designated Representative Advising Suspension of Spent Fuel Shipments

Applicant: Nuclear Assurance Corporation (IRA–20).

Non-Federal rule affected: Letter dated October 7, 1982, from the New York Governor's Designated Representative advising Nuclear Assurance Corporation to suspend certain proposed shipments of spent nuclear fuel.

Mode affected: Highway.

Ruling: The letter from the Governor's Designated Representative dated October 7, 1982, constitutes a State requirement. It is not found to be inconsistent with the HMTA or the regulations issued thereunder.

I. Background

By letter dated October 8, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether a letter issued by the Designated Representative of the Governor of New York constitutes a State order which is inconsistent with the Hazardous Materials Transportation Act (HMTA) or the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted pursuant to 49 U.S.C. 1811(a). The complete text of the letter is as follows:

October 7, 1982.

Nuclear Assurance Corporation,
24 Executive Park West, Atlanta, Georgia 30329

You are hereby advised to suspend proposed shipments of spent fuel rods through New York State from Chalk River, Canada via two non-interstate routes in the urban areas of Albany-Schenectady-Troy and Binghampton pending development of a policy applied uniformly, nationwide, covering transportation of radioactive materials.

[Signed]

Donald A. DeVito,

Governor's Designated Representatve.

NAC contended that the requirements imposed by the Governor's Designated Representative were inconsistent with the intent and language of both the HMTA and the HMR. Specific reference was made to certain sections of the HMR which deal with highway routing of radioactive materials.

Pursuant to 49 CFR 107.205(a), the Governor's Designated Representative submitted comments on behalf of the State of New York regarding NAC's application for an inconsistency ruling. The State contended that its position was fully consistent with the HMTA and the HMR.

II. Analysis

A. Is the Letter From the Governor's Designated Representative a State Requirement?

Under section 112(a) of the HMTA any State requirement which is inconsistent with the HMTA or the regulations issued thereunder is preempted. Before one can reach the question of inconsistency, it is first necessary to determine whether the alleged conflict involves a State requirement.

The Governor's Designated Representative is the individual who is authorized to receive advance notification of nuclear waste shipments through the State of New York (10 CFR 73.37(f)). In the instant case, NAC provided the Governor's Designated

Representative with advance notification of certain spent fuel shipments. Responding to this advance notification, on October 7, 1982, the Governor's Designated Representative issued the letter quoted above advising NAC to suspend proposed shipments via the specified non-Interstate routes which NAC had intended to use.

By telex of the same date, the Governor of New York informed the U.S. Secretary of Transportation that New York considered the proposed shipments to be in conflict with Federal regulations and that the notification to NAC to suspend the shipments had been made on his authorization.

By letter dated November 9, 1982, the Governor's Designated Representative submitted a response to NAC's application for an inconsistency ruling in which reference was made to "the October 7, 1982 New York *State Order* suspending proposed shipments of spent fuel rods through New York State from Chalk River, Canada via non-interstate routes." (Emphasis added.)

It is clear from the foregoing that the State intended, by issuance of the October 7 letter, to order NAC to suspend the proposed shipments. It is equally clear, as one commenter pointed out, that NAC's failure to comply with the letter would likely result in sanctions imposed by the State.

In addition to New York's intent that the letter constitute a "State Order", the letter must also be considered such by the provisions of the HMR. In Appendix A to 49 CFR, Part 177, a "routing rule" is defined as "any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo." The letter from the Governor's Designated Representative effectively restricts the movement by public highway of motor vehicles containing a specific hazardous material and was issued because of the hazardous nature of that material. Thus, the letter satisfies the HMR's definition of a State routing rule.

On the basis of the foregoing, I conclude that the letter from the Governor's Designated Representative is a State requirement within the meaning of the HMTA.

B. Is the State Requirement Inconsistent?

(1) *Dual Compliance Test.* The State requirement under consideration in this docket amounts to a ban on the use of two non-Interstate highways for transporting spent nuclear fuel. As described in the Preamble, the HMR require motor carriers of spent nuclear fuel to operate over "preferred routes", i.e., an Interstate System highway for which an alternative route has not been designated or a State-designated alternate route. (49 CFR 177.825(b).) New York has not designated any alternate preferred routes. Thus, on its face, the State's refusal to allow spent fuel shipments on non-Interstate routes would appear to be consistent with the Federal rule, since the Federal requirement prescribing use of an Interstate highway may be met without conflicting with the State requirement prohibiting use of the non-Interstate highway.

In support of its contention that the State requirement is inconsistent, NAC has offered a number of arguments based on the exceptions to the use of preferred routes contained in the HMR. NAC first cites 49 CFR 177.825(a) which states:

> (a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. . . . This requirement does not apply when—
> (1) There is only one practicable highway route available, considering operating necessity and safety, or
> (2) The motor vehicle is operated on a preferred highway . . . .

Relying on § 177.825(a)(1), NAC argues that, because of the New York State Thruway's ban on spent fuel transportation, the proposed route is the only "practicable highway route available, considering operating necessity and safety."

The proposed route involves entering New York State at Champlain via Interstate 87 and proceeding south to Albany. Because I–87 south of Albany is part of the New York State Thruway, which bans spent nuclear fuel shipments, NAC proposed to travel approximately ten miles on a non-Interstate route in order to connect from Interstate 87 to Interstate 88. The proposed route would then follow Interstate 88 west to Binghamton where avoidance of the Thruway would once again necessitate travel over a non-Interstate route for approximately fourteen miles to access Interstate 81 and proceed south into Pennsylvania.

Section 177.825(a) applies to all motor vehicles carrying radioactive material for which placarding is required. Not all placarded shipments contain highway route controlled quantity radioactive materials (as defined in 49 CFR 173.403(l)). Those which do, such as carriers of spent nuclear fuel, are required by § 177.825(b) to operate over preferred routes except in the case of certain allowable deviations. NAC contends that such a deviation is allowable in the instant case and cites § 177.825(b)(2)(iii):

> b. * * *
> (2) When a deviation from a preferred route is necessary (including emergency deviation, to the extent time permits), routes shall be selected in accordance with paragraph (a) of this section. A motor vehicle may deviate from a preferred route under any of the following circumstances:
> (i) * * *
> (ii) * * *
> (iii) To the extent necessary to pick up, deliver or transfer a highway route controlled quantity package of radioactive materials.

The threshold question, of course, is whether NAC's proposed deviations are necessary. NAC contends that they are necessary if it is to deliver the shipment from Chalk River, Ontario, to Savannah River, South Carolina, while complying with both the Federal requirement that it operate "over preferred routes selected to reduce time in transit" (49 CFR 177.825(b)) and the State requirement that it not operate over the New York State Thruway. The State contends that the deviation is not necessary because another route exists which is entirely Interstate. The referenced route involves entering Vermont via Interstate 91 and proceeding south through Vermont, Massachusetts and Connecticut to access Interstate 84 in New York. (NAC had used this route in the past but ceased use upon receipt of a letter from the Governor of Vermont advising suspension of the shipments. That letter is the subject of Inconsistency Ruling IR–9 published herewith.)

Both arguments are flawed by reliance on the same assumption, to wit, that the New York State Thruway ban on spent fuel shipments is a valid restriction. As demonstrated in Inconsistency Ruling IR–10 published herewith, the restriction is inconsistent with the HMTA and, therefore, preempted. Since the Thruway ban is preempted, there is no necessity to redirect spent fuel shipments either onto non-Interstate routes in New York or onto Interstate routes in other states. And since the deviation is not necessary, NAC may not select a route in accordance with § 177.825(a)(1).

Finally, NAC cites section III of Appendix A to Part 177 which states:

> A State routing rule which applies to large quantity radioactive materials is inconsistent with Part 177 if—
> 1. It prohibits transportation of large quantity radioactive materials by highway between any two points without providing an alternate route for the duration of the prohibition;

The State requirement under consideration does not prohibit the transportation of spent fuel between two points. It merely underscores the Federal rule that such transportation shall take place on preferred routes. There are a number of preferred routes in the State of New York. As a practical matter, these routes were closed to NAC by a variety of State and local restrictions and NAC properly chose to comply with these restrictions pending determination of their inconsistency. The *de facto* closure of the preferred routes, however, is not resolved by abandoning the Federal rule requiring their use, but by determining the validity of the State/local restrictions involved.

On the basis of the foregoing, I find that no incongruity exists between the subject State order and the Federal rules on highway routing of radioactive materials. Not only is it possible to comply with both rules, but the State rule, is, in effect, an order to comply with the Federal rule. I, therefore, find that, under the dual compliance test, no inconsistency exists between the State and Federal requirements.

(2) *Obstacle Test.* In view of my previous finding that the State rule under consideration in this proceeding amounts to a requirement that the Federal rule be complied with, I find that it presents no impediment to the accomplishment and execution of the HMTA or the regulations issued thereunder.

III. Ruling

For the foregoing reasons, I find that the letter of October 7, 1982, from the Designated Representative of the Governor of New York to NAC is a State requirement which is not inconsistent with the HMTA or the regulations issued thereunder.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–8—State of Michigan; Radioactive Materials Transportation Regulations of the State Fire Safety Board and the Department of Public Health

Applicant: Nuclear Assurance Corporation (IRA–21).

Non-Federal rules affected: Rules 1–10 (Sections R29.551–R29.560) of the Rules of the Michigan State Fire Safety Board; and Rules 1–10 (Sections R325.5801–R325.5810) of the Rules of the Michigan Department of Public Health.

Modes affected: Highway, Rail, Water.

Ruling: Rules 3 through 6 and sections of Rules 1, 7 and 10 of the radioactive materials transportation regulations of both the Michigan State Fire Safety Board and the Michigan Department of Public Health are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with 49 U.S.C. 1811(a).

I. Background

By letter dated October 13, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether the radioactive materials transportation regulations of the State of Michigan are inconsistent with and thus preempted by the HMTA or the HMR. The State rules are codified in two parallel sets of ten enumerated rules at §§ R29.551–R29.560 of the State Fire Safety Board (SFSB) Rules and §§ R325.5801–R325.5810 of the Department of Public Health (DPH) Rules.

NAC contended that the SFSB and DPH rules are inconsistent with the HMTA and the HMR issued thereunder. The SFSB and DPH, in a joint response commenting on NAC's application, contended that their rules were reasonable and necessary to ensure compliance with Federal and State safety regulations and to ensure adequate and timely emergency response.

II. Analysis

This proceeding concerns the radioactive materials transportation regulations of the SFSB and DPH. They were published in their entirety as Appendices A and B respectively to the public notice and invitation to comment which appeared in the May 12, 1983, **Federal Register** (48 FR 21503–21505). The rules are considered in consecutive order below.

Rule 1 (SFSB § R 29.551; DPH § R 325.5801)

Rule 1 sets forth a number of definitions, none of which were challenged in NAC's application. However, in view of MTB's most recent inconsistency rulings regarding the exclusive Federal role in hazard class definition (IR–5, IR–6), I consider it necessary to address the possible inconsistency of one of the given definitions.

SFSB Rule 1(d) (DPH Rule 1(e)) defines "radioactive material" as "irradiated reactor fuel and radioactive wastes that are large quantity radioactive materials as defined in 49 CFR 173.389(b)."

At the time Rule 1 was adopted, § 173.389(b) of the HMR defined "radioactive material" as "any material or combination of materials which spontaneously emit ionizing radiation", but excluding "material in which the estimated specific activity is not greater than 0.002 microcuries per gram of material, and in which the radioactivity is essentially uniformly distributed".

By adoption of a Final Rule which became effective July 1, 1983 (Docket No. HM–169; 48 FR 10218), MTB deleted all of § 173.389 and added a new Subpart I to Part 173 entitled "Radioactive Materials". As defined in § 173.403(y) "radioactive material" means "any material having a specific activity greater than 0.002 microcuries per gram".

Clearly, the SFSB/DPH definition of "radioactive material" differ significantly from the Federal definition now in effect.

In IR–6, MTB gave notice that it considered the Federal role in the definition of hazard classes to be exclusive:

> The key to hazardous materials transportion safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulation. This is precisely the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA.

On the basis of the precedent established by IR–5 and IR–6, I find the definition of "radioactive material" in Rule 1 to be inconsistent. Throughout the remainder of this inconsistency ruling, the Michigan rules are interpreted as if the term "highway route controlled quantity radioactive material" had been substituted for the term "radioactive material".

Rule 2 (SFSB § R 29.552; DPH § 325.5802)

Although their language differs, the SFSB and DPH versions of Rule 2 have essentially the same meaning. In both cases, the rule enables the agency to grant exemptions from the requirements of the rules. NAC did not challenge this rule and, since it imposes no obligation to act, the issue of inconsistency does not arises.

Rule 3 (SFSB § R 29.553; DPH § R 325.5803)

Rule 3 requires that application for approval to transport highway route

controlled quantity radioactive material in Michigan be submitted not less than 15 days before the date of planned shipment. The application must be submitted in duplicate through the Operations Division of the State Police for immediate forwarding to the SFSB and DHP. Compliance with Rule 3 is a criterion for transportation approval under Rule 5. Because the application requirements are inextricably linked with the approval process, Rule 3 is considered together with Rule 5 below.

Rule 4 (SFSB § R 29.554; DPH § R 325.5804)

Rule 4 sets forth communications equipment requirements for shipments of highway route controlled quantity radioactive material being transported by highway, railway and waterway. Communications capability is an element of physical security, and Appendix A to 49 CFR, Part 177, sets forth as Departmental policy the opinion that a State transportation rule is inconsistent with Part 177 if it conflicts with the physical security of the Nuclear Regulatory Commission (NRC) at 10 CFR, PART 73, or equivalent requirements approved by MTB. This is based on the requirement in 49 CFR 173.22 that shippers of irradiated reactor fuel provide physical protection in compliance with a plan established under the NRC requirements or equivalent requirements approved by MTB. The requirements for each mode are addressed separately below.

Highway Shipments—Rule 4 forbids the highway transportation of radioactive materials unless the transporting vehicle or an escort vehicle "is equipped with continuous 2-way communications by radiotelephone or other means acceptable to the state fire marshall with land-based stations familiar with, and capable of assisting in" implementing emergency plans. The NRC regulations require shippers (whether by highway, rail or water) to establish a single, continuously staffed communcations center which shipment escorts are to call at least every two hours. In addition to this general NRC requirement, highway shippers must ensure that:

> Escorts have the capabilty of communicating with the communications center, local law enforcement agencies, and one another, through the use of:
> (i) A citizens band (CB) radio available in the transport vehicle and in each escort vehicle;
> (ii) A radiotelephone or other NCR-approved equivalent means of two-way voice communications avaialable in the transport vehicle or in an escort vehicle committed to travel the entire route; and
> (iii) Citizens band (CB) radio and normal local law enforcement agency radio communcations in any local law enforcement agency mobile units used for escort purposes. (10 CFR 73.3(c)(3).)

Since the HMR require highway transporters to comply with the NRC requirments or their equivalent approved by MTB, these are the standards with which the SFSB/DHP requirements will be compared for consistency.

With regard to the "dual compliance" test, I find that compliance with the Federal rule would place a shipper in violation of the State rule. The communications equipment required by the Federal rules is incapable of ensuring the "continuous two-way communications" required by the State rule because of the existence of radiotelephone dead zones. At least one commenter suggested that "continuous two-way communications" may not, in fact, be technologically possible.

Even assuming that continuous communication could be achieved through the use of special equipment, the Michigan rule fails the "obstacle" test. MTB addressed this issue directly in the section-by-section analysis of HM-164:

> The existence of State or local requirements for special equipment may effective by dictate the continuous use of the equipment in all jurisdictions. Varying requirements between jurisdictions pose additional problems that may necessitate equipment changes and delays in route, or avoidance of an otherwise desirable route. (46 FR 5314.)

Were transporters required to change the means and/or frequency of communication each time they entered a different jurisdiction, the overall reliability of the communication system would be seriously jeopardized. Thus, shipments would be subject, not only to the minor delays inherent in system changeover, but also to potentially significant delays necessary to restore communications capability. It is axiomatic that equipment changes pose a greater risk of system breakdown than does maintenance of a single system. And an increased risk of communications breakdown constitutes a serious degradation of physical protection safeguards. The SFSB/DPH rule, therefore, impedes the Congressional purposes of increased safety and regulatory uniformity which underlay enactment of the HMTA.

Rail Shipments—For rail shipments of radioactive materials, Rule 4 requires the transporting vehicle to be "equipped with communications equipment acceptable to the State fire marshal." The NRC regulations for rail shipments require that:

> Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications, which shall be available on the train. (10 CFR 73.37(d)(3).)

Since Rule 4 provides no indication of the minimum level of communications capability which would be acceptable to the State fire marshal, it is not possible to determine whether compliance is possible with both the Federal and State rule. I am, therefore, unable to make a finding under the "dual compliance" test.

Under the "obstacle" test, however, it is possible to reach a definite conclusion. As shown above, State rules requiring special equipment pose an obstacle to the two major Congressional purposes underlying the HMTA. Even greater, then, is the obstacle posed by a State rule which sets no specific requirements but leaves the matter wholly to the discretion of a State official. For this reason and those stated in the discussion of highway shipments *supra*, the Rule 4 equipment requirements for rail shipments constitute an obstacle to the accomplishment and execution of the HMTA.

Water Shipments—Rule 4 sets the same standards for water as for rail shipments, i.e. that the vessel be "equipped with communications equipment acceptable to the State fire marshal." The NRC regulations for shipments by vessel require that:

> Escorts have the capability of communicating with the communications center and local law enforcement agencies through the use of a radiotelephone, or other NRC-approved equivalent means of two-way voice communications. (10 CFR 73.37(e)(3).)

As was discussed in connection with rail shipments *supra*, a State rule which grants an official discretionary authority to set equipment requirements for carriers engaged in interstate commerce is inconsistent with the dual objectives Congress sought to achieve by enacting the HMTA.

Rule 5 (SFSB § 29.555; DPH § R 325.5805)

Rule 5 sets forth the criteria for SFSB and DPH approval of applications to transport highway route controlled quantity radioactive material in Michigan. Since the rule prohibits transportation of radioactive materials without the written approval of both the DPH and the State fire marshal, it constitutes a routing rule in the form of a permit requirement.

Section II of Appendix A to 49 CFR, Part 177, defines "routing rule" as follows:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects . . .

The SFSB/DPH rules restrict the movement of radioactive material by public highway by denying access to those shipments which have not obtained written approval. Moreover, this restriction has the effect (as in the case of NAC) of redirecting such shipments to other jurisdictions. And the rules apply because of the nature of the cargo. For these reasons, the SFSB/DPH rules constitute a State routing rule within the meaning of the HMR.

Under HM-164, the Federal rule requires shipments of highway route controlled quantity radioactive material to operate over "preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available." The term "preferred route" is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with DOT guidelines. Because the State of Michigan has not applied these guidelines to designate any alternate preferred routes, the preferred routes in Michigan are the Interstate System highways.

The State and Federal rules having been identified, the question at issue is whether the State rule is consistent.

(1) *Dual Compliance Test.* A carrier which complied fully with the SFSB/DPH rules, thereby obtaining the necessary written approvals, could transport highway route controlled quantity radioactive material via preferred routes in Michigan, and thereby be in compliance with the Federal requirement as well. Consequently, application of the "dual compliance" test reveals that it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the SFSB/DPH rules. Therefore, those rules cannot be deemed inconsistent on the basis of that test.

(2) *Obstacle Test.* Under the "obstacle" test, however, I reach a different conclusion.

MTB first addressed the issue of State transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR-2, 44 FR 75566, Dec. 20, 1979.) In that ruling, it was stated that:

> A permit may serve several legitimate State police power purposes, and the bare requirement . . . that a permit be applied for and obtained is not inconsistent with federal requirements. However, a permit itself is inextricably tied to what is required in order to get it. Therefore, the permit requirement . . . must be considered together with the application requirements . . . (44 FR at 75570,1.)

The same reasoning applies here.

Rule 5 sets forth several criteria which must be satisfied before approval is granted to transport highway route controlled quantity radioactive material in Michigan. Each is discussed separately below.

Rule 5(a) requires fulfillment of the application requirements of Rule 3. For discussion purposes, the application requirements can be broken down into three categories: information, documentation and certification.

Information—Rule 3 requires applicants to submit the following information as part of the application to transport highway route controlled radioactive material in Michigan:

> (a) The proposed route of travel, specifying all of the following:
> (i) Each road or rail to be used by route number, name, or other identification.
> (ii) Each major bridge to be traversed.
> (iii) Each waterway to be traversed for transport by vessel.
> (iv) The reasons for the choice of the proposed route of travel from the site of origin to the receiver of the radioactive material, including the designation of alternative routes and the reasons for the selection of the proposed route and the rejection of alternative routes.
> (b) The proposed means of conveyance.
> (c) The names, addresses, and emergency telephone numbers of the shipper, carrier, and receiver of the radioactive material, including the individual to contact for current shipment information.
> (d) A description of the shipment as specified in the provisions of 49 C.F.R. § 172.203(d).
> (e) The estimated date and time of all of the following, as applicable:
> (i) The departure of the radioactive material from the site of origin.
> (ii) The arrival of the radioactive material at the Michigan boundary or at its final destination if the destination is within Michigan.
> (iii) The departure of the radioactive material from Michigan.

With the exception of Rules 3 (a)(iv), (b) and (e)(iii), all of the above information is required to be provided in advance to the Commanding Officer of the Michigan State Police Operations Division, who is the Governor's Designated Representative for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the NRC physical protection regulations (10 CFR 73.37(f)). The NRC regulations were not promulgated under the HMTA. However, § 173.22(c) of the HMR requires shippers of highway route controlled quantity radioactive materials to comply with a physical protection plan established under the requirements of the NRC or equivalents approved by MTB. This section of the HMR was adopted as part of HM-164. In the preamble to HM-164, MTB took administrative notice of the fact that NRC was in the process of establishing prenotification requirements and stated:

> Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirements are not consistent with Part 177. (46 FR 5314,5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM-164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons stated in the preamble to that rulemaking, MTB declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of a study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of Prenotification: Hazardous Materials Study, Final Report*, May 4, 1981) and was relied on in an inconsistency ruling (IR-6, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification ordinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving State, city and regional governments. Most recently, MTB awarded a contract to Battelle Northwest Laboratories to perform a comprehensive evaluation of prenotification. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by State and local governments.

In its discussion of Rhode Island's permit application requirement in IR-2, MTB noted that, to the extent the State required the same information as appeared on the DOT shipping paper, the State rule was redundant and "(r)edundancy does not further

transportation safety and represents the type of multiplicity that the HMTA intended to make unnecessary." (44 FR 75571.) Of the above-described information requirements of the SFSB/DPH rules, only one (Rule 3 (d), proper shipping description) is required to be shown on the DOT shipping papers. All of the items except (a)(iv), (b) and (c)(iii) are rquired by the NRC prenotification regulations which MTB has recognized as currently providing an adequate standard of national applicability. If shippers could satisfy both the State and the Federal requirements by the same action, then the issue of redundancy would not arise, for the result would be the same as if Michigan had adopted the Federal rules. That is not the case, for the SFSB/DPB rules require additional, separate submissions. To the extent that they require multiple submissions of information which is required by DOT's shipping paper regulations or which other Federal regulations already require to be submitted to the State, the SFSB/DPH rules are redundant, do not further transportation safety and represent the type of multiplicity which Congress sought to preclude by enacting the HMTA. To the extent that they require transporters to provide safeguards information to officials other than the Governor's designated representative, the SFSB/DPH rules create the potential for conflict with the Federal rules on physical security.

Different issues are raised by the three items of information required by the SFSB/DPH rules but not by the Federal rules. Rule 3(a)(iv) calls for a description and justification of the proposed and alternate routes from origin to destination, regardless of what proportion of the route involves Michigan. The logical inference drawn from this requirement is that the State seeks to second-guess carriers' route selections. The standards to be used in selecting highway routes for transportation of radioactive materials are set forth at 49 CFR 177.825. When promulgating those rules, MTB recognized that States were in a better position to know local road conditions. Therefore, HM-164 established a process by which States could apply this knowledge to designate alternate routes which provide an equal or greater level of safety than Interstate System highways. Michigan has yet to avail itself of this process. If there are valid safety reasons why certain preferred routes should not be used in Michigan, then it is incumbent on Michigan to designate safer alternative routes by using the process DOT has designed for this purpose. State approval of route selections on a shipment-by-shipment basis completely undercuts the primary purpose of national uniformity underlying adoption of HM-164. Rule 3(a)(iv), therefore, fails the "obstacle" test and is, accordingly, inconsistent.

Rule 3(b) requires submission of the proposed means of conveyance. This is implicit in the route selection. (A shipment which will proceed over identified waterways is obviously not being conveyed by train.) Since both the State and the Federal rules call for the State to receive a complete route description, this item is redundant, serves no safety purpose and merely contributes to the type of multiplicity which the HMTA was meant to eliminate. It therefore constitutes an obstacle to the Congressional objective of regulatory uniformity underlying the HMTA.

Rule 3(e)(iii) requires submission of the date and time of the shipment's departure from Michigan. While this is not required by the DOT shipping paper requirements or the NRC prenotification requirements, it is like Rule 3(b) in that it is easily determined from the information which is required to be submitted. With knowledge of the time of entry and the routes and distances to be covered, the time of departure is easily calculated. And, in the event of a schedule change of more than six hours, the NRC regulations require that the State receive a revised notification. Therefore, like Rule 3(b), this item is redundant, serves no safety purpose and merely contributes to the type of multiplicity which the HMTA was meant to eliminate. Accordingly, it constitutes an obstacle to the Congressional objective of regulatory uniformity underying the HMTA.

Documentation—Rule 3 requires submission of the following documentation as part of the application for approval to transport highway route controlled quantity radioactive material in Michigan:

> (g) Copies of any required NRC approval of the proposed route of travel and any other NRC licensing action specific to the shipment, such as an import license or a license to transport.
>
> (h) A copy of the emergency plan for the carrier which describes procedures to be taken in an emergency to eliminate or minimize the radiation exposure of the public. The plan shall include a provision for notification of the state police operations division upon implementation of the plan.
>
> (i) For transport over a major bridge or on a vessel, provisions to submit the proposed recovery plan to the department for approval before beginning recovery efforts.

Rule 3(g) calls for the submission of copies of all NRC approvals and licenses related to the shipment for which transportation approval is being sought. Presumably, the purpose of this requirement is to enable the State to ensure that NRC regulations have been complied with. This a valid concern. However, the chosen manner of resolving this concern raises the possibility of a new kind of risk. Shipment—specific information of the sort included in route plans and licenses is required to be protected against unauthorized disclosure. The NRC regulations (10 CFR 73.21) set forth specific requirements for the protection of safeguards information. The HMR impose physical security requirements in § 177.825(e). By requiring hard copies of these documents to be distributed to two State agencies, the Michigan rules greatly increase the possibility that the information contained therein will be disclosed to an extent sufficient to compromise the physical security of the shipment. The assurances sought by the State could be obtained without the risk of disclosure through the simple expedient of contacting the NRC upon receipt of advance notification of a shipment. The requirement contained in Rule 3(g) adds to the existing paperwork burden on radioactive materials transportation, subjects applicants to potential liability for violation of NRC and/or DOT regulations on protection of safeguards information, and increases the potential for outside interference with shipments. Since the primary objective of the HMTA is to protect the Nation against the risks inherent in hazardous materials transportation, a State rule which increases those risk necessarily poses an obstacle to the accomplishment and execution of the HMTA.

Rule 3(h) calls for applicants to develop and submit a copy of a plan describing procedures to be followed in the event of an emergency to protect the public from radiation exposure. Response to transportation emergencies is necessarily site-specific:

> Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility. (IR-2, 44 FR 75568.)

In HM-164, MTB addressed the Federal responsibility for reducing the likelihood of emergencies by requiring not only that such materials be transported over those routes which have been demonstrated to offer the highest safety levels, but also that the drivers of such shipments receive, and carry certification of, written training on: (1)

the HMR concerning radioactive materials; (2) the properties and hazards of radioactive materials being transported; and (3) procedures to be followed in case of an accident or other emergency. (49 CFR 177.825(d).) Drivers are also required to carry a route plan which includes the telephone numbers to access emergency assistance in each State to be entered. (49 CFR 177.825(c).)

It is not clear whether the plan required by Rule 3(h) is meant to describe standard procedures to be taken in the event of an emergency or whether it is meant to be tailored to the specific characteristics of the points to be traversed in Michigan. If the former is intended, then applicants can comply merely by submitting a copy of the materials used in the drivers' training course. Such materials are readily available to the State and their submission as part of an application for transportation approval would contribute little to State/local emergency preparedness. If the plan is meant to be tailored to the specific characteristics of the route in Michigan, then the effect of the requirement is to shift the burden of emergency preparedness planning from State and local governments to the carriers. Emergency preparedness is necessarily a continuing process which is predominantly concerned with the site-specific characteristics of a given locale. It is an innately governmental responsibility. Therefore, if Rule 3(h) requires only the submission of standard guidance documents, it is an unnecessary paperwork burden which Michigan has failed to demonstrate addresses any local safety problem requiring its imposition. In addition, State and local emergency preparedness efforts may be adversely affected by reliance on the false assumptions that such documents are sufficient guidance in the event of an emergency. If, on the other hand, the requirement is meant to provide Michigan with a blueprint covering every possible contingency that could arise in the State, then it imposes an unrealistic burden on carriers. Such planning requires indepth knowledge of available emergency services equipment and personnel, demographics, geography and other site-specific factors. No carrier-developed plan could be an adequate substitute for an integrated, on-going State/local system of emergency response preparedness. It is for this reason that the HMR require transporters of highway route controlled quantity radioactive material to comply with a physical protection plan, in accordance with NRC standards or MTB-approved equivalents, which requires them to make arrangements with local law enforcement agencies along their routes for response to an emergency or a call for assistance.

Finally, were Michigan's requirement found to be consistent with the HMTA, then any State could impose additional planning requirements on transportation of highway route controlled quantity radioactive material. The resulting multiplicity of varying and possible conflicting State planning requirements would completely undermine the radioactive materials routing requirements of the HMR. The provisions of HM-164 retained for the States a defined role in the designation of preferred routes. That role does not include the prohibition of interstate transportation pending approval of State-required emergency plans.

For the foregoing reasons, I find that Rule 3(h) constitutes an obstacle to the accomplishment and execution of the HMTA and is therefore inconsistent therewith.

Rule 3(i) sets forth additional provisions to be included in the emergency plan required by Rule 3(h) when transportation is intended to take place over a major bridge or by vessel. Since the requirement of a plan has been found to be inconsistent, additional provisions to that plan need not be considered, because each component thereof would be inconsistent.

Certifications—Rule 3 requires submission of the following certifications as part of the application for approval to transport highway route controlled quantity radioactive material in Michigan:

> (f) Attestation to the fact that the vehicle has been inspected within a period of 6 months prior to the date of the proposed shipment for compliance with the provisions of 49 C.F.R. § 396 or Act No. 300 of the Public Acts of 1949, as amended, being § 257.1 et seq. of the Michigan Compiled Laws, by a law enforcement agency acceptable to the state fire marshal, and that evidence of such inspection shall be carried in the vehicle.
>
> * * * * *
>
> (j) A certification that the shipment will be in compliance with these rules and all applicable state and federal statutes, rules, and regulations governing the shipment.

Rule 3(f) requires an applicant to attest that the transport vehicle has been inspected in accordance with Federal or State law. Safety inspection of vehicles is a legitimate State activity and this proceeding will not address the specific requirements of Michigan's inspection laws. The narrower question involved herein is whether the requirement for a written attestation to the fact of compliance is a legitimate precondition to transportation approval. Under the cited Federal regulations on vehicle inspection (49 CFR, Part 396), motor carriers are required to maintain copies of each vehicle inspection report and to provide a copy to be carried on the power unit of the vehicle. Within the HMR, § 177.804 requires compliance with Part 396. Since Michigan apparently considers this record-keeping requirement adequate for transporters of all other hazardous materials, the basis for requiring additional attestation by transporters of highway route controlled quantity radioactive material is not clear. It thus appears that the requirement merely imposes another redundant paperwork burden which serves no apparent safety purpose.

Rule 3(j) requires applicants for transportation approval to certify that the shipment will be in compliance with all applicable Federal and State rules. The HMR requires shippers to make such a certification on the shipping papers which accompany each shipment of hazardous materials. (49 CFR 172.204.) As was stated in IR-2:

> No matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations. (44 FR 75571.)

Accordingly, Rule 3(j) is inconsistent with the HMR.

The application requirements of Rule 3 (parts a-j) have a cumulative effect which is greater than the "obstacle" presented by any one part individually. That effect is the redirection of radioactive materials shipments into other jurisdictions by transporters seeking to avoid the administrative burden and planning delays inherent in complying with Michigan's application procedure. Like the New York State Thruway ban which is the subject of IR-10, the Michigan application process results in the diversion of such shipments into other jurisdictions, thereby increasing total distance and time in transit. In other words, overall exposure to the risks of radioactive materials transportation is increased and exported. For all of the foregoing reasons, the application procedures of Rule 3 which constitute the approval criteria of Rule 5(a) are an obstacle to the accomplishment and execution of the HMTA's dual purposes of increased transportation safety and national uniformity in safety regulation.

Rule 5(b) of the SFSB rules requires that the application submitted under Rule 3 be approved in writing by the DPH. Since the application has been found to be inconsistant with the

HMTA, written approval of the application is also inconsistant. This issue is addressed in more detail under Rule 6 below.

Rule 5(c) of the SFSB rules (DPH Rule 5(b)) requires certification of compliance with all applicable Federal and State rules. This repeats the application requirement at Rule 3(j). Whether set forth as an approval criterion or an application requirement, this certification is a redundancy, as it requires applicants to provide the same certification as is required to appear on the DOT shipping paper, and is accordingly inconsistent.

Rule 5(d) of the SFSB rules (DPH Rule 5(c)) establishes as a criterion for transportation approval that the emergency plan required to be submitted under Rule 3(h) be acceptable to the State fire marshall and DHP respectively. As was demonstrated in the discussion of Rule 3(h) *supra*, that requirement constitutes and obstacle to the accomplishment and execution of the HMTA. Whether set forth as an approval criterion or an application requirement, the planning requirement described in Rule 3(h) is inconsistent.

Rule 5(e) of the SFSB (DPH Rule 5(d)) requires that:

> A certificate of compliance for the container has been issued by the NRC, and the container has been tested and approved for hypothetical accident conditions pursuant to the provisions of 10 CFR § 71.36.

If the purpose of this requirement is to ensure that Federal standards have been met, then it reflects a basic misunderstanding of the Federal regulations on transportation containers for highway route controlled quantity radioactive material. The NRC issues certificates of compliance, not for containers, but for container designs. Moreover, the cited NRC regulations at 10 CFR 71.36 do not require that each container be tested and approved for hypothetical accident conditions. Rather, the rules require that each container be constructed in accordance width a design approved by the NRC as meeting the necessary design criteria including, *inter alia*, the ability to meet the standards for hypothetical accident conditions. The HMR incorporate the NRC requirements in § 173.416. The exclusive Federal role in hazardous materials containment systems has long been established. In IR–2, MTB stated:

> The Hazardous Materials Regulations contain extensive requirements for the packagings necessary for the safe transportation of hazardous materials. The MTB has looked at specific commodities and determined what type of containers must be used to move them, including, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, etc. Uniform standards in this area insure safe, efficient interstate transportation. State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to Federal regulations. (44 FR 75568.)

The need to ensure the integrity of spent fuel shipping containers is of such paramount importance that it is difficult to conceive any situation where regulation by Michigan, or by any other State or local government, would not pose an obstacle to the accomplishment and execution of the HMTA. Because it imposes additional packaging standards, SFSB Rule 5(e) (DPH Rule 5(d)) is inconsistent.

Rules 5(f) and (g) of the SFSB (DPH Rules 5(e) and (f)) require containers intended for transport via a major bridge or waterway to be subjected to physical testing under standards which exceed the NRC's standards for hypothetical accident conditions. Unlike Rule 5(e) which relied on the NRC standards in its requirement of additional testing, these rules establish independent test standards to be applied only to those containers to be used over major bridges or on waterways in Michigan. The joint SFSB/DPH comment on this proceeding offered the following justification of the additional testing requirements:

> Michigan is unique. Although normal transport conditions and some accident scenarios are adequately addressed in the Federal packaging tests and regulations for radioactive material, the tests and regulations do not address serious accidents which may occur on "major bridges" as designated by the Michigan rules. The Federal packaging rules are inadequate to deal with such extreme conditions, and such accidents were not considered when the packaging regulations were developed. (SFSB/DPH letter dated Nov. 29, 1982, pp 2–3.)

In other words, Michigan apparently has taken the position that, when a State finds Federal safety regulations inadequate to meet local conditions, it may, on its own determination, regulate to overcome the perceived Federal inadequacy. This completely undermines the regulatory system mandated by the HMTA. Congress recognized that rules of national applicability would not always meet unique local conditions. It was for this reason that the HMTA did not preempt all State or local rules, but only those that were inconsistent. Furthermore, Congress recognized that there could be valid safety reasons for permitting certain inconsistent State or local rules to coexist with their Federal counterparts, and authorized the Department of Transportation to waive preemption in certain circumstances.

In implementing its regulatory authority under the HMTA, MTB has sought to ensure the flexibility necessary to respond to changing conditions. Recognizing that practical experience in applying the regulations can point out the need for change, MTB adopted procedures in 49 CFR, Part 106, whereby "(a)ny interested person may petition the Director to establish, amend, or repeal a regulation." (49 CFR 106.31.) With specific regard to the establishment of highway routes for radioactive materials, MTB had the authority to require the use of the Interstate System without exception. However, the recognition of the wide variety of local conditions and the States' experience in responding to these conditions, MTB adopted a rule which enabled States to apply safety guidelines to their unique local condiations, and, if justified, designate alternative routes.

In view of the foregoing, Michigan's defense of its additional container test requirements must be rejected. If, as alleged, the Federal regulations are inadequate to deal with the "extreme conditions" found in Michigan, the State has recourse to three (possibly concurrent) alternatives to the imposition of independent requirements:

1. Concede inconsistency and apply for a waiver of preemption pursuant to 49 CFR 107.215.

2. File a petition for rulemaking pursuant to 49 CFR 106.31.

3. Designate alternate preferred routes pursuant to 49 CFR 177.825.

Nothing in Michigan's response justifies departure from MTB's established position that the regulation of cargo containment systems is an exclusive Federal function.

On the basis of the foregoing, I find that the application requirements and approval criteria of Rules 3 and 5 are an obstacle to the accomplishment and execution of the HMTA and the HMR are are, therefore, inconsistent.

Rule 6 (SFSB § R29.556; DPH § R325.5806)

Rule 6 states that approval shall be granted in writing before shipment of the radioactive materials and shall include any conditions or limitations as determined necessary by the State fire marshal and DPH. Previously in this ruling it was determined that both the application requirements and the approval criteria set forth in the SFSB and DPH rules are inconsistent with the HMTA and, therefore, preempted. Those

sections dealt with the form of the State approval process, but did not address the question of whether the approval process itself, regardless of form, may be inconsistent with the HMTA. That issue is addressed now.

As was noted in IR–2, a permit requirement may serve several legitimate State police power purposes. For example, a State may require operators to obtain a permit when they intend to transport loads of a size or weight which exceeds the limits established for all traffic. Such a requirement represents a legitimate exercise of the State's responsibility to maintain the integrity of the roadbed and to prevent disruption of the flow of traffic. Such requirements apply equally to all vehicles, regardless of the nature of the cargo being transported.

In the instant case, Michigan has imposed a requirement to obtain State approval in writing (in effect, a permit) which applies only to those parties wishing to transport highway route controlled quantity radioactive material in Michigan. This requirement is based on a presumption that Michigan has the authority to control, and ultimately, to prohibit this form of interstate commerce.

Michigan asserts that this authority stems from the State's public safety power; that radioactive materials transportation poses higher risks in Michigan than elsewhere; and that the State has a duty to protect the public from those risks. This argument fails to recognize that, in enacting the HMTA, Congress granted to the Secretary of Transportation, and not to the States, the authority to designate as hazardous those materials whose transportation poses an unreasonable risk and to issue regulations to protect the Nation adequately against those risks. Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) Traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists, for a State of local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

For all of the foregoing reasons, I find Michigan's requirement of written approval to transport highway route controlled quantity radioactive material in Michigan to be inconsistent with the HMTA and the regulations issued thereunder.

Rule 7 (SFSB § R29.557; DPH § R325.5807)

Rule 7 states that "(u)nless otherwise specified in the approval notification, the carrier, driver, or operator transporting radioactive material shall notify the operations division of the department of state police" of certain information to be described below. The requirement of a written notification of approval has been found to be inconsistent with the HMTA. Therefore, to the extent that Rule 7 implies an ability to impose requirements other than those specifically set forth, it is inconsistent with the HMTA.

Rule 7(a) requires transporters to notify the Operations Division of the Department of State Police of any schedule change that differs by more than six hours from the schedule information previously furnished. The HMR rely on the notification requirements contained in the NRC standards for physical protection. Included in those standards at 10 CFR 73.37(f)(4) is the requirement that a licensee notify the Governor or the Governor's Designee of any schedule change that differs by more than six hours from the schedule information previously furnished. In Michigan, the Governor's Designee is the Commanding Officer of the Operations Division of the Department of State Police. Thus, Rule 7(a) and the Federal rule are identical. Since one action satisfies both rules, the issue of redundancy does not arise. This differs from the prenotification requirements of Rule 3 which called for submission of the same information required by NRC but in different form and to different parties. The practical effect of Rule 7(a) is the same as if Michigan had adopted 10 CFR 73.37(f)(4). Therefore, no inconsistency exists.

Rule 7(b) requires transporters to notify the Operations Division of the Department of State Police of any incident causing delay in the transport of radioactive material in Michigan. The HMR require transporters of highway route controlled quantity radioactive material to operate in compliance with a physical protection plan as required by NRC regulations (10 CFR 73.37) or MTB-approved equivalent. The NRC regulations require shipment escorts to make calls to the communications center at least every two hours to advise of the status of the shipment. The communications center required by NRC regulations must be "staffed continuously by at least one individual who will monitor the progress of the spent fuel shipment and will notify the appropriate agencies in the event a safeguards emergency should arise."

Any shipment delay of more than six hours must be reported under SFSB/DPH Rule 7(a) and 10 CFR 73.37(f)(4). Delays of less than six hours may be caused by a variety of factors ranging from a safeguards emergency to simple traffic delay. Since the planned schedule necessarily projects estimated times of arrival, a certain margin is built into the schedule. Rule 7(b) does not define "incident" or "delay" and this vagueness prevents a clear understanding of the circumstances in which notification is required. Clearly, the State of Michigan has a legitimate interest in knowing of shipment delays which could stem from or result in safeguards emergencies. The Federal regulations are designed to ensure that they receive such notice. No showing has been made of any safety problem unique to Michigan which requires carriers to report normal transportation delays of less than six hours. Therefore, were Michigan's requirement allowed to stand, any State could impose its own additional reporting requirements. This type of multiplicity impedes the Congressional objective of national uniformity in hazardous materials safety regulation. Therefore, I find Rule 7(b) to be an obstacle to the accomplishment and execution of the HMTA.

Rule 7(c) requires transporters to notify the Operations Division of the Department of State Police of any implementation of the emergency plan submitted under Rule 3(h). Since Rule 3(h) has been found to be inconsistent, it follows that Rule 7(c) is also inconsistent. Preemption of Rule 7(c), however, does not deprive Michigan of

notification of transportation emergencies as this is ensured by the NRC physical protection regulations set forth at 10 CFR 73.37.

Rule 8 (SFSB § R 29.558; DPH § R 325.5808)

Rule 8 sets forth the standards of confidentiality to be applied to radioactive materials shipment schedule information. The requirements set forth herein are the same as set forth in the NRC regulations (10 CFR 73.21, 73.37) on which the HMR rely. Accordingly, no inconsistency exists.

Rule 9 (SFSB § R 29.559; DPH § R 325.5809)

Rule 9 states that shipments of highway route controlled quantity radioactive material may be inspected by the State Fire Marshal and/or the DPH for compliance with applicable State and Federal statutes, rules, and regulations. It should be noted that State statutes, rules, and regulations governing radioactive materials transportation are "applicable" only if they are not inconsistent with the HMTA. Having noted this distinction, I find that Rule 9 constitutes a valid exercise of the State's inherent police powers. Ensuring that transport vehicles do not threaten public health and safety has long been recognized as a legitimate State function. Far from being an obstacle to the accomplishment of the HMTA, State enforcement of Federal and consistent State regulations concerning hazardous materials transportation safety is a critical element of a regulatory system of national applicability. MTB has long sought to foster a Federal/State partnership in hazardous materials transportation safety and, to this end, has developed and implemented the State Hazardous Materials Enforcement Development Program, in which Michigan participates, to provide States with the financial and technical assistance in the enforcement of a nationally uniform system of hazardous materials transportation safety regulation. Therefore, to the extent that enforcement is directed only to those requirements not found inconsistent, I find that Rule 9 is consistent with the HMTA and the regulations issued thereunder.

Rule 10 (SFSB § R 29.560; DPH § R 325.5810)

Rule 10 incorporates by reference the following sections of the Code of Federal Regulations:

(a) 10 CFR 71.36;
(b) 49 CFR 172.203(d); and
(c) 49 CFR 173.389(b).

Rules 10(1)(a) and (b) incorporate by reference Federal regulations which are currently in effect. Therefore, there is no question as to their consistency.

Rule 10(1)(c) incorporates by reference a regulation which was deleted from the HMR effective July 1, 1983. As stated previously in this ruling, consistency in the definition of hazardous materials is essential to the effectiveness of a regulatory system of national applicability. Therefore, for the reasons set forth in the discussion of Rule 1, I find Rule 10(1)(c) to be inconsistent with the HMTA and the regulations issued thereunder.

III. Ruling

For the foregoing reasons, I find that the radioactive materials transportation rules of the Michigan State Fire Safety Board (SFSB) and the Michigan Department of Public Health (DPH) constitute a regulatory scheme which in many aspects is inconsistent with the HMTA and the regulations issued thereunder. Specifically, I find that the following SFSB rules are inconsistent and thus preempted: Rule 1(d)/R29.551(d); Rule 3/R29.553; Rule 4/R29.554; Rule 5/R29.555; Rule 6/R29.556; Rule 7(b–c)/R29.557(b–c); and Rule 10(1)(c)/R29.560(1)(c). I find the following DPH rules to be inconsistent and thus preempted: Rule 1(e)/R325.5801(e) Rule 3/R325.5803; Rule 4/R325.5804; Rule 5/R325.5805; Rule 6/R325.5806; Rule 7(b–c)/R325.5807(b–c); and Rule 10(1)(c)/R325.5810(1)(c).

The following SFSB rules are not preempted: Rule 1(a–c)/R29.551(a–c); Rule 2/R29.552; Rule 7(a)/R29.557(a); Rule 8/R29.558; Rule 9/R29.559; and Rule 10(1)(a–b) and (2)/R29.560(1)(a–b) and (2). The following DPH rules are not preempted: Rule 1(a–d,f)/R325.5801 (a–d,f); Rule 2/R325.5802); Rule 7(a)/R325.5807(a); Rule 8/R325.5808; Rule 9/R325.5809; and Rule 10(1)(a–b) and (2)/R325.5810(1)(a–b) and (2).

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–9—State of Vermont; Letter From Governor Concerning Highway Shipment of Spent Fuel Through Vermont

Applicant: Nuclear Assurance Corporation (IRA–22).

Non-Federal rule affected: Letter dated October 8, 1982, from the Governor of Vermont advising Nuclear Assurance Corporation to suspend spent fuel shipments through Vermont.

Mode affected: Highway

Ruling: The letter from the Governor of Vermont dated October 8, 1982, does not constitute a State requirement within the meaning of the Hazardous Materials Transportation Act (HMTA). Therefore, the issue of inconsistency with the HMTA does not arise.

I. Background

By letter dated October 14, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether a letter sent to it by the Governor of Vermont constitutes a State requirement which is inconsistent with, and thus preempted by, the HMTA or the HMR. The complete text of the letter is as follows:

October 8, 1982.

Nuclear Assurance Corporation,
24 Executive Park West, Atlanta, Georgia 30329

This is to advise you that the State of Vermont does not intend to permit any further shipments of spent fuel through Vermont until such time as the responsible federal agencies establish and enforce a uniform national policy regarding such shipments. Vermont will not be placed at a disadvantage because of actions in other states which ban or have the effect of banning shipments in violation of applicable federal law. More specifically, Vermont may not be used as a route until the federal Department of Transportation and the Nuclear Regulatory Commission fulfill their legal responsibilities with respect to any statutes, regulations or ordinances in the states of Michigan and New York that are inconsistent with preemptive federal law and have the effect of forcing shipments through this state.

Since you stopped shipments through Vermont on September 3, 1982, Vermont Secretary of Transportation Tom Evslin has written to Drew Lewis, Secretary of the U.S. Department of Transportation, expressing our strong concerns regarding the unfair impact on Vermont resulting from the actions of these other states. We are confident now that Mr. Lewis and other responsible federal officials understand the serious nature of the issue and plan to take necessary action to remedy the inequities that now exist.

I must advise you that if you were to plan shipments through Vermont in the meantime, I would seek all legal remedies available to me to stop the shipments, including an immediate injunction.

I hope I have clearly stated my position on this matter. If you should have any questions, I would expect to hear from you immediately.

Sincerely,

[Signed]

Richard A. Snelling,

Governor.

NAC contended that the requirements imposed by the Governor's letter were

inconsistent with the HMTA and the HMR. Specific reference was made to certain sections of the HMR which deal with highway routing of radioactive materials.

Pursuant to 49 CFR 107.205(a), the State of Vermont submitted comments regarding NAC's application for an inconsistency ruling. The State asserted that the Governor's letter was not a State requirement within the meaning of the HMTA, but a mere notice of intent to seek equitable relief at some time in the future.

II. Analysis

A. Is the Governor's Letter a State Requirement?

Section 112(a) of the HMTA holds that any State requirement which is inconsistent with the HMTA or the regulations issued thereunder is preempted. Before one can reach the issue of inconsistency, it is first necessary to determine whether the alleged conflict involves a State requirement.

Unlike the letter which is the subject of inconsistency ruling IR–7, the letter from the Governor of Vermont is not held out as a "State Order". Neither the letter itself, nor any related writings from the State, point to any intent that the letter assume the weight of law whether from executive authority or otherwise. The letter makes no indication of present restraints being placed on NAC's right to ship spent fuel through Vermont. Admittedly, the letter contains forceful language stating that "Vermont may not be used as a route until" the responsible Federal agencies deal with the inconsistent regulations of other states. However, subsequent language clearly demonstrates that this is not an enforceable State requirement. As stated therein: "I must advise you that if you were to plan shipments through Vermont in the meantime, I would seek all legal remedies available to me to stop the shipments, including an immediate injunction." Had the letter been intended as a State requirement, reference would have been made to immediate enforcement action rather than recourse to equitable remedies. Because the Governor's letter did not impose presently exercisable restrictions on the transportation of spent fuel by NAC, it must be accepted as no more than that which Vermont claims, a notice of intent to seek equitable relief.

NAC had been engaged in transporting spent fuel through Vermont via preferred routes that satisfied both the Department's transportation safety regulations and the physical protection requirements of the Nuclear Regulatory Commission. No suggestion has been made that NAC performed in any manner not in compliance with applicable laws and regulations. Upon receipt of the Governor's letter, NAC chose to suspend activities in Vermont until the issue was resolved. This was a matter of business judgment. Nothing prevented NAC from continuing its planned shipments until such time as Vermont sought, and ultimately obtained, an injunction. While continuation of the planned series of shipments might have been imprudent, it would not have constituted a violation of any State law, order or regulation.

On the basis of the foregoing, I conclude that the October 8, 1982, letter to NAC from the Governor of Vermont is not a State requirement within the meaning of the HMTA.

B. Is the Letter Inconsistent?

Section 112(a) of the HMTA preempts any State requirement which is inconsistent with the HMTA or the regulations issued thereunder. Because the Governor's letter which is the subject of this proceeding has been found not to be a State requirement within the meaning of the HMTA, the question of inconsistency does not arise.

III. Ruling

For the foregoing reasons, I find that the letter of October 8, 1982, from the Governor of Vermont to NAC is not a State requirement within the meaning of the HMTA and therefore is not subject to preemption under that Act.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–10—New York State Thruway Authority Restrictions on the Transportation of Radioactive Materials

Applicant: Nuclear Assurance Corporation (IRA–23).

State rule affected: Section 102.1(q) of the Rules and Regulations of the New York State Thruway Authority (Chapter III, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York).

Mode affected: Highway.

Ruling: Section 102.1(q) of the Rules and Regulations of the New York State Thruway Authority is inconsistent with the HMTA and the regulations issued thereunder and is, therefore, preempted.

I. Background

By letter dated October 20, 1982, Nuclear Assurance Corporation (NAC) applied for an administrative ruling on the question of whether the prohibition on transportation of radioactive materials over facilities operated by the New York State Thruway Authority (NYSTA) is inconsistent with, and thus preempted by, the HMTA or the HMR. The prohibition is contained in section 102.1(q) of Chapter III, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York:

Part 102. Limitations on Use of the Thruway System

102.1 Prohibited uses of the Thruway.

Use of the Thruway system and entry thereon is prohibited at all times, with the noted exceptions:

* * * * *

(q) Vehicles carrying radioactive materials except under such procedures as may be adopted by the authority board, and as thereafter amended, from time to time, by the department of operations with the approval of the chairman.

II. Analysis

A. Dual Compliance Test

The NYSTA rule being challenged by NAC prohibits use of the Thruway system to "vehicles carrying radioactive materials except under such procedures as may be adopted by the authority board." The procedures adopted by the NYSTA apparently involve the case-by-case consideration of requests to use the Thruway. In its response to NAC's application for an inconsistency ruling, NYSTA stated its position on radioactive shipments as:

> Apart from certain operational requirements which can easily be met, radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure. (NYSTA letter dated July 1, 1983, p. 1.)

In practice, NYSTA has usually granted approval for shipments of low level radioactive materials but, with the recent exception of certain shipments of spent fuel which a Federal District Court ordered removed from New York, NYSTA has historically denied the use of the Thruway to vehicles transporting highway route controlled quantity radioactive material (e.g. spent nuclear fuel).

The Federal routing rule which carriers of highway route controlled quantity radioactive material must follow is set forth at § 177.825(b) of the HMR (49 CFR 177.825(b)). It requires such carriers to:

. . . ensure that the vehicle operates over preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available.

The section then defines "preferred route" as:

(i) An Interstate System highway for which an alternative route is not designated by a State routing agency as provided in this section, and

(ii) A State-designated route selected by a State routing agency (see § 171.8 of this subchapter) in accordance with the DOT "Guidelines for Selecting Preferred Highway Routes for Shipments of Large Quantity Radioactive Materials".

The State of New York has not designated any alternate preferred routes. Therefore, the preferred routes in New York are Interstate System highways. The New York State Thruway, although financed by construction bonds, has been designated a part of the Interstate System of highways with the exception of that segment of Interstate 87 between Suffern and Newburgh. With the exception of that segment, therefore, the New York State Thruway is a preferred route as defined in § 177.825(b)(1).

Consequently, under the "dual compliance" test, the question at issue is: Is it possible for NAC to comply with both the Federal and the NYSTA rules? NAC sought to transport spent nuclear fuel from Chalk River, Ontario to Savannah River, South Carolina. For the purposes of this ruling, the routes it identified involved entering the United States at a point in New York State and proceeding south to Pennsylvania. As shown below, each of these routes involved operating over a portion of the Thruway and was thus blocked by the NYSTA rule.

1. I–81 south to Syracuse, east on I–90 (Thruway) approximately seven miles to connect with I–481 and then proceeding south on I–81 to Pennsylvania.

2. I–87 south to Newburgh, then west on I–84 to Pennsylvania. I–87 between Albany and Newburgh is part of the Thruway.

3. I–87 south to I–90, west on I–90 (Thruway) to I–88, southwest to I–81, then south to Pennsylvania.

In making its route selection, however, NAC is not limited to consideration of a New York entry only and, by necessity, must examine each of the routes available to it for entry at the Canadian border. As demonstrated in IR–8 and IR–15, it may choose entry points in Michigan or Vermont, utilizing preferred routes in those States. NAC is not required by HM–164 (nor has any showing been made that it is required under Canadian law) to enter the U.S. at the New York/Canadian border. By selecting a preferred route which begins in the U.S. in either Michigan or Vermont, NAC could comply with the NYSTA restrictions by avoiding the facilities subject to their jurisdiction, and at the same time comply with the broad Federal standard regarding operation over preferred routes. Therefore, on the narrow question of whether it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the NYSTA rules, I find in the affirmative. The NYSTA rule cannot be deemed inconsistent on the basis of the dual compliance test.

B. Obstacle Test

Under the "obstacle" test, the question at issue is whether section 102.1(q) of the Rules and Regulations of the NYSTA presents an obstacle to Congress' dual purposes in enacting the HMTA.

The HMTA authorizes the Secretary of Transportation to promulgate regulations in furtherance of the purpose of the Act, "to protect the Nation adequately against the risks . . . inherent in the transportation of hazardous materials. . ." The Federal rules on highway routing of radioactive materials were issued under this authority. The preamble to the Final Rule (46 FR 5298; hereinafter referred to as HM–164) stated that, while exhaustive studies revealed "that the public risks in transporting (radioactive) materials by highway are too low to justify the unilateral imposition by local governments of bans and other severe restrictions on the highway mode of transportation", MTB believed "that these currently low risks will be further minimized by the adoption of driver training requirements and provisions of a method for selecting the safest available highway routes for carriers of large quantity radioactive materials." (46 FR 5299).

Since one objective of HM–164 was to further the Congressional goal of hazardous materials transportation safety, it is necessary to examine the safety impacts of the NYSTA rule. As described above, the practical effect of the NYSTA rule is to redirect shipments of highway route controlled quantity radioactive material into adjoining states. By doing so, the NYSTA has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If the NYSTA could impose such restrictions on the availability of highway routes to vehicles engaged in the transportation of radioactive materials, then any political subdivision of a State could do so. As has been stated with regard to similar State and local requirements, the proliferation of independently enacted restrictions would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA.

The NYSTA rule is not based upon any finding that transportation of highway route controlled quantity radioactive materials over the Thruway would present an unacceptable safety risk. Rather, as clearly stated in the NYSTA's response to NAC's application, such transportation is considered to present an unacceptable financial risk. (". . . radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure." NYSTA letter of July 1, 1983.) By denying use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of the Congressional objective of enhancing hazardous materials transportation safety.

The second Congressional objective purpose in enacting the HMTA was to prevent a patchwork of varying and conflicting State and local regulations. This goal of national uniformity in hazardous materials transportation safety regulation was balanced by the recognition of valid State and local interests in this area. In order to maintain this balance when promulgating HM–164, the Department incorporated into the rule a procedure whereby States, in consultation with local governments, could designate routes other than Interstate System highways as preferred routes. As set forth in the HMR, States may require vehicles containing highway route controlled quantity radioactive material to operate over routes other than Interstate System highways so long as those alternate routes are selected in accordance with specified DOT guidelines and they are designated as alternate preferred routes by a State routing agency as defined in 49 CFR 171.8. The NYSTA is not a State routing agency.

The NYSTA rule thus stands as a repudiation of the Department's rule of national applicability on highway routing of radioactive materials. It

effectively blocks the use of Interstate System highways without ensuring the availability of alternate preferred routes. It is clearly an obstacle to the accomplishment of the Congressional goals of increased safety and national uniformity in hazardous materials transportation regulation.

In its response to NAC's application, the NYSTA contended that its rule did not prohibit the interstate transportation of radioactive materials through New York. Shipments proceeding south on Interstate 91 through Vermont and Massachusetts to Interstate 84 in Connecticut could proceed on Interstate 84 across the southeastern corner of New York and into Pennsylvania. While this may be so, it does not change the fact that the NYSTA rule severely curtails New York's exposure to radioactive materials shipments at the expense of neighboring jurisdictions.

The Supreme Court has consistently held this kind of State rule to violate the Commerce Clause of the Constitution. See, e.g., *Kassell* v. *Consolidated Freightways Corporation of Delaware*, 450 U.S. 662 (1981), wherein the Supreme Court stated that "a State cannot constitutionally promote its own parochial interests by requiring safe vehicles to detour around it."

While the Department has no authority to rule on Commerce Clause issues, its administrative rulings on preemption under the HMTA have followed Supreme Court rulings in this area. Applying this to the instant case leads inexorably to the conclusion that, if any one State may use insurance requirements to deflect interstate carriers of hazardous materials into other jurisdictions, then all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation then the very patchwork of varying and conflicting State and local regulations which Congress sought to preclude.

On the basis of the foregoing, I conclude that the NYSTA rule impedes Congress' dual purposes in enacting the HMTA.

III. Ruling

For the foregoing reasons, I find that section 102.1(q) of the Rules and Regulations of the New York State Thruway Authority is inconsistent with the HMTA and the regulations issued thereunder and, in accordance with 49 U.S.C. 1811(a), is preempted.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–11— Ogdensburg Bridge and Port Authority; Ogdensburg, New York; Radioactive Materials Transportation Rules

Applicant: Department of Transportation (IRA–24).

Non-Federal rule affected: Sections 5701.3, 5702.1, 5702.2, and 5702.3 of the Rules and Regulations Governing the Operation of the Ogdensburg-Prescott International Bridge (Chapter LXV, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York).

Mode affected: Highway.

Ruling: To the extent that they affect the interstate transportation of other than highway route controlled quantity radioactive material, §§ 5701.3, 5702.1, 5702.2, and 5702.3 of the Rules and Regulations Governing the Operation of the Ogdensburg-Prescott International Bridge are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted undr 49 U.S.C. 1811(a).

No determination is made as to the consistency of §§ 5701.3, 5702.1, 5702.2 and 5702.3 insofar as they affect the transportation of highway route controlled quantity radioactive material.

I. Background

The Ogdensburg Bridge and Port Authority (OBPA) is a public benefit corporation of the State of New York which operates a number of transportation facilities including the Ogdensburg-Prescott International Bridge (Ogdensburg, New York-Prescott, Ontario). The OBPA administers and develops its facilities as an independent, self-supporting agency.

The rules governing operation over the Ogdensburg Bridge are set forth in Chapter LXV, Title 21, Official Compilation of the Codes, Rules and Regulations of the State of New York. In September of 1981, the OBPA adopted amended rules governing the transportation of radioactive materials. The amended rules are set forth in §§ 5701.3 and 5702.1-5702.3. Essentially, the rules: incorporate the provisions of St. Lawrence County Local Law No. 10 (see IR–12); require prior approval by the OBPA of insurance coverage and/or indeminification provisions; and reserve to the OBPA the right to specify the time of crossing, to provide any escort deemed necessary and to obtain full compensation for the costs associated with the clearance and crossing of radioactive materials.

Shortly after the OBPA adopted the amended rules, the Department's Final Rule, hereinafter referred to as HM–164 (46 FR 5298), regarding the highway routing of radioactive materials went into effect. It set forth general routing requirements for placarded shipments of radioactive materials and specific routing requirements for large quantity radioactive material. A subsequent rulemaking (48 FR 10218) which became effective July 1, 1983, deleted the term "large quantity" and substituted the term "highway route controlled quantity." Whether a highway shipment of radioactive materials is required to comply with the specific routing requirements depends on whether it constitutes a highway route controlled quantity.

As codified at 49 CFR 177.825, HM–164 requires motor carriers of highway route controlled quantity radioactive material to operate over "preferred routes", i.e., Interstate System highways or alternate routes designated by a State routing agency in accordance with DOT guidelines. Such carriers may deviate from preferred routes only when necessitated by the conditions set forth in § 177.825(d)(2). The Ogdensburg Bridge is not part of an Interstate System highway; the State of New York has not designated any non-Interstate highways as alternate preferred routes; and the Department is not aware of any circumstances which currently require transporters of highway route controlled quantity radioactive material to operate over the Ogdensburg Bridge. Therefore, irrespective of the OBPA rules, at the present time, transportation of highway route controlled quantity radioactive material over the Ogdensburg Bridge would constitute a violation of the HMR. While acknowledging this fact, the Department also recognize that transportation of highway route controlled quantity radioactive material across the Ogdensburg Bridge and through adjacent St. Lawrence County has occurred without incident prior to the adoption of HM–164 and that this route could receive consideration as a possible alternate preferred route in this area of New York at such time as the State choose to designate preferred routes. On this basis, the Department initiated this inconsistency proceeding, in accordance with 49 CFR 107.209(b), on the issue of whether the OBPA rules would be inconsistent with the HMTA, and therefore preempted, if the Ogdensburg Bridge were designated as

part of a preferred route. Accordingly, on May 12, 1983, the Department published a notice and invitation to comment in the **Federal Register** (48 FR 21496).

In response to the public notice, comments were received from ten parties. The New York State Department of Law submitted a comment urging that this proceeding be dropped because the issue presented was hypothetical. Citing the Department's acknowledgement that, at the present time transportation across the Bridge of highway route controlled quantity radioactive material would constitute a violation of the HMR, the State argued that, since the State has not indicated any intention to designate the Ogdensburg Bridge as a preferred route, this proceeding concerns "an issue which is not now, and may never become, ripe for decision." This point is persuasive and, upon consideration, is dispositive of this proceeding insofar as highway route controlled quantity radioactive material is concerned.

However, as asserted in the comment submitted by Federal Express Corporation, and subsequently confirmed by Departmental analysis, the effect of the OBPA rules is not limited to highway route controlled quantity radioactive material. By imposing additional requirements on the transportation of radioactive materials which are not required to operate solely on preferred routes, the OBPA rules present issues which are not hypothetical or speculative. Therefore, the Department has determined that issuance of an inconsistency ruling with regard to the radioactive materials transportation rules of the OBPA is appropriate at this time.

II. Analysis

The following determination of whether any or all of the radioactive materials transportation rules of the OBPA are inconsistent with the HMTA or the HMR, is based on the two-prong test described in MTB's procedural regulations and discussed in the General Preamble.

The radioactive materials transportation rules of the OBPA appeared in their entirety as Appendix C to the public notice and invitation to comment which was published in the **Federal Register** on May 12, 1983. The rules consist of four sections which are addressed in consecutive order below.

§ 5701.03—Permit Requirement

Section 5701.3 sets forth the following requirements:

§ 5701.3. Vehicles requiring special permits or escorts. No vehicle falling within any of the following categories shall be permitted to use the facilities unless a special permit therefor is issued by the Authority Employee in charge, and, if required as a condition of such permit, a special escort is provided and fees, including consulting engineering services if required, therefor paid, in advance, viz:

* * * * *

(f) Vehicles which are transporting or have recently carried explosives, radioactive materials or other dangerous commodities and show any evidence or residue of such materials or commodities.

* * * * *

In determining whether or not special permits should be issued or, if issued, what conditions should apply thereto, such Authority Employee in charge may confer with the Authority's consulting engineers, counsel and/or whatever other specialist or regulatory agencies he may consider appropriate in the circumstances, but such determination in any given situation shall be the sole and exclusive judgment of such Authority Employee in charge and final and binding upon all persons. Application for a special permit shall be made at least 48 hours in advance of the proposed crossing. If permission is granted, the Authority shall specify the time of the crossing.

Section 5701.3 prohibits the highway transportation of radioactive materials without a permit issued by the Authority Employee in charge, and therefore constitutes a routing rule in the form of a permit requirement. The term "routing rule" is defined in the HMR in Appendix A to Part 177 as follows:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effect. . . .

With regard to other than highway route controlled quantity radioactive material, § 5701.3 restricts such transportation by denying access to those carriers which, although in compliance with the HMR, have not obtained a permit issued by the Authority Employee in charge. Moreover, this restriction creates the likelihood of such shipments being diverted to other jurisdictions. And the restriction applies because of the hazardous nature of the cargo. For these reasons, § 5701.3 constitutes a local routing rule within the meaning of the HMR.

MTB first addressed the issue of local transportation permits for transport of radioactive materials in IR–1 (43 FR 16954, April 20, 1978) which dealt with § 175.111 of the New York City Health Code. That regulation required a certificate of Emergency Transport for each shipment in or through the city of identified quantities of radioactive material. In that ruling, MTB concluded that the local permit requirement was not inconsistent because there was no identifiable requirement in the text of the HMTA or HMR which provided a basis for a finding of inconsistency. Having reached this conclusion, MTB announced its intent to commence rulemaking to consider the need for routing requirements under the HMTA for highway carriage of radioactive materials. In view of this announcement, MTB added that permit requirement similar to that of New York City "may face a necessary future harmonization with rulemaking that results from the inquiry MTB intends to undertake." (43 FR 16958.)

The planned inquiry alluded to in IR–1 resulted in the promulgation of HM–164 and this proceeding represents the "necessary future harmonization with rulemaking" to be faced by jurisdictions which adopted requirements similar to those in the New York City ordinance. Several commenters argued that HM–164 was invalid as a result of the District Court holding in *City of New York* v. *DOT*, 539 F. Supp. 1237 (1982). However, that decision was reversed on appeal to the Second Circuit Court of Appeals (715 F. 2d 732, August 10, 1983) and on February 27, 1984, the Supreme Court dismissed the city's appeal from the Circuit Court ruling. Therefore, the present case differs from that presented in IR–1, in that there is now an identifiable Federal requirement that provides a standard against which a State/local requirement can be compared for consistency.

Transporters of other than highway route controlled quantity radioactive material are subject to the Federal routing requirements set forth in § 177.825(a) of the HMR.

(a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—

(1) There is only one practicable highway route available, considering operating necessity and safety, or

(2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

Section 5701.2 imposes a further restraint on route selection by requiring transporters to obtain a permit to cross the Ogdensburg Bridge. This

requirement is based on a presumption that the OBPA has the authority to control, and ulimately, to prohibit this form of interstate commerce.

The OBPA is a creature of the State of New York. As such, it cannot be imbued with greater authority than resides in the parent State. The extent to which States and the political subdivisions may regulate the highway routing of radioactive materials has been thoroughly addressed in the inconsistency rulings published herewith. As stated in IR–8:

> Generally, in the absence of departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

In the course of developing the regulations promulgated under HM–164, DOT gave specific consideration to the subcategory of radioactive materials affected by the OBPA rules (i.e, other than highway route controlled quantity radioactive material) and selected the above-quoted general guidelines as the appropriate regulatory measure, as opposed to the possible alternatives of no regulation at all or a regulation mandating the use of preferred routes. In other words, DOT selected and implemented a level of requirements based on a comparative assessment of the risks presented by shipments of different quantities of radioactive materials. In doing so, DOT performed the duty imposed on it by the HMTA and, having satisfied all of the procedural requirments of the HMTA and the Administrative Procedure Act, established a rule which is national in its scope and application. This rule does not eliminate risk. That is not possible. What the rule does accomplish is to provide an orderly and predictable regimen for the transportation of other than highway route controlled quantity radioactive material, a regimen which presents a low and equitably distributed level of risk from transportation that is far outwighed by the societal benefits derived from that transportation. While a community may legitimately seek to further reduce its exposure to the risk inherent in the transportation of these materials, it may not do so by exporting that risk, albeit a low one, to its neighbors. Such an approach not only frustrates the equitable distribution of risk which the Federal rule sought to achieve, but also impedes the accomplishment and execution of the HMTA's objective of regulatory uniformity. For these reasons, such an approach is clearly inconsistent with the HMTA and the HMR.

The OBPA permit requirements in § 5701.3 is such an approach. By restricting access to the international crossing at the Ogdensburg Bridge, the requirement redirects shipments of other than highway route controlled quantity radioactive material into adjoining jurisdictions. In bringing about this result, the OBPA has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If the OBPA could impose such restrictions on the availbility of highway routes to vehicles engaged in the transportation of radioactive materials, then any political subdivision of a State could do so. As has been stated with regard to similar State and local requirements, the proliferation of independently enacted restrictions would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA. The OBPA rules, moreover, have the added dimension of restricting international commerce.

On the basis of the foregoing, I find that § 5701.3 of the OBPA rules, to the extent that it affects the transportation of other than highway route controlled quantity radioactive material, is inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a).

§ 5702.1—Incorporation of Local Law

Section 5702.1 prohibits passage over the Ogdensburg Bridge by any vehicle which has not satisfied the requirements of St. Lawrence County Local Law No. 10 Regulating the Transportation of Radioactive Materials through St. Lawrence County. St. Lawrence County Local Law No. 10 is the subject of a separate inconsistency ruling (IR-12, published herewith) and has been determined to be inconsistent to the extent that it affects the transportation of other than highway route controlled quantity radioactive material. Therefore, on the basis of the analysis contained in IR–12, I find § 5702.1 of the OBPA rules to be inconsistent to the extent that it affects the transportation of other than highway route controlled quantity radioactive material.

§ 5702.2—Indemnification

Section 5702.2 of the radioactive materials transportation rules of the OBPA sets forth the following requirements concerning indemnification:

> § 5702.2. In addition to the Certificate of Emergency Transportation, responsible state or federal agencies and the carrier shall submit for Authority's prior approval evidence of proper insurance coverage and/or and acceptable indemnification and hold harmless agreement.

Unlike the Vermont rule on insurance coverage which is considered in IR–15, the OBPA rule does not quantify "proper insurance coverage." Therefore, comparison with Federal requirements on financial responsibility is not possible. Instead, § 5702.2 is comparable to the requirement of the New York State Thruway Authority (NYSTA) which was the subject of IR–10. In that ruling, MTB stated:

> The NYSTA rule is not based upon any finding that transportation of highway route controlled quantity radioactive material over the Thruway would present an unacceptable safety risk. Rather, as clearly stated in the NYSTA's response to NAC's application, such transportation is considerd to present an unacceptable financial risk. ("... radioactive shipments will be permitted on the Thruway when we are properly indemnified for any exposure." NYSTA letter of July 1, 1983.) By denying use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported. For this reason, the NYSTA rule necessarily poses an obstacle to the accomplishment of increased hazardous materials transportation safety.

The same reasoning applies to § 5702.2 of the OBPA rules and, on that basis, I find § 5702.2 to be inconsistent to the extent that it affects the transportation of other than highway route controlled quantity radioactive material.

Because § 5702.2 has been determined to impose a requirement which impedes

the accomplishment of the HMTA, it is not necessary to address the fact that the section imposed an obligation to act, not only on the carrier, but also on Federal agencies. Nevertheless, it should be noted that, regardless of the nature of the requirement imposed, any attempt by a political subdivision of a State to impose an obligation to act on the Federal government would be subject to the strictest scrutiny in connection with both statutory and Constitutional preemption.

§ 5702.3—Additional Requirements

Section 5702.3 of the radioactive materials transportation rules of the OBPA imposes the following additional requirements:

> § 5702.3. As a condition of the special permit or escort set forth in 5701.3, the Authority shall specify the time of crossing, provide escort if deemed necessary and be fully compensated for any and all costs associated with the clearance and crossing of the radioactive materials.

Previously in this ruling, the requirement for advance approval by OBPA to transport other than highway route controlled quantity radioactive material across the Ogdensburg Bridge was found to be inconsistent. Since § 5702.3 imposes additional requirements which transporters must satisfy before a permit will be issued, it constitutes an integral part of the inconsistent regulatory scheme and is, therefore, also inconsistent to the extent that it affects the interstate transportation of other than highway route controlled quantity radioactive material.

III. Ruling

For the foregoing reasons, I find that, to the extent they affect the interstate transportation of other than highway route controlled quantity radioactive material, §§ 5701.3, 5702.1, 5702.2, and 5702.3 of the Rules and Regulations Governing the Operation of the Ogdensburg-Prescott International Bridge are inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a). No determination is made as to the consistency of §§ 5701.3, 5702.1, 5702.2, and 5702.3 insofar as they affect the transportation of highway route controlled quantity radioactive material.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–12—St. Lawrence County, New York; Local Law Regulating the Tansportation of Radioactive Materials Through St. Lawrence County

Applicant: Department of Transportation (IRA–25).

Non-Federal rule affected: St. Lawrence County Local Law No. 10 for the year 1980.

Mode affected: Highway.

Ruling: To the extent that they affect the interstate transportation of other than highway route controlled quantity radioactive material, Sections 2 through 6 of Local Law No. 10 are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted under 49 U.S.C. 1811(a). No determination is made as to the consistency of Sections 2 through 6 of Local Law No. 10 insofar as they affect the transportation of highway route controlled quantity radioactive material.

I. Background

On August 11, 1980, the St. Lawrence County Board of Legislators adopted Local Law No. 10 for the year 1980 (hereinafter referred to as "Law No. 10"), which was duly published in accordance with § 24 of the County Law of the State of New York. Law No. 10 established the requirement that any party seeking to transport certain specified quantities of radioactive materials within St. Lawrence County must obtain a Certificate of Emergency Transport.

St. Lawrence County lies at the foot of the international bridge linking Ogdensburg, New York, and Prescott, Ontario. Thus, any restriction on transportation in St. Lawrence County imposes an equal restriction on international transportation over the Ogdensburg Bridge.

The Department of Transportation issued a Final Rule, hereinafter referred to as HM–164 (46 FR 5298), regarding the highway routing of radioactive materials which become effective February 1, 1982. It set forth general routing requirements for placarded shipments of radioactive materials and specific routing requirments for large quantity radioactive material. A subsequent rulemaking (48 FR 10218) which became effective July 1, 1983, deleted the term "large quantity" and substituted the term "highway route controlled quantity."

As codified at 49 CFR 177.825, HM–164 require motor carriers of highway route controlled quantity radioactive material to operate over "preferred routes", i.e., Interstate System highways or alternate routes designated by a State routing agency in accordance with DOT guidelines. Such carriers may deviate from preferred routes only when necessitated by the conditions set forth in § 177.825(b)(2). No Interstate System highways rune through St. Lawrence County; the State of New York has not designated any non-Interstate highways as alternate preferred routes; and the Department is not aware of any circumstances which currently require transporters of highways route controlled quantity radioactive material to operate over non-preferred routes in St. Lawrence County. Therefore, irrespective of local regulation, at the present time, transportation of high route controlled quantity radioactive material through St. Lawrence County would constitute a violation of the HMR. While acknowledging this fact, the Department also recognized that transportation of highway route controlled quantity radioactive material across the Ogdensburg Bridge and through St. Lawrence County had occurred without incident prior to the adoption of HM–164 and that this route could receive consideration as a possible alternate preferred route in this area of New York such time as the State chooses to designate preferred routes. On this basis, the Department initiated this inconsistency proceeding, in accordance with 49 CFR 107.209(b), on the issue of whether Law No. 10 would be inconsistent with the HMTA, and therefore preempted, if non-Interstate System highways in St. Lawrence County were designated as part of a preferred route. Accordingly on May 12, 1983, the Department published a notice and invitation to comment in the **Federal Register** (48 FR 21496).

In response to the public notice, comments were received from eleven parties. The New York State Department of Law submitted a comment urging that this proceeding be dropped because this issue presented was hypothetical. Citing the Department's acknowledgement that, at the present time, through transportation of highway route controlled quantity radioactive material would constitute a violation of the HMR, the State argued that, since the State has not indicated any intention to designate a preferred route through St. Larence County, this proceeding concerns "and issue that is not now, and may never

become, ripe for decision." This point is persuasive and, upon consideration, is dispositive of this proceeding insofar as highway route controlled quantity radioactive material is concerned.

However, as asserted in the comment submitted by Federal Express Corporation, and subsequently confirmed by Department analysis, the effect of Law No. 10 is not limited to highway route controlled quantity radioactive material. By imposing additional requirements on the transportation of radioactive materials which are not required to operate solely on preferred routes, Law No. 10 presents issues which are not hypothetical or speculative. Therefore, the Department has determined that issuance of an inconsistency ruling with regard to Law No. 10 is appropriate at this time.

II. Analysis

Law No. 10, which apeared in its entirety as Appendix D to the public notice and invitation to comment, consists of seven sections which are addressed in consecutive order below.

Section 1 of Law No. 10 sets forth the following policy statements:

> Section 1: The St. Lawrence County Legislature hereby regulates the transportation of nuclear materials specified below in or through St. Lawrence County for the purpose of protecting the health and safety of residents until such time as adequate information is made available by Federal and State agencies responsible for radioactive materials to prepare an adequate emergency response plan.

The HMTA does not preempt all State and local regulation of hazardous materials tranportation safety, only those regulations which are inconsistent. Therefore, the mere statement of intent to regulate is not inconsistent with the HMTA. Since Section 1 imposes no obligation to act on any party, no problem arises under the "dual compliance"test. With regard to the "obstacle" test, the statement of intent indicates a role for local government which does not exceed that intended by the framers of the HMTA. Accordingly, Section 1 is consistent with the HMTA.

Section 2 of Law No 10 identifies certain classes of radioactive materials for which a transportation permit is required:

> Section 2: A Certificate of Emergency Transport issued by the St. Lawrence County Emergency Services Coordinator-Civil Defense Director shall be required for such shipment of any of the following materials:
>
> 1. Plutonium isotopes in any quantity exceeding 2 grams, or 20 curies.
>
> 2. Uranium enriched in the isotope U235 exceeding 20 percent of the total uramium content in quantities where the U235 content exceeds one kilogram.
>
> 3. Any actinides (elements with atomic number 89 or greater) the activity of which exceeds 20 curies.
>
> 4. Spent reactor fuel elements or mixed fission products associated with such spent fuel elements whose activity exceeds 20 curies.
>
> 5. Any quantity of radioactive material specified as a "large quantity" by the Nuclear Regulatory Commission in 10 CFR Part 71 and as amended entitled "Packaging of Radioactive Materials for transport", with the exception of Co–60 used for medical radiation therapy or medical research.

The hazard classes identified in subsections 1–5 of Section 2 have no direct counterparts in the HMR. Each subsection encompasses a group of materials, not all of which are highway route controlled quantity radioactive material as defined in 49 CFR 173.403(l). This raises two issues which are relevant to the question of inconsistency: hazard class definition and regulatory effect.

In prior inconsistency rulings, MTB has given notice that it considers the Federal role in definition of hazard classes to be exclusive. (IR–5, 47 FR 51991; IR–6, 48 FR 760; IR–8 and IR–15, published herewith.) As stated in IR–5, which dealt with a New York City ordinance regulating compressed gases:

> The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1000 pages of the Code of Federal Regulations. . . . For the City to impose additional requirements based on differing hazard class definition adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classification of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompanying decrease in overall public safety (47 FR 51994.)

By imposing additional requirements on a subgroup of radioactive materials, St. Lawrence County has, in effect, created a new hazard class. If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety. As stated in IR–6:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulation. This is precisly the situation which Congress sought to preclude when it enacted the preemption provision of the HMTA (49 U.S.C. 1811). (48 FR 764.)

On the basis of the foregoing, I find that the hazard class definitions set forth in Section 2 of Law No. 10 constitute an obstacle to the accomplishment of Congressional objectives of enhanced safety and regulatory uniformity underlying enactment of the HMTA and adoption of the HMR.

The regulatory effect of the hazard classes defined in Section 2 is to impose a permit requirement on a number of radioactive materials, some of which are highway route controlled quantity and some not. This distinction is critical to a determination of whether Law No. 10 is inconsistent with the HMTA.

Since Section 2 prohibits the highway transportation of certain radioactive materials without a permit issued by the St. Lawrence County Civil Defense Diretor—Emergency Services Coordinator, it constitutes a routing rule in the form of a permit requirement. The term "routing rule" is defined in the HMR in Appendix A to Part 177 as follows:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. . . .

With regard to other than highway route controlled quantity radioactive material, Law No. 10 restricts such transportation by denying access to those shipments which, although in compliance with the HMR, have not obtained a Certificate of Emergency transport. Moreover this restriction creates the likelihood of such shipments being diverted to other jurisdictions. And the restriction applies because of the hazardous nature of the cargo. For these reasons, Law No. 10 constitutes a local routing rule within the meaning of the HMR.

MTB first addressed the issue of local permits for transport of radioactive materials in IR–1 (43 FR 16954, April 20, 1978) which dealt with § 175.111 of the New York City Health Code. That regulation required a Certificate of Emergency Transport for each shipment in or through the city of the same materials identified in Section 2 of Law No. 10. In that ruling, MTB concluded: "There is not any identifiable

requirement in the text of the HMTA or in regulations issued thereunder that provides a basis for a finding of inconsistency with § 175.111." (43 FR 16957.) Having reached this conclusion, MTB stated:

> The legal validity of § 175.111 is still subject to serious doubt. . . . New York City and any other jurisdictions which have, or are contemplating, similar ordinances, should also bear in mind the fact that § 175.111 may be preempted by the Commerce Clause of the United States Constitution, or by the Atomic Energy Act of 1954 and regulations issued thereunder. . . . Finally, whatever the ultimate legal fate of § 175.111, such provisions may face a necessary future harmonization with rulemaking that results from the inquiry MTB intends to undertake. (43 FR 16958.)

The planned inquiry alluded to in IR–1 resulted in the promulgation of HM–164 and this proceeding represents the "necessary future harmonization with rulemaking" to be faced by jurisdictions which adopted ordinances similar to § 175.111 of the New York City Health Code. Several commenters argued that HM–164 was invalid as a result of the District Court holding in *City of New York* v. *DOT*, 539 F. Supp. 1237 (1982). However, that decision was reversed by the Second Circuit Court of Appeals (715 F. 2d 732, August 10, 1983) and on February 27, 1984, the Supreme Court dismissed the city's appeal from the Circuit Court ruling. Therefore, the present case differs from that presented in IR–1, in that there is now an identifiable Federal requirement that provides a standard against which a State or local rule may be compared for consistency.

Transporters of other than highway route controlled quantity radioactive material are subject to the Federal routing requirements set forth in § 177.825(a) of the HMR:

> (a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population desity and activities, time of day and day of week during which transportation will occur. In performace of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—
>
> (1) There is only one practicable highway route available, considering operating necessity and safety, or
>
> (2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

Section 2 of Law No. 10 imposes a further restraint on route selection by requiring transporters to obtain a local permit. This requirement is based on a presumption that St. Lawrence County has the authority to control, and ultimately, to prohibit this form of interstate commerce.

In its comments on this proceeding, the St. Lawrence County Board of Legislators asserts that this authority stems from the "fundamental function of local government" to protect the lives and property of it citizens; that its attempts at emergency response planning were hampered by a lack of information; and that its regulation was necessary to ensure adequate emergency response preparedness. Nothing in this argument points to any safety problem unique to St. Lawrence County. Therefore, if the argument is sustained with regard to Law No. 10, equal authority must be conceded to every local jurisdiction in the Nation. And this would lead directly to the proliferation of independent State and local restrictions on the highway transportation of radioactive materials which prompted the Department to adopt HM–164.

In other inconsistency rulings published herewith, radioactive materials routing rules in the form of shipment-specific permit requirements were determined to be inconsistent *per se*. As stated in IR–8:

> Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State Law, local governments, may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a state or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

In the course of developing the regulations promulgated under HM–164, DOT gave specific consideration to the subcategory of radioactive materials affected by Law No. 10 (i.e., other than highway route controlled quantity radioactive material) and selected the above-quoted general guidelines as the appropriate regulatory measure, as opposed to the possible alternatives of no regulation at all or a regulation mandating the use of preferred routes. In other words, DOT selected and implemented a level of requirements based on a comparative assessment of the risks presented by shipments of different quantities of radioactive materials. In doing so, DOT performed the duty imposed on it by the HMTA and, having satisfied all of the procedural requirements of the HMTA and Administrative Procedure Act, established a rule which is national in its scope and application. This rule does not eliminate the risk. That is not possible. What the rule does accomplish is to provide an orderly and predictable regimen for the transportation of other than highway route controlled quantity radioactive material, a regimen which presents a low and equitably distributed level of risk from transportation that is far outweighed by the societal benefits derived from that transportation. While a community may legitimately seek to further reduce its exposure to the risk inherent in the transportation of these materials, it may not do so by exporting that risk, albeit a low one, to its neighbors. Such an approach not only frustrates the equitable distribution of risk which the Federal rule sought to achieve, but also impedes the accomplishment and execution of the HMTA's objective of regulatory uniformity. For these reasons, such an approach is clearly inconsistent with the HMTA and the HMR.

The permit requirement in Section 2 of Law No. 10 is such an approach. By restricting access to highways in St. Lawrence County, the requirement redirects shipments of other than highway route controlled quantity radioactive material into adjoining jurisdictions. In bringing about this result, St. Lawrence County has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If St. Lawrence County could impose such restrictions on the availability of its highways to vehicles engaged in the interstate transportation of radioactive materials, then any local jurisidiction could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA.

On the basis of the foregoing, I find Section 2 of Law No. 10, to the extent

that it affects the interstate transportation of other than highway route controlled quantity radioactive material, to be inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a).

Sections 3 through 6 of Law No. 10 set forth additional provisions related to the permit required by Section 2:

Section No.	Subject
3	Application procedure.
4	Approval criteria.
5	Expiration of the permit.
6	Penalties.

All of these provisions implement the permit requirement which has been determined to be inconsistent to the extent that if affects the transportation of other than highway route controlled radioactive material. It, therefore, follows that the provisions for administration and enforcement of the inconsistent requirement are also inconsistent. On this basis, I find that Sections 3 through 6 of Law No. 10, to the extent that they affect the interstate transportation of other than highway route controlled quantity radioactive material, are inconsistent with the HMTA and the HMR and, therefore, preempted.

Section 7 of Law No. 10 sets forth certain exemptions from the requirements of Law No. 10. Since this imposes no obligation to act, the issue of inconsistency does not arise.

III. Ruling

For the foregoing reasons, I find that, to the extent they affect the interstate transportation of other than highway route controlled quantity radioactive material, Sections 2 through 6 of Law No. 10, are inconsistent with the HMTA and the HMR and, therefore, preempted under 49 U.S.C. 1811(a). No determination is made as to the consistency of Sections 2 through 6 of Local Law No. 10 insofar as they affect the transportation of highway route controlled quantity radioactive material.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–13—Thousand Island Bridge Authority; Restrictions on the Transport of Radioactive Materials

Applicant: Department of Transportation (IRA–26).

Non-Federal rule affected: Sections 5503.2 and 5503.3 of Chapter LXIII, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York.

Mode affected: Highway.

Ruling: To the extent that it affects the transportation of radioactive materials, § 5503.3 of the rules governing operation of the Thousand Islands Bridge is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with 49 U.S.C. 1811(a).

I. Background

The Thousand Islands Bridge Authority (TIBA) is responsible for the operation and maintenance of the Thousand Islands Bridge, an international crossing which links Collins Landing, New York, and Ivy Lea, Ontario and which constitutes a part of Interstate Highway I–81. By letter dated March 22, 1982, the TIBA applied to the Department of Transportation for a non-preemption determination regarding its rules and regulations governing the shipment of radioactive materials across the Thousand Islands Bridge. As set forth at 49 CFR 107.215(b)(4), any application for a non-preemption determination must contain an express acknowledgement by the applicant that the rule in question is inconsistent with the HMTA or the regulations issued thereunder. Such acknowledgement is not required if the rule has been determined inconsistent by a court of competent jurisdiciton or in an inconsistency ruling issued under 49 CFR 107.209. Neither of these exceptions applied to the rules governing the Thousand Islands Bridge. Therefore, when the TIBA, upon direct request, declined to acknowledge the inconsistency of the rules for which it had requested a non-preemption determination, the Department suspended action on the matter.

The question of whether the rules governing radioactive materials transportation across the Thousand Islands Bridge are inconsistent with the HMTA resurfaced in October of 1982. In a letter to the Department, Nuclear Assurance Corporation cited "a permit requirement for an arbitrary, but substantial insurance coverage at the Thousand Islands Bridge" as one of several factors restricting the availability of routes for transporting spent nuclear fuel from Chalk River, Ontario, to a reprocessing facility at Savannah River, South Carolina. Therefore, notwithstanding that application for an inconsistency ruling had not been filed, the Department elected, in accordance with 49 CFR 107.209(b), to issue an administrative ruling on the question of whether or not the radioactive materials transportation rules of the TIBA are inconsistent with the HMTA or the regulations issued thereunder.

On May 12, 1983, a public notice and invitation to comment was published in the **Federal Register** (48 FR 21496). Comments were received from ten parties. One commenter, the New York State Department of Law, urged that this proceeding be dismissed "because the issue presented is hypothetical, and no determination is necessary at this time", as no carrier had applied for an inconsistency ruling or otherwise indicated a wish to use a route across the Thousand Islands Bridge. This comment arises from the misapprehension that the Department may issue inconsistency rulings only upon the direct application of a party claiming to have been affected by an allegedly inconsistent State or local rule. The HMTA does not support this interpretation. The preemption provision at section 112(a) states clearly that any State or local requirement which is inconsistent is preempted. No reference of any kind is made to a need for third party involvement. The procedural regulations adopted by MTB to implement section 112 are explicit on this matter:

> (b) Notwithstanding that application for a ruling has not been filed under § 107.203, the Associate Director for HMR, on his own initiative, may issue a ruling as to whether a particular State or political subdivision requirement is inconsistent with the Act or the regulations issued under the Act. (49 CFR 107.209.)

The Department clearly has authority to issue an inconsistency ruling *sua sponte*. Furthermore, as part of an Interstate System highway, the Thousand Islands Bridge is a preferred route for the highway transportation of highway route controlled quantity radioactive materials. Whether or not carriers have recently indicated a wish to use the bridge is irrelevant to the question of whether the TIBA rules are inconsistent. While this may be relevant in a non-preemption proceeding which involves consideration of the extent to which an inconsistent rule affects interstate commerce, the argument is premature in the context of an inconsistency proceeding.

The comment that this issue is hypothetical may, therefore, be dismissed as without merit. Where appropriate in the subsequent analysis of the TIBA regulations, other comments

and previous administrative decisions will be discussed.

II. Analysis

The radioactive materials transportation regulations of the TIBA, which are the subject of this ruling, are contained §§ 5503.2 and 5503.3 of Chapter LXIII, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York:

5503.2. Types of vehicles excluded. Vehicles loaded in such a manner or with such materials or so constructed or equipped as possibly to endanger persons or property or likely to render the use of the facilities unsafe, shall be excluded from use of the facilities, and the transportation of any such vehicle is hereby prohibited. Without limiting the foregoing, the following types of vehicles come within the meaning of this section and shall be denied use of the facilities:

* * * * *

(n) vehicles which would be excluded from passage without a special permit or escort, under section 5503.3 of this Part, and for which no such permit has been issued or no such escort provided:

* * * * *

5503.3 Vehicles requiring special permits or escorts. (a) No vehicle falling within any of the following categories shall be permitted to use the facilities unless a special permit therefor is issued by the authority employee in charge and, if required as a condition of such permit, a special escort is provided and fees therefor paid, viz:

* * * * *

(6) vehicles transporting explosives, radioactive materials or other dangerous commodities; and

(7) vehicles which have recently carried explosives, radioactive materials or other dangerous commodities and show any evidence of residue of such materials or commodities.

(b) In determining whether or not such special permit should be issued or, if issued, what conditions should apply thereto, such authority employee in charge may confer with the authority's consulting engineers, counsel and-or whatever other specialists or regulatory agencies he may consider appropriate in the circumstances, but such determination in any given situation shall be the sole and exclusive judgment of such authority employee in charge and final and binding upon all persons.

Although the TIBA regulations affect the transportation of many hazardous materials, only their effect on radioactive materials transportation will be considered in this ruling.

Subsection 5503.2(n) of the TIBA rules prohibits passage over the Thousand Islands Bridge by any vehicle which has failed to obtain a permit or provide an escort under the terms of § 5503.3. MTB first addressed the issue of State transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR–2, 44 FR 75566, Dec. 20, 1979.) In that ruling, MTB acknowledged that "(a) permit may serve several legitimate State police power purposes, and the bare requirement * * * that a permit be applied for and obtained is not inconsistent with federal requirements." (44 FR 75570.) For example, a State may require operators to obtain a permit when they intend to transport loads of a weight or size which exceeds the limits established for all traffic. Such requirements represent a legitimate exercise of the State's responsibility to maintain the intergrity of the roadway and to prevent disruption of the flow of traffic. Moreover, such requirements apply equally to all vehicles, regardless of the nature of the cargo being transported. The same standards apply when a state delegates responsibility for a portion of its transportation system to a political subdivision like the TIBA. (See 49 CFR 107.201(b) for definition of "political subdivision.") Therefore, the mere statement of intent to require a permit is not inconsistent with the HMTA.

Since subsection 5503.2(n) of the TIBA rules imposes a permit requirement but does not describe the actions necessary to obtain that permit, no finding is possible under the dual compliance test. With regard to the obstacle test, the imposition of a permit requirement is not, by itself, beyond the scope of State/local authority recognized by the HMTA. For the foregoing reasons, subsection 5503.2(n) of the TIBA rules is not inconsistent with the HMTA or the regulations issued thereunder.

Section 5503.3 of the TIBA rules describes the radioactive materials shipments for which a permit is required and the process by which such permits may be granted. As set forth in subsection 5503.3(a)(6) and (7), the permit requirement applies to vehicles which are carrying radioactive materials or have recently carried radioactive materials and show any evidence of residue of such materials. This includes an extremely broad range of vehicles which are subject to different degrees of regulation under the HMR. The TIBA permit requirement applies to: vehicles transporting highway route controlled quantity radioactive material, such as spent nuclear fuel; vehicles transporting shipments which are not highway route controlled quantity radioactive material but for which placarding is required, such as used gloves and gowns from hospital radiotherapy facilities; vehicles transporting limited quantities of radioactive materials for which no placarding is necessary, such as home smoke detectors and tritium backlighted watches; and empty vehicles which have recently carried any of the foregoing and retain trace quantities of radiation which, though detectable by sensitive equipment, pose no hazard in transportation.

Because § 5503.3 prohibits the highway transportation of radioactive materials without a permit issued by the TIBA employee in charge, it constitutes a routing rule in the form of a permit requirement. The term "routing rule" is defined in the HMR in Appendix A to Part 177 as follows:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. * * *

The TIBA rule restricts the movement of radioactive materials by public highway by denying access to those shipments which have not obtained prior approval. Moreover, the restriction has the effect of redirecting such shipments to other jurisdictions. And the rules apply because of the nature of the cargo. For these reasons, the permit requirement constitutes a local routing rule within the meaning of the HMR.

MTB first addressed the issue of local transportation permits for transport of redioactive materials in IR–1 (43 FR 16954, April 20, 1978) which dealt with § 175.111 of the New York City Health Code. That regulation required a certificate of Emergency Transport for each shipment in or through the city of identified quantities of radioactive material. In that ruling, MTB concluded that the local permit requirement was not inconsistent because there was no indentifiable requirement in the text of the HMTA or HMR which provided a basis for a finding of inconsistency. Having reached this conclusion, MTB announced its intent to commence rulemaking to consider the need for routing requirements under the HMTA for highway carriage of radioactive materials. In view of this announcement, MTB added that permit requirements similar to that of New York City "may face a necessary future harmonization with rulemake that results from the inquiry MTB intends to undertake." (43 FR 16958).

The planned inquiry alluded to in IR–1 resulted in the adoption of a Final Rule on the highway routing of radioactive materials (46 FR 5298, hereinafter referred to as "HM–164") and this proceeding represents the "necessary future harmonization with rulemaking"

to be faced by jurisdictions which adopted requirements similar to those in the New York City Ordinance. Several commenters argued that HM–164 was invalid as a result of the District Court holding in *City of New York* v. *DOT*, 539 F. Supp. 1237 (1982). However, that decision was reversed by the Second Circuit Court of Appeals (715 F. 2d 732, August 10, 1983) and on February 27, 1984, the Supreme Court dismissed the city's appeal from the Circuit Court ruling. Therefore, the present case differs from that presented in IR–1, in that there is now a Federal requirement that provides a standard against which a State/local requirement can be compared for consistency.

HM–164 established different routing requirements for different kinds of radioactive materials shipments. The most stringent requirements were applied to shipments of "highway route controlled quantity radioactive material", such as spent nuclear fuel. As codified at 49 CFR 177.825(b), HM–164 requires transporters of such shipments to operate over preferred routes, i.e. Interstate System highways or alternate routes designated by a State in consultation with local authorities. The Thousand Islands Bridge is part of an Interstate System highway and the State of New York has not designated any alternate preferred routes. Therefore, the Thousand Islands Bridge is part of a preferred route.

Under HM–164, vehicles transporting a shipment of radioactive materials which is not a highway route controlled quantity, but which must be placarded, are required to operate either over preferred routes or over routes selected to minimize radiological risk. The standards are codified at 49 CFR 177.825(a):

> (a) The carrier shall ensure that any motor vehicle which contains a radioactive material for which placarding is required is operated on routes that minimize radiological risk. The carrier shall consider available information on accident rates, transit time, population density and activities, time of day and day of week during which transportation will occur. In performance of this requirement the carrier shall tell the driver that the motor vehicle contains radioactive materials and shall indicate the general route to be taken. This requirement does not apply when—
>
> (1) There is only one practicable highway route available, considering operating necessity and safety, or
>
> (2) The motor vehicle is operated on a preferred highway under conditions described in paragraph (b) of this section.

Shipments of other than highway route controlled quantity radioactive material for which placarding is not required are not subject to specific routing requirements under the HMR. However, such shipments are subject to the general requirements of 49 CFR 177.853 that all shipments of hazardous materials be transported without unnecessary delay.

In comparing the routing rules of the TIBA and the HMR, the first criterion for determining inconsistency is the "dual compliance" test. A carrier which complied fully with the TIBA rule and obtained the necessary permit could transport radioactive materials across the Thousand Islands Bridge and thereby also be in compliance with the Federl requirement for using preferred routes. Consequently, on the narrow question of whether it is physically possible for a transporter of radioactive materials to comply with both the HMR and the TIBA rule, I find in the affirmative. The permit requirement contained in § 5503.3 of the TIBA rules cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, I reach a different conclusion, for this test considers factors which go beyond the narrow question of whether compliance with both the Federal and the local rule is possible.

As described above, the HMR impose certain requirements on the highway routing of radioactive materials. The TIBA rules impose a further restraint on route selection by requiring transporters to obtain a permit to cross the Thousand Islands Bridge. This requirement is based on a presumption that the TIBA has the authority to control, and ultimately, to prohibit this form of interstate commerce.

The TIBA is a creature of the State of New York. As such, it cannot be imbued with greater authority than resides in the parent State. The extent to which States and their political subdivisions may regulate the highway routing of radioactive materials has been thoroughly addressed in the inconsistency ruling published herewith. As stated in IR–8:

> Generally, in the absence of departmental involvement in a safety issue, State and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

In its comments of this proceeding, the TIBA offered the following argument in support of its permit requirement:

> The Federal Department of Transportation has chosen *Interstate* routes due to the fact that design standards afford a high degree of *safety* given the fact there is direction traffic (four lanes), meets various standards with respect to sight clearance, and there are limited access to and from this type of highway system.
>
> However, the Thousand Islands Bridge system which was opened in 1938, is only two lanes, which does not meet Interstate requirements and carries a heavy volume of traffic, appears to have been placed under the Department of Transportation's criteria as meeting the standards. If there is any inconsistency, it is for the DOT to include the Thousand Islands Bridge in an approved route, bearing in mind its physical limitations. (TIBA letter dated June 30, 1983, p. 5.)

In other words, the TIBA apparently has taken the position that, when a political subdivision of a State finds Federal safety regulations inadequate to meet local conditions, it may, on it own determination, regulate to overcome the perceived Federal inadequacy. This completely undermines the regulatory system mandated by the HMTA. Congress recognized that rules of national applicability would not always meet unique local conditions. It was for this reason that the HMTA did not preempt all State or local rules, but only those that were inconsistent. Furthermore, Congress recognized that there could be valid safety reasons for permitting certain inconsistent State or local rules to coexist with their Federal counterparts, and authorized the Department of Transportation to waive preemption in certain circumstances.

In implementing it regulatory authority under the HMTA, MTB has sought to ensure the flexibility necessary to respond to changing conditions. Recognizing that practical experience in applying the regulations can point out the need for change, MTB adopted procedures in 49 CFR, Part 106, whereby "(a)ny interested person may petition the director to establish, amend, or repeal a regulation." (49 CFR 106.31.)

With specific regard to the establishment of highway routes for radioactive materials, MTB had the authority to require the use of the Interstate System without exception. However, in recognition of the wide variety of local conditions and the States' experience in responding to these conditions, MTB adopted a rule which enabled States, in consultation with local authorities, to apply safety guidelines to their unique local conditions and, if justified, designate alternate routes.

In view of the foregoing, the TIBA's justification of its permit reqirement must be rejected. If, as alleged, the Thousand Islands Bridge is inadequate for use as part of a preferred route, then the TIBA should seek State action to designate an alternate preferred route. Nothing in the TIBA's response justifies deviation from the established procedure for State designation of alternate routes.

When promulgating HM-164, MTB sought to balance the HMTA's dual objectives of enhanced safety and regulatory uniformity. The permit requirement in § 5503.3 impedes both objectives. By restricting access to the international crossing at the Thousand Islands Bridge, the requirement redirects shipments of radioactive materials into adjoining jurisdictions.

By causing the diversion of radioactive materials shipments, the TIBA has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If the TIBA could impose such restrictions on the availability of highway routes to vehicles engaged in the transportation of radioactive materials, then any political subdivison of a State could be so. As has been stated with regard to similar State and local requirements, the proliferation of independently enacted restrictions would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA. The TIBA rules, moreover, have the added dimension of restricting international commerce.

For the foregoing reasons, I find that the radioactive materials transportation permit requirement contained in § 5503.3 of the TIBA rules constitutes an impediment to the execution and accomplishment of the HMTA and the regulations issued thereunder. Consequently, I find it to be inconsistent and, therfore, preempted under 49 U.S.C. 1811(a).

Section 5503.3 of the TIBA rules also authorizes the employee in charge to require a special escort and the payment of fees therefor as a condition of the permit to transport radioactive materials. That permit requirement having been deemed inconsistent, it follows that the additional conditions attached thereto are also inconsistent.

In the public notice and invitation to comment on this proceeding, a form entitled "Application for Permit to Transport Nuclear Materials via the Thousand Islands Bridge" was presented as Appendix E. (48 FR 21505.) That form imposed a variety of requirements for information, documentation, certification, and indemnification. However, the application requirements contained therein are not included in the codification of the TIBA rules. Moreover, § 5503.3(b) of the TIBA rules delegates to the TIBA employee in charge, the sole and exclusive judgment to determine whether or not a permit should be issued and, if so, under what conditions. Thus, it would appear that the number of preconditions on use of the Thousand Islands, Bridge by transporters of radioactive materials is limited only by the imagination of the TIBA employee in charge. However, for purposes of this ruling, it is not necessary to identify all application procedures. Since the requirement for a permit has been found to be inconsistent, the application procedures by which that requirement would be administered, are also inconsistent.

III. Ruling

For the foregoing reasons, I find that, to the extent if affects the transportation of radioactive materials, § 5503.3 of the rules govering operation of the Thousand Island Bridge (Chapter LXIII, Title 21, Official Compilation of Codes, Rules and Regulations of the State of New York) is inconsistent with the HMTA and the regulations issued thereunder and, therefore, preempted.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR-14—Jefferson County, New York; Local Legislative Stipulation Regulating Radioactive Materials Transportation through Jefferson County

Applicant: Department of Transportation (IRA-27).

Non-Federal rule affected: Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County.

Mode affected: Highway.

Ruling: Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County is inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, preempted in accordance with 49 U.S.C. 1811(a).

I. Background

By letter dated May 13, 1982, the Jefferson County, New York, Board of Supervisors notified the Department of Transportation of its adoption of Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County. Resolution No. 81 imposed a number of conditions under which radioactive materials would be allowed to travel through Jefferson County.

Jefferson County lies at the foot of the international bridge linking Ivy Lea, Ontario, with Collins Landing, New York, and connecting with Interstate Route I-81. Thus, any restriction on transportation in Jefferson County imposes an equal restriction on international transportation which may operate over the Thousand Island Bridge and Interstate Route I-81.

The Department was on notice of Resolution No. 81 at a time when it was initiating administrative rulings on the consistency of several State and local restrictions on radioactive materials transportation, including the permit requirement of the Thousand Islands Bridge Authority which is incorporated by reference in Resolution No. 81. Because of this direct connection, the Department elected, in accordance with 49 CFR 107.209(b), to initiate an inconsistency proceeding on the issue of whether Resolution No. 81 is inconsistent with the HMTA or the HMR, and thus preempted. Accordingly, on May 12, 1983, the Department published a notice and invitation to comment in the **Federal Register** (48 FR 21496).

In response to that notice, comments were received from nine parties. One commenter, the New York State Department of Law, urged that this proceeding be dismissed "because the issue presented is hypothetical, and no determination is necessary at this time", as no carrier had applied for an inconsistency ruling or otherwise indicated a wish to use a route through Jefferson County. This comment arises from the misapprehension that the Department may issue inconsistency rulings only upon the direct application of a party claiming to have been

affected by an allegedly inconsistent State or local rule. The HMTA does not support this interpretation. The premption provision at section 112(a) states clearly that any State or local requirement which is inconsistent is preempted. No reference of any kind is made to a need for third party involvement. The procedural regulations adopted by MTB to implement section 112 are explicit on this matter:

(b) Notwithstanding that application for a ruling has not been filed under § 107.203, the Associate Director for HMR, on his own initiative, may issue a ruling as to whether a particular State or political subdivision requirement is inconsistent with the Act or the regulations issued under the Act. (49 CFR 107.209.)

The Department clearly has authority to issue an inconsistency ruling *sua sponte*. Furthermore, Jefferson County contains an Interstate System highway, I–81, which is a preferred route for the highway transportation of highway route controlled quantity radioactive material. Whether or not carriers have recently indicated a wish to use this route is irrelevant to the question of whether Resolution No. 81 is inconsistent. While this may be relevant in a non-preemption proceeding which involves consideration of the extent to which an inconsistent rule affects interstate commerce, the argument is premature in the context of an inconsistency proceeding.

The comment that this issue is hypothetical may, therefore, be dismissed as without merit.

II. Analysis

Resolution No. 81 was published in its entirety as Appendix F to the **Federal Register** notice of May 12, 1983. Its operative provisions are contained in the following excerpted paragraph:

Now, therefore, Be It Resolved, That the Jefferson County Board of Supervisors does hereby put the United States Department of Transportation and Nuclear Regulating Commission on notice that the transport of radioactive waste through and within Jefferson County is conditioned on compliance with the following provisions: That 24 hour prior notification of said transport be duly given to appropriate Jefferson County officials; that front and rear escort service be provided; that said transport only be made during the six month period from May thru October; that no movement of said material be made on holidays or during periods of inclement weather; and that the permit system as promulgated by the Thousand Islands Bridge Authority regulating the movement of radioactive materials through the Bridge System be recognized and fully adhered to by the Federal Government and/or agents thereof.

Before proceeding with an examination of the specific conditions set forth therein, it is first necessary to determine what kinds of shipments are subject to those conditions. The language of Resolution No. 81 is not clear on this point. The title and introductory paragraphs refer to the transport of "radioactive materials", but the transport restrictions quoted above are imposed on "radioactive waste." These wastes are a subgroup of all radioactive materials. Neither do these terms reflect different degrees of hazard, as each includes materials which span the full range of transportation risk and are subject to appropriately varying degrees of safety regulation under the HMR.

Resolution No. 81 refers to "recent pronouncements by federal officials identify(ing) Interstate 81 as a route for the transport of such materials." From this, it is possible to infer that Resolution No. 81 was intended to place additional requirements on those materials which the Federal rules require to proceed via Interstate System highways.

The Federal rules adopted under HM–164 require carriers of highway route controlled quantity radioactive material to operate over "preferred routes," i.e., an Interstate System highway or an alternate route selected by a State routing agency in accordance with DOT guidelines. The State of New York has not designated any alternate preferred routes. Therefore, the preferred route which carriers of highway route controlled quantity radioactive material are required to use when operating in Jefferson County is I–81.

Since Resolution No. 81 appears to reflect concern over such materials as are required to use I–81, and since HM–164 requires shipments of highway route controlled quantity radioactive material to operate over Interstate System highways, this administrative ruling will interpret Resolution No. 81 as if the term "highway route controlled quantity radioactive material" had been used instead of the terms "radioactive materials" and "radioactive waste" respectively.

The first of the five substantive provisions of Resolution No. 81 is "(t)hat 24 hour prior notification of said transport be duly given to appropriate Jefferson County officials." Appendix A to Part 177 of the HMR sets forth the Department's policy position that a local transportation rule is inconsistent if it requires prenotification. This policy was substantiated by application of the two-prong test for inconsistency in connection with the prenotification requirements of Michigan and Vermont in inconsistency rulings IR–8 and IR–15, respectively, published herewith.

With regard to the "dual compliance" test, the HMR do not contain an express prohibition of prenotification. Therefore, it is possible for carriers to provide the 24-hour advance notice required by Resolution No. 81 and still remain in compliance with the HMR. The prenotification requirement of Resolution No. 81 cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, a different conclusion is reached. While the HMR do not contain an express requirement for prenotification, § 173.22(c) of the HMR requires shippers of highway route controlled quantity radioactive materials to comply with a physical protection plan established under the requirements of the Nuclear Regulatory Commission (NRC) or equivalents approved by MTB. The NRC requirements for advance notification are contained in the physical protection standards at 10 CFR 73.37 and require transporters to provide a minimum of four days advance notification of shipments to the Governor or the Governor's Designated Representative. Local jurisdictions receive notification from the Governor's Designee. The requirement that transporters comply with the NRC requirements or MTB-approved equivalents was adopted as part of HM–164. In the preamble to that rulemaking, MTB took administrative notice of the fact that the NRC was in the process of establishing prenotification requirements and stated:

Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirements are not consistent with Part 177. (46 FR 5314, 5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM–164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons stated in the preamble to that rulemaking, MTB declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of a study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of*

Prenotification: Hazardous Materials Study, Final Report, May 4, 1981) and was relied on in an inconsistency ruling (IR–8, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification ordinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving State, city and regional governments. Most recently, MTB awarded a contract to Battelle Northwest Laboratories to perform a comprehensive evaluation of prenotification. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by State and local governments.

Resolution No. 81 does not provide Jefferson County with any advance notification not already provided for under Federal regulation. What it requires is that shippers of highway route controlled quantity radioactive materials provide advance notice directly to Jefferson County instead of relying on the designated representative of the Governor of New York to provide the information to affected jurisdictions. If Jefferson County could impose such a requirement, then every political subdivision of every State along the shipment route could impose such a requirement. As stated in a previous inconsisency ruling, "(r)edundancy does not further transportation safety and represents the type of multiplicity that the HMTA intended to make unnecessary." (IR–2, 44 FR 75571.) It was for this reason that Appendix A to Part 177 sets forth the Department's opinion that local prenotification requirements are inconsistent. As stated in the section-by-section analysis of Appendix A, which was published as part of HM–164, the Department underlined the seriousness of its concern with redundant regulations by stating that "(p)renotification requirements by State and local governments, if found to be necessary, will be established in a nationally uniform manner." (46 FR 5314.)

On the basis of the foregoing, I conclude that the prenotification requirement of Resolution No. 81 is an obstacle to the accomplishment of the Congressional objective of regulatory uniformity underlying enactment of the HMTA. Accordingly, I find it to be inconsistent and, therefore, preempted.

The second of the substantive provisions imposed by Resolution No. 81 is "that front and rear escort services be provided" for shipments of highway route controlled quantity radioactive material.

As discussed previously, the HMR require transporters of highway route controlled quantity radioactive material to comply with a physical protection plan in accordance with NRC standards or MTB-approved equivalents. The NRC standards require highway shipments to be accompanied by front and rear escorts. Since the Federal and local requirements are identical, and the same action satisfies both, the issue of redundancy does not arise. In effect, the escort requirement of Resolution No. 81 amounts to an adoption of the NRC physical protection standards on which the HMR rely. This being the case, the local requirement poses no inconsistency under either the "dual compliance" or the "obstacle" test.

The next two substantive provisions of Resolution No. 81 are closely related and will be considered together. They require "that said transport only be made during the six month period from May thru October" and "that no movement of said material be made on holidays or during periods of inclement weather."

The inclusion of these provisions subjects Resolution No. 81 to interpretation as a routing rule. As set forth in Appendix A to Part 177:

> "Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. Traffic controls are not included if they are not based on the nature of the cargo, such as truck routes based on vehicles weight or size, nor are emergency measures.

By prohibiting the transportation of highway route controlled quantity radioactive material during more than half of the year, Resolution No. 81 "significantly restricts" the movement of such materials by public highway. Moreover, it applies because of the nature of the cargo. Therefore, it must be considered a "routing rule" within the meaning of the HMR.

Appendix A to Part 177 sets forth the Department's opinion that a local routing rule in inconsistent if it prohibits or otherwise affects transportation on routes authorized by the HMR or authorized by a State routing agency in a manner consistent with the HMR. Interstate route I-81 in Jefferson County is a route authorized by the HMR. Resolution No. 81 prohibits use of that route for more than half of the year. However, while the Department's policy statement, is relevant to consideration of Resolution No. 81, it is not determinative of the inconsistency thereof. Such determination must be based on the two-prong test contained in the MTB's procedural regulations and discussed in the General Preamble.

Consequently, under the "dual compliance" test, the question at issue is: It is possible for a carrier of highway route controlled quantity radioactive material to comply with both the HMR and Resolution No. 81? Jefferson County lies at the foot of the Thousand Islands Bridge which links New York and Canada. In selecting a highway route to or from Canada, however, a carrier is not limited to consideration of a crossing at the Thousand Islands Bridge. As demonstrated in IR–8, IR–10 and IR–15, it may choose border crossings in Michigan, Vermont, or elsewhere in New York, utilizing preferred routes at those points. Carriers are not required by HM–164 (nor has any showing been made that they are required under Canadian law) to cross the international border via the Thousand Islands Bridge. By selecting a border crossing using a preferred route in Michigan, Vermont or elsewhere in New York, a carrier could comply with the Jefferson County requirement (to operate only during clement weather on non-holidays in the months of May through October) by avoiding the county altogether, and at the same time comply with the broad Federal standard regarding operation over preferred routes. Therefore, on the narrow question of whether it is physically possible for a carrier of highway route controlled quantity radioactive material to comply with both the HMR and Resolution No. 81, I find in the affirmative. The local routing rule cannot be deemed inconsistent on the basis of the "dual compliance" test.

The second criterion for determining inconsistency is the "obstacle test" which requires consideration of the extent to which the local rule impedes the accomplishment and execution of the HMTA and the regulations issued thereunder. As stated previously, the principal Congressional objectives underlying enactment of the HMTA were safety enhancement and regulatory uniformity. When promulgating HM–164, MTB sought to balance these objectives. Under the authority of the HMTA, MTB could have established an inflexible requirement that carriers of highway route controlled quantity radioactive material operate over Interstate System highways. However, MTB recognized that the States were more knowledgeable about local road conditions. For the reason, HM–164 included a process by which States, in consultation with local governments, could apply this knowledge to designate alternate routes which provide an equal or greater level

of safety than Interstate System highways.

The objectives of the HMTA and the regulations issued thereunder having been identified, the effects of Jefferson County's routing rule may now be examined. Resolution No. 81 prohibits transportation of highway route controlled quantity radioactive material in Jefferson County: (1) During the six-month period from November through April; (2) on holidays; and (3) during inclement weather. (While not critical to the following analysis, the vagueness of the terms "holiday" and "inclement" should be noted. Which holidays—Federal, State or County? Inclement according to whom, in comparison to what?) Presumably, the rationale for these restrictions is that weather conditions and holiday traffic render transportation unsafe at these times.

Weather, traffic and road conditions are all reflected in accident rates and transit time and the HMR require carriers of highway route controlled quantity radioactive materials to consider these factors in selecting routes. For example, if available information demonstrated a higher accident rate during the winter months, a carrier would be required to consider this as a constant. As for short-term adverse weather conditions, carriers of radioactive materials, like all highway users, are subject to a State's inherent power to control traffic. Similarly, chronic highway conditions are inherent in considerations of accident rates and transit times. As for short-term degradation of highway conditions, all highway users are subject to State's inherent power to control traffic.

The above discussion of weather traffic and road conditions is not meant to indicate the such factors are not directly relevant to the development of routing rules. It was precisely because MTB recognized the possibility of chronic problems of portions of the Interstate System of highways, that HM-164 provided for designation of alternate preferred routes by a State routing agency. The State of New York has not yet chosen to designate alternate preferred routes. This does not mean that Jefferson County may take independent action. If Jefferson County could impose a partial ban on radioactive materials transportation, then any political subdivision could do so, and the resulting proliferation of varying and possibly conflicting regulations would completely undercut the Congressional objective of regulatory uniformity as implemented through HM-164.

The restrictions imposed by Resolution No. 81 may be completely justifiable on the basis of local conditions, but this does not justify their unilateral imposition by Jefferson County. Under HM-164, such restrictions could be imposed by a State routing agency but only if an alternate route were designated for the duration of the prohibition. The reasons for placing such authority at the State level were articulated clearly in the preamble to HM-164.

> Local jurisdictions are inherently limited in perspective with respect to establishing routing requirements. While the Department recognizes that local governments are accountable only to their own citizens, such a limited accountability has some undesirable effects. For example, a routing restriction in one community may have adverse safety impacts on surrounding jurisdictions. Also, some communities in determining that they do not have the appropriate expertise or manpower to perform a routing analysis, may find attractive the option of completely prohibiting the transport of radioactive materials through their jurisdictions. This has already happened in some cases. Uncoordinated and unilateral local routing restrictions place on carriers of radioactive materials would simply not be conducive to safe transportation. There is a clear need for national uniformity and consistency. (46 FR 5301).

In its comments on this proceeding, Jefferson County cited "its undeniable obligation to provide for and maintain the public safety of its citizens." (Letter dated July 5, 1983, p. 2.) While in no way denying that such an obligation exists, this ruling must take issue with the manner in which Jefferson County has chosen to fulfill its obligation. By adoption of HM-164, MTB established a nationally uniform system for the designation of transportation routes for highway route controlled quantity radioactive material. Resolution No. 81 was adopted in a manner that completely disregards the nationally uniform regulatory system created by HM-164.

As stated previously, when promulgating HM-164, MTB sought to balance the HMTA's dual objectives of enhanced safety and regulatory uniformity. The transport ban of Resolution No. 81 impedes both objectives. By restricting access to preferred routes in Jefferson County, it redirects shipments of highway route controlled quantity radioactive material into adjoining jurisdictions.

By causing the diversion of radioactive materials shipments, Jefferson County has acted unilaterally to the exclusion of those jurisdictions through which the redirected shipments must travel. If Jefferson County could impose such restrictions on the availability of its highways to vehicles engaged in the interstate transportation of radioactive materials, then any local jurisdiction could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA.

For the foregoing reasons, I conclude that the provisions of Resolution No. 81 which prohibit transportation of highway route controlled quantity radioactive material during certain periods constitute an obstacle to the accomplishment and execution of the HMTA and the regulations issued thereunder. Accordingly, I find them to be inconsistent and, therefore, preempted.

The last of five substantive requirements imposed by Resolution No. 81 is "that the permit system as promulgated by the Thousand Islands Bridge Authority regulating the movement of radioactive materials through the Bridge System be recognized and fully adhered to by the Federal Government and/or agents thereof." The permit system of the Thousand Islands Bridge Authority is the subject of a separate inconsistency ruling (IR-13, published herewith) and has been determined to be inconsistent with the HMTA and the HMR and, therefore, preempted. For the reasons set forth in IR-13, I find the incorporation of the permit system in Resolution No. 81 to be inconsistent and, therefore, preempted.

Because the provision has been found to be inconsistent, it is not necessary to address the fact that it imposed an obligation to act on the Federal Government. Nevertheless, it should be noted that, regardless of the nature of the requirement imposed, any attempt by a political subdivision of a State to impose an obligation to act on the Federal Government would be subject to the strictest scrutiny in connection with both statutory and Constitutional preemption.

In summary, of the five substantive provisions of Resolution No. 81, all but one are inconsistent. However, as drafted, Resolution No. 81 must be considered in its entirety. The Resolution does not lead itself to the severance of individual provisions. Therefore, while noting that the requirement for front and rear escorts is not inconsistent, this ruling considers the effect of Resolution No. 81 as a whole.

III. Ruling

For all of the foregoing reasons, I find Jefferson County Resolution No. 81 Regulating the Transport of Radioactive Materials Through Jefferson County to be inconsistent with the HMTA and the

regulations issued thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

Inconsistency Ruling IR–15—State of Vermont; Rules for Transportation of Irradiated Reactor Fuel and Nuclear Waste

Applicant: Department of Transportation (IRA–30).

Non-Federal rule affected: Rules I–IX of the Vermont Agency of Transporation regulation entitled "Transporation of Irradiated Reactor Fuel and Nuclear Waste; Approval, Monitoring."

Modes affected: Highway, Rail, Water.

Ruling: Rules I (e), III (D) (3–4), III (E–L) and IV through VII of the radioactive materials transportation regulations of the Vermont Agency of Transportation are inconsistent with the Hazardous Materials Transporation Act and the Regulations issued thereunder and, therefore, preempted.

I. Background

On May 12, 1983, the Department issued a public notice and invitation to comment on the inconsistency of various State and local rules on the transportation of radioactive materials in Michigan, New York and Vermont. (48 FR 21496.) During the comment period on that notice, the State of Vermont adopted new rules governing the transportation of irradiated reactor fuel and nuclear waste. The impact of these rules on radioactive materials routing options and the question of whether these rules are inconsistent with the HMTA were questions of direct relevance to those being addressed in the on-going inconsistency preceedings. Therefore, the Department, pursuant to 49 CFR 107.209(b), elected to initiate an inconsistency proceeding on the question of whether the Vermont rules are inconsistent with the HMTA or the regulations issued thereunder.

On August 4, 1983, a public notice and invitation to comment was published in the **Federal Register** (48 FR 35550). Three comments were received. Where appropriate, these comments and previous administrative decisions will be discussed in this ruling.

II. Analysis

Rule I. Definitions

Rules I sets forth a number of definitions, only one of which need be addressed for possible inconsistency

(e) "RADWAS" means irradiated reactor fuel and radioactive wastes that are large quantity redioactive materials as define in 49 CFR 173.389(b), or after July 1, 1983, highway route controlled quantities as defined in the latest amended section of 49 CFR 173.403.

It should be noted that the acronym RADWAS is not synonymous with the term "highway route controlled quanity radioactive material"; rather, it defines a subset of that group. In other words, the Vermont regulations do not apply to all highway route controlled quantity radioactive material, but only to highway route controlled quantity shipments of irradiated reactor fuel or nuclear waste. This presents two issues which relate to the question of consistency with the HMR: nomenclature and regulatory effect.

IN prior inconsistency rulings, MTB has given notice that it considers the Federal role in definition of hazard classes to be exclusive. (IR–5, 47 FR 51991; IR–6, 48 FR 760; IR–8, published herewith.) As stated in IR–5 which dealth with a New York City ordinance regulating compressed gases:

The HMR are, in and of themselves, a comprehensive and technical set of regulations which occupy approximately 1000 pages of the Code of Federal Regulations . . . . For the City to impose additional requirements based on differing hazard class definitions adds another level of complexity to this scheme. Thus, shippers and carriers doing business in the City must know not only the classifications of hazardous materials under the HMR and the regulatory significance of those classifications, but also the City's classifications and their significance. Such duplication in a regulatory scheme where the Federal presence is so clearly pervasive can only result in making compliance with the HMR less likely, with an accompaning decrease in overall public safety. (47 FR 51994.)

By imposing additional requirements on a subgroup of highway route controlled quanity radioactive material to be known as RADWAS, Vermont has created a new hazard class. If every State were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusing of regulatory requirements would lead ineluctably to the increased likelihood of reduced compliance with the HMR nd subsequent decrease in public safety.

In view of the foregoing, I find that the definition of "RADWAS" contained in Rule I (e) of the Vermont regulation is inconsistent with the HMR. Throughout the remainder of this inconsistency ruling, the Vermont rules will be interpreted as if the term "highway route controlled quantity radioactive material" had been substituted for the acronym "RADWAS".

Rule II. Carrier's Responsibility

Rule II sets forth the intent of the Vermont regulations and the carrier's responsibility thereunder as follows:

The intent of this regulation is to establish a procedure for monitoring and regulating the transportation of RADWAS in the State in order to protect the public health consistent with national transportation policy. Nothing in these regulations or any directives issued under authority thereof shall release a carrier of any responsibility for the safe transportation of RADWAS in the State.

Both the HMTA and the regulatory system promulgated thereunder recognize the right of States to regulate hazardous materials transportation so long as the State requirements are consistent with the Federal scheme. Thus, the statement of intent in Rule II reflects the State role outlined by Congress in the HMTA. The intent that the Vermont rules coexist with, rather than supplant, the Federal regulations is further supported by the explicit statement that the Vermont rules do not release carriers of any other responsibility for safe transportation.

Since Rule II imposes no requirement to act upon any party, no problem arises under the "dual compliance" test. With regard to the "obstacle" test, the statement of intent is identical to the State role intended by the HMTA. Thus, Rule II poses no obstacle to the accomplishment and execution of the HMTA. Accordingly, Rule II is consistent with the HMTA.

Rule III. Application; procedure; content; and

Rule IV. Transportation approval; criteria

Rules III and IV set forth the criteria to be satisfied before the State Secretary of Transportation will grant written approval to transport highway route controlled quantity radioactive material in Vermont. Since the rule prohibits such transportation without the written approval of the Secretary, it constitutes a routing rule in the form of a permit requirement.

Section II of Appendix A to 49 CFR Part 177, defines "routing rule" as follows:

"Routing rule" means any action which effectively redirects or otherwise significantly restricts or delays the movement by public highway of motor vehicles

containing hazardous materials, and which applies because of the hazardous nature of the cargo. Permits, fees and similar requirements are included if they have such effects. . . .

The Vermont regulation restricts the movement of radioactive materials by public highway by denying access to those shipments which have not obtained written approval. Moreover, this restriction has the effect of redirecting such shipments to other jurisdictions. And the regulation applies because of the nature of the cargo. For these reasons, the Vermonf regulation constitutes a State routing rule within the meaning of the HMR.

The Federal rule which carriers of highway route controlled quantity radioactive material must follow is set forth at section 177.825(b) of the HMR (49 CFR 177.825(b)). It requires such carriers to operate over "preferred routes selected to reduce time in transit, except that an Interstate System bypass or beltway around a city shall be used when available." The term "preferred route" is defined as an Interstate System highway or an alternate route selected by a State routing agency in accordance with DOT guidelines. The State of Vermont has designated preferred routes in accordance with the HMR. They are:

Interstate 89—Total Length
Interstate 91—Total Length
Interstate 93—Total Length
Interstate 189—Total Length
VT 100 and VT 8 between Readsboro and the Massachusetts line in Stamford (includes Deerfield River road in Readsboro).
VT 142 between Vernon and the Massachusetts line in the Town of Vernon.

The State and Federal rules having been identified, the question at issue is whether the routing rule imposed by Vermont's permit requirement is consistent with the HMTA or the regulations issued thereunder.

A carrier which complied fully with the Vermont regulation, thereby obtaining the necessary written approval, could transport radioactive materials via preferred routes in Vermont and thereby be in compliance with the Federal requirements as well. Consequently, on the narrow question of whether it is physically possible for a carrier of spent nuclear fuel to comply with both the Federal and the Vermont rules, I find in the affirmative. The State rule cannot be deemed inconsistent on the basis of the "dual compliance" test.

Under the "obstacle" test, however, I reach a different conclusion, for this considers factors which go beyond the narrow question of whether compliance with both the State and Federal rules is physically possible.

MTB first addressed the issue of State transportation permit requirements in an inconsistency ruling dealing with a Rhode Island regulation governing the transportation of liquefied energy gases. (IR–2, 44 FR 75566, Dec. 20, 1979.) In that ruling, it was stated that:

A permit may serve several legitimate State police power purposes, and the bare requirement . . . that a permit be applied for and obtained is not inconsistent with federal requirements. However, a permit itself is inextricably tied to what is required in order to get it. Therefore, the permit requirement . . . must be considered together with the application requirements . . . (44 FR at 75570, 1.)

This line of reasoning was subsequently applied in IR–8 (published herewith), the inconsistency ruling holding Michigan's radioactive materials transport permit requirement to be inconsistent, which stated that "in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo." There being many similarities between the Michigan and Vermont rules, frequent reference will be made to IR–8.

Rule IV of the Vermont regulation sets forth three criteria which must be satisfied before approval is granted to transport highway route controlled radioactive material in Vermont. Each is discussed separately below.

Rule IV(A) requires fulfillment of the application requirements of Rule III. For discussion purposes, the application requirements can be broken down into four categories: information, documentation, certification and indemnification.

Information—Rule III requires submission of the following information as part of the application for approval to transport highway route controlled quantity radioactive material in Vermont:

(A) The proposed route of travel in Vermont, specifying all of the following:
(1) Each road to be used by route number, name, or other identification.
(2) Each railroad or waterway to be utilized.
(B) The names, addresses, and emergency telephone numbers of the shipper, carrier, and receiver of the RADWAS, specifiying the individual to contact for current shipment information.
(C) A description of the shipment as specified in the provisions of 49 CFR 172.203(d).
(D) the estimated date and time of all of the following for each shipment as applicable:
(1) The departure of the RADWAS from the site of origin.
(2) The arrival of the RADWAS at the Vermont boundary and its final destination if the destination is within Vermont.
(3) Scheduled stop(s) in Vermont and reason(s) therefore.
(4) The departure of the RADWAS from Vermont.
* * * * *
(K) A certificate giving the point of origin and point of destination of the shipment and stating that the route to be used is the shortest and most direct, or if not so, then stating the explicit reason(s) that the proposed route was chosen.

With the exception of Rules III (D) (3–4) and (K), all of the above information concerning spent fuel shipments is specifically required by Federal regulation to be provided in advance to the Vermont Secretary of Transportation, who is the Governor's Designee for receipt of advance notification of nuclear waste shipments. The requirement is set forth as part of the NRC regulations on physical protection of irradiated reactor fuel in transit (10 CFR 73.37). The NRC regulations were not promulgated under the HMTA. However, § 173.22(c) of the HMR requires shippers of highway route controlled quantity radioactive material to comply with a physical protection plan established under the requirements of the NRC or equivalents approved by MTB. This section of the HMR was adopted as part of HM–164, wherein MTB took administrative notice of the fact that the NRC was in the process of establishing prenotification requirements and stated:

Unless DOT reaches and acts on a conclusion that prenotification rules are necessary, beyond those Congress has directed NRC to impose on certain radioactive wastes, independent State and local prenotification requirments are not consistent with Part 177. (46 FR 5314, 5.)

The absence to date of prenotification requirements in the HMR cannot be construed as an abdication of the field, because MTB has taken several administrative actions regarding prenotification. In the process of promulgating HM–164, MTB received numerous comments urging adoption of a national prenotification regulation. For the reasons set forth in the preamble to that rulemaking, MTE declined to do so. That preamble, which discussed the Congressional directive to NRC to establish prenotification requirements, also described MTB's sponsorship of study by the Puget Sound Council of Governments (PSCOG) to examine the efficacy of prenotification for certain materials. The PSCOG report has since been completed (*Analysis of Prenotification: Hazardous Materials*

Study, Final Report, May 4, 1981) and was relied on in an inconsistency ruling (IR–6, 48 FR 760, January 6, 1983) which found a Covington, Kentucky, prenotification ordinance to be inconsistent. MTB has also sponsored a number of emergency response demonstration projects involving State, city and regional governments. Most recently, MTB awarded a contract to Battelle Northwest Laboratories to perform a comprehensive evaluation of prenotification. In view of the above, MTB has clearly demonstrated its intent to occupy the field of prenotification, to the exclusion of requirements adopted by State and local governments.

Of the above-described information requirements of the Vermont regulation, all except (D) (3–4) and (K) are required by the NRC prenotification regulations which MTB has recognized as currently providing an adequate standard of national applicability. To the extent that they impose prenotification requirements identical to those of the NRC regulations, the Vermont rules amount to an effective adoption of the Federal prenotification scheme on which the HMR rely and, therefore, pose no inconsistency. This is easily distinguished from the conclusion reached in IR–8 regarding virtually identical information requirements imposed by the Michigan State Fire Safety Board and Department of Public Health. In that case, the State rules required submission of the same information, but to different parties, thus creating regulatory redundancy, in addition to potential conflict with the NRC regulations on access to safeguards information.

Different issues are raised by the three items of information required by the Vermont regulation but not by the Federal rules. Vermont Rule III (K) requires transporters to certify that the proposed route from origin and destination is the shortest and most direct and, if it is not, then to explain the reason(s) for its selection. The HMR do not require highway route controlled quantity shipments of radioactive materials to proceed by the "shortest and most direct" route. As codified at 49 CFR 177.825, HM–164 requires carriers to operate over preferred routes selected to reduce (not minimize) time in transit. When promulgating HM–164, MTB recognized that States were in a better position to know local road conditions. Therefore, the Final Rule established a process by which States, in consultation with local governments, could apply this knowledge to designate alternate routes which provide an equal or greater level of safety than Interstate System highways. As noted above, Vermont has utilized this process to designate preferred routes. This is the extent to which States may act in designating transportation routes for interstate shipments of highway route controlled radioactive material. In IR–8, a Michigan rule requiring transporters to describe and justify their proposed routes and rejected alternates was found to be inconsistent on the grounds that "State approval of route selections on a shipment-by-shipment basis completely undercuts the primary purpose of national uniformity underlying adoption of the highway routing rule." This applies equally to Vermont Rule III (K). By imposing route selection criteria which exceed those established by the HMR, Rule III (K) presents an obstacle to the accomplishment and execution of the HMTA and the regulations promulgated thereunder. This application requirement is related to the approval criterion set forth in Rule IV (C) and is discussed at greater length below.

Rules III(D) (3) and (4) require transporters to submit shipment-specific information not expressly required by Federal regulations. Section (3) requires advance notification of scheduled stop(s) in Vermont and the reason(s) therefor. Section (4) requires advance notification of the estimated date and time of departure of the shipment from Vermont. While it is possible to argue that this information is deducible from that which the Federal rules require to be provided to the State, the issue presented here is not one redundancy but of multiplicity. Under the provisions of its regulation, Vermont seeks to prohibit the transportation of highway route controlled quantity radioactive material on the basis of a transporter's failure to provide information required only by the State of Vermont. If each State were empowered to prohibit interstate transportation of radioactive materials until all of its additional information requirements were satisfied, the result would be to effectively nullify the nationally uniform system of highway routing which was established by adoption of HM–164. The provisions of HM–164 retained for the States a defined role in the designation of preferred routes to be used by all carriers of highway route controlled quantity radioactive material. That role does not include the selective prohibition of interstate transportation for failure to comply with independent State information requirements.

Documentation—Rule III requires submission of the following documentation as part of the application for approval to transport highway route controlled quantity radioactive material in Vermont:

> (F) Copies of any required NRC approval of the proposed route of travel and any other NRC licensing action specific to the shipment, such as an import license or a license to transport.
>
> (G) A copy of an emergency plan which describes procedures to be taken by the carrier in an emergency to eliminate or minimize the radiation exposure of the public.
>
> * * * * *
>
> (I) A copy of the certificate of compliance for the container issued by the NRC, as evidence the container has been approved for hypothetical accident conditions pursuant to the provisions of 10 CFR 71.36.
>
> * * * * *

Rule III(F) is identical to Michigan Rule 3(g) which was examined in IR–8. The Michigan rule was found to be inconsistent because it required transporters to submit copies of shipment-specific documents to two agencies, neither of which was the Governor's Designee for receipt of advance notification under the NRC regulations, thereby greatly increasing the possibility of the information being disclosed to an extent sufficient to compromise the physical security of the shipment. This reasoning does not apply to the Vermont rule which requires submission of the documents to the State Secretary of Transportation, who is the Governor's Designee for receipt of advance notification. Therefore, the Vermont rule does not present the same potential for breach of security as does the inconsistent Michigan rule.

The Vermont rule, nevertheless, poses a problem which, although not discussed in IR–8, is equally relevant to the Michigan rule. The purpose of requiring submission of copies of NRC approvals and licenses is, obviously, to ensure that transporters of highway route controlled quantity radioactive material operate in compliance with NRC regulations. This is a valid State concern. Nevertheless, the legitimacy of the State's interests does not justify its imposition of an inconsistent routing rule in the form of a permit requirement. There are other, less cumbersome methods by which Vermont could obtain the desired assurances. For example, the State could make procedural arrangements with NRC whereby, upon receipt of the minimum four days advance notification of shipment, the Governor's Designee could obtain telephonic or electronic confirmation that the shipment is in conformance with all NRC licensing requirements.

Rule III(G) requires transporters to develop and submit an emergency plan

describing procedures to be taken by the carrier in an emergency to eliminate or minimize radiation exposure of the public. Response to transportation emergencies is necessarily site/specific:

> Although the Federal Government can regulate in order to avert situations where emergency response is necessary, and can aid in local and State planning and preparation, when an accident does occur, response is, of necessity, a local responsibility. (IR–2, 44 FR 75568.)

In HM–164, MTB addressed the Federal responsibility for reducing the likelihood of emergencies by requiring not only that such materials be transported over those routes which have been demonstrated to offer the highest safety levels, but also that the drivers of such shipments receive, and carry certification of, written training on: (1) The HMR concerning radioactive materials; (2) the properties and hazards of the radioactive materials being transported; and (3) procedures to be followed in case of an accident or other emergency. (49 CFR 177.825(d).) Drivers are also required to carry a route plan which includes the telephone numbers to access emergency assistance in each State to be entered. (49 CFR 177.825(c).) Since the HMR requires drivers to be trained in emergency procedures, transporters could comply with the Rule III(G) merely by submitting a copy of the materials used in the drivers' training course. Such materials are readily available to the State and their submission as part of an application for transportation approval would contribute little to State/local emergency preparedness. If the purpose of this requirement is to ensure that vehicle operators are aware of proper emergency procedures, then the requirement is redundant, as HM–164 addressed this in its imposition of driver training requirements.

Rule III(I) requires submission of the NRC certificate of compliance for the shipping container as evidence that the container has been approved for hypothetical accident conditions pursuant to the provisions of 10 CFR 71.36. The stated purpose of this requirement reflects a basic misunderstanding of the Federal regulations on transportation containers for highway route controlled quantity radioactive material. The NRC issues certificates of compliance, not for containers, but for container designs. Moreover, the cited NRC regulations at 10 CFR 71.36 do not requires that each container be tested and approved for hypothetical accident conditions. Rather, the rules require that each container be constructed in accordance with a design approved by the NRC as meeting the necessary design criteria including, *inter alia*, the ability to meet the standards for hypothetical accident conditions. The HMR incorporate the NRC requirements at 49 CFR 173.416.

Even if this provision is interpreted as requiring advance submission of a copy of the NRC certificate of compliance for the container design, it still presents a conflict with the HMTA's objective of national uniformity in safety regulation. Just as was discussed in connection with Rule III(F) *supra*, ensuring that transporters comply with NRC regulations is a valid State concern. But the legitimacy of the State's interest does not justify it requiring, a a precondition to the use of preferred routes, the advance submission of documents which the NRC regulations require licensees to obtain and to maintain extensive records of.

None of the documentation requirements of the Vermont application procedure relate to any transportation safety risk which is unique to Vermont. It therefore follows that if Vermont may deny access to preferred routes for failure to submit copies of certain documents, then any State (and possibly any jurisdiction) may also do so. The resulting multiplicity of requirements that would result if each State were empowered to prohibit interstate transportation of radioactive materials until all of its additional documentation requirements were satisfied, would effectively nullify the nationally uniform system of highway routing which was established by adoption of HM–164. For these reasons, I find that Rules III (F) and (I) constitute an obstacle to the Congressional objective of regulatory uniformity underlying the HMTA and are, therefore, inconsistent.

Certification—Rule III requires submission of the following certifications as part of the application for approval to transport highway route controlled quantity radioactive material in Vermont:

> (E) Certification that the vehicle has been inspected in compliance with the provisions of 49 CFR 396.
>
> * * * * *
>
> (H) A Certification that the shipment will be in compliance with these rules and all applicable state and federal statutes, rules, and regulations governing the shipment, including but not limited to Parts 172, 173 and 177 of 49 CFR and Parts 71 and 73 of 10 CFR.
>
> * * * * *

Rule III(E) requires transporters of highway route controlled quantity radioactive material to certify that the transport vehicle has been inspected in accordance with Federal law. It does not appear that Vermont requires such certifications from other highway transporters of hazardous materials. Presumably, existing vehicle inspection regulations are adequate to ensure the proper maintenance of such vehicles. It thus appears that the requirement merely imposes another redundant paperwork burden which serves no apparent safety purpose and which, if adopted by all States, would result in precisely the type of multiplicity which Congress sought to preclude by enacting the HMTA.

Rule III(H) requires applicants for transportation approval to certify compliance with all applicable Federal and State Rules. The HMR requires shippers to make such a certification on the shipping papers which accompany each shipment of hazardous materials. (49 CFR 172.204.) As was stated in IR–2:

> No matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations. (44 FR 75571.)

Therefore, for the same reasons set forth in connection with similar provisions of the Michigan rules considered in IR–8, Rule III(H) is inconsistent with the HMR.

Like the information and documentation requirements discussed *supra*, the certification requirements of the Vermont regulation relate to no transportation safety risk which is unique to Vermont. Therefore, if Vermont may prohibit access to preferred routes for failure to submit certain certifications, then any State may do so. As stated previously, such regulatory multiplicity would render HM–164 meaningless. Because they constitute an obstacle to the Congressional objective of regulatory uniformity underlying the HMTA, Rules III (E) and (H) are inconsistent therewith.

Indemnification—Rule III requires transporters to secure insurance and pay a fee as preconditions for approval to transport highway route controlled quantity radioactive material in Vermont:

> (J) A certificate that a bond or insurance acceptable to the Secretary has been posted to cover all types of damages caused by release of the shipped RADWAS materials, and in no event shall such bond or insurance be for less than Five Million Dollars ($5,000,000) total damages.
>
> * * * * *
>
> (L) A cashier's check in the amount of $1,000.00 payable to Treasurer, State of Vermont for *each* proposed shipment. When moved as a group, two or more vehicles,

railcars or barges will be considered one shipment for the purpose of this subsection.

Rule III(J) establishes $5 Million as the minimum level of financial responsibility for transporters of highway route controlled quantity radioactive material.

Motor carriers of highway route controlled quantity radioactive material are required to meet the minimum levels of financial responsibility set forth in the Federal Motor Carrier Safety Regulations at 49 CFR, Part 387. By rulemakings dated June 11, 1981 (46 FR 30974), June 28, 1983 (48 FR 29698), and July 2, 1984 (49 FR 27288), the Federal Highway Administration established a phased-in schedule of minimum levels of financial responsibility: July 1, 1981, $1,000,000; January 1, 1985, $5,000,000.

The HMR require transporters to comply with the Federal Motor Carrier Safety Regulations. (49 CFR 177.804.) At the present time, the Vermont regulation establishes a higher minimum level of financial responsibility than does the Federal rule.

Indemnification for nuclear transportation accidents, however, is not limited to the carrier's public liability insurance. As discussed in the preamble to HM–164:

> If the origin or destination of the radioactive material is an idemnified facility such as a nuclear power plant, the provisions of the Price-Anderson Act (42 U.S.C. 2210) assure a source of funds to cover certain personal injury and property damage claims. The law extends to persons other than the licensee such as the carrier, who may be liable for an accident. Insurance coverage up to $560 million per accident is provided by a combination of licensee private insurance policies and indemnity agreements between the licensees and the NRC. (46 FR 5304.)

In the course of promulgating HM–164, MTB examined the issue of indemnification and concluded that Federal law provided adequate coverage. State adoption of higher insurance coverage requirements can operate as barriers to transportation. This was addressed in IR–10 (published herewith), which dealth with a New York State Thruway Authority (NYSTA) policy allowing radioactive materials on the Thruway only when there was proper indemnification:

> By denying use of the Thruway to any radioactive materials shipment not offering what the NYSTA considers to be proper indemnification, the NYSTA rule directly results in the diversion of such shipments into other jurisdictions and the increase of overall time in transit. In other words, the overall exposure to the risks of radioactive materials transportation is increased and exported.

In the absence of a clear showing that the transportation of highway route controlled quantity radioactive material in Vermont poses a financial risk which exceeds the level of indemnification provided by Federal law, Rule III (J) poses an obstacle to the nationally uniform system of highway routing established under the HMTA. Because it impedes the Congressional objective of regulatory uniformity underlying the HMTA, Rule III (J) is inconsistent therewith.

Rule III (L) requires payment of a fee of $1,000 for each proposed shipment of higway route controlled radioactive material. Presumably, this fee is to reimbuse the State for the cost of the State Monitoring Team which Rule VII requires to accompany each shipment. In its comments on this proceeding, Vermont asserted that the fee is reasonable and that the deployment of trained State personnel to accompany shipments is necessitated by the fact that response groups in the communities along Vermont's preferred routes are predominately voluntary and subject to high turnover, and therefore have difficulty maintaining the skills and equipment needed to respond to nuclear transportation emergencies. Following this line of reasoning, one would expect Vermont to impose similar requirements on shipments of other hazardous materials which pose a potential for extraordinary transportation emergencies. On the basis of both shipment frequency and accident history, spent nuclear fuel poses a much lower risk of transportation accident than do any number of common chemicals, the containment of which could also be expected to exceed the capacity of local groups to respond.

The discriminatory application of the fee notwithstanding, Vermont's claim of uniqueness can be challenged on other grounds. The transportation of spent nuclear fuel in Vermont poses no safety risk which is not present in any other jurisdiction. It is Vermont's limited capacity for emergency response which is alleged to be unique. However, this is the result of the State's deliberate decision, as reflected in its transportation regulations, to field a completely independent response team, rather than to rely on available Federal resources. An extensive network of emergency assistance has been developed and is maintained by the Federal Government precisely because no individual State could be expected to maintain the necessary depty and breath of expertise in this specialized area of contingency response. By requiring transporters to pay a fee, Vermont seeks to transfer the financial burden of its decision to replicate Federal efforts and this has two foreseeable impacts relevant to highway routing of radioactive materials—one direct and one indirect.

The immediate and direct result of Vermont's transport approval fee is to cause transporters to redirect shipments away from Vermont whenever possible. Such diversion onto less direct routes would reduce Vermont's exposure to the risks of radioactive materials transportation at the expense of neighboring jurisdictions by increasing total transport time and, therefore, overall exposure to risk. Thus Vermont's requirement has precisely that effect on other States from which it sought to insulate itself, that is, being used as the path of least resistance "to avoid more difficult regulatory terrain." (Vermont comments on IRA–30, September 15, 1983.)

The foreseeable indirect effect of Vermont's imposition of a transport approval fee is to encourage other States to take similar action. The proliferation of escalating fees, as States sought to finance elaborate response systems and/or to reduce their exposure to radioactive materials transportation, would amount to a system of internal tariff barriers which would completely undermine HM–164 by forcing transporters to select routes on the commercial basis of reduced cost rather than the safety basis of reduced time in transit.

In view of these impacts, the transport approval fee imposed by Vermont Rule III (L) presents an obstacle to the accomplishment and execution of the HMTA as implemented through the adoption of HM–164 and is, therefore, inconsistent.

In summary, the indemnification provisions of Rule III, like the information, certification and documentation provisions discussed above, relate to no safety risk which is unique to Vermont. If Vermont could impose such preconditions upon access to preferred routes, any State could do so. This would lead to the type of regulatory balkanization which Congress sought to preclude by enacting the HMTA. Therefore, I find that the application requirements in Sections (D) (3–4) and (E) through (L) of Rule III, as reflected in the approval criterion of Rule IV (A), constitute an obstacle to the accomplishment and execution of the HMTA and the regulations promulgated thereunder.

The second criterion for transport approval is set forth at Rule IV (B) and requires that the plan required to be submitted under Rule III (G) be acceptable to the State Secretary of Transportation. As was demonstrated in

the discussion of Rule III (G) *supra*, that requirement constitutes an obstacle to the accomplishment and execution of the HMTA. Since the application requirement of Rule III (G) has been found to be inconsistent, it follows that the approval criterion of Rule IV (B) is also inconsistent.

The third criterion for transport approval is set forth at Rule IV (C) and concerns the standards to be applied in approving a transporter's choice of route from origin to destination:

> (C) If the proposed route from origin to destination is not the shortest and most direct, the route has been determined to be acceptable by the Secretary after consultation with the Commissioners of Health and Public Safety on the health, safety and security aspects of the proposal. Avoidance or circumvention of one or more jurisdictations which have precluded or restricted shipments of radioactive materials shall not constitute an acceptable reason for approval of a route through Vermont which is not the shortest and most direct.

In the discussion of Rule III (K) *supra*, the requirement for submission of a justification for the selection of a transport route which is not the shortest and most direct was determined to be inconsistent and, therefore, preempted. It therefore follows that Rule IV (C) is also inconsistent. Nevertheless, because the rule provides Vermont's rationale for its imposition, additional discussion is warranted on the matter.

Vermont's interest in the reasons behind a transporter's route selection reflects the concern that Vermont was being subjected to a disproportionate share of exposure to the risks inherent in radioactive materials transportation; that this had resulted from the diversion into Vermont of shipments which had encountered bans or other significant restrictions in States along the route selected to reduce time in transit (i.e., the route required by HM–164); and that Vermont was being penalized for complying with the Federal routing scheme while other jurisdictions continued to enforce their inconsistent regulations. The Department shares Vermont's concern over the subversion of HM–164 by inconsistent State and local regulations. The fact situation which gave rise to the issuance of inconsistency rulings IR–7 through IR–15 involved precisely the cause and effect of concern to Vermont. The shipper, Nuclear Assurance Corporation, in attempting to transport spent nuclear fuel from Ontario to South Carolina, encountered a variety of inconsistent State and local restrictions which prevented the use of routes through New York and Michigan. Recourse was subsequently made to a route through Vermont. The route was not selected because it reduced time in transit, but because it was the last available alternative.

In view of the validity of Vermont's concern, its requirement for approval of route selections would seem, on first impression, to be consistent with the HMTA by ensuring compliance with the intent of HM–164. On closer examination, however, the flaws in this reasoning became apparent. First of all, good intentions notwithstanding, the immediate effect of the requirement is to contribute yet another impediment to the interstate transportation of radioactive materials. Additionally, by operating on its own determination that the regulations of another State or local government are unjustified, Vermont is effectively usurping the Federal responsibility for determining inconsistency. For these reasons, as well as those discussed in connection with Rule III (K) supra, the route approval criterion set forth in Rule IV (C) is inconsistent with the HMTA and the MHR.

Preemption of the requirement for State approval of the proposed route does not, however, deprive Vermont of means to redress its grievances. No shipper certification, is necessary to determine whether a proposed route is the most direct. The NRC regulations require licensees to provide the State with a minimum of four days advance notice of the route a shipment will follow. Reference to a standard road atlas should immediately reveal whether a proposed route appears to be unnaturally skewed through Vermont. Should this be the case, two avenues are open to Vermont: (1) application to MTB for an inconsistency ruling on the State or local regulation(s) which appear to have caused a diversion of traffic into Vermont and (2) petition to a Federal District Court to permanently enjoin the State or local jurisdiction from enforcing a routing rule which is inconsistent with the HMTA and therefore preempted.

In summary, Rules III and IV constitute a State routing rule in the form of a permit requirement. Such a requirement is inconsistent with the HMTA. As stated in IR–8:

> Generally, in the absence of Departmental involvement in a safety issue, States and, to the extent authorized by State law, local governments may regulate to protect the public safety. Where, as here, the issue has been thoroughly addressed through rulemaking, the State role is much more circumscribed. The HMR address all aspects of radioactive materials transportation. Increasingly stringent requirements are imposed on the basis of increasing degree of risk. Under the authority of the HMTA, Federal regulation of radioactive materials transportation safety has been so detailed and so pervasive as to preclude independent State or local action. The extent to which State and local government may regulate the interstate transportation of radioactive materials is limited to: (1) traffic control or emergency restrictions which affect all transportation without regard to cargo; (2) designation of alternate preferred routes in accordance with 49 CFR 177.825; (3) adoption of Federal regulations or consistent State/local regulations; and (4) enforcement of consistent regulations or those for which a waiver of preemption has been granted pursuant to 49 CFR 107.221. Thus, in the absence of an express waiver of preemption, no authority exists for a State or local government to impose a permit requirement on shipments of radioactive materials which applies because of the hazardous nature of the cargo.

Rule V. Approval Notification

Rule V states that approval shall be granted in writing and shall indicate any conditions or limitations pertaining thereto. The requirement of prior State approval to transport radioactive materials via perferred routes has been found to be inconsistent, not only in this proceeding, but also in other inconsistency rulings published herewith. Therefore, to the extent that Rule V designates the form such approval shall take, it is also inconsistent.

Rule VI. Transporter notification of Changes

Rule VI sets forth the following requirements:

> Unless otherwise specified in the approval notification, the carrier, driver, or operator transporting RADWAS shall notify the Secretary or his designee of the following not less than 4 hours prior to beginning movement in the States:
>
> (A) Any schedule change that differs by more than 1 hour from the schedule information previously funished.
>
> (B) Any incident or situation anticipated to cause a delay in the transport of the RADWAS through Vermont.

The requirement for obtaining State transportation approval has been determined to be inconsistent with the HMTA. Therefore, to the extent that Rule VI implies an ability to impose requirements other than those specifically set forth, it is inconsistent with the HMTA.

Rule VI(A) requires transporters to notify the State Secretary of Transportation of any schedule change that differs by more than one hour from the schedule information previously furnished. The HMR rely on the notification requirements contained in the NRC standards for physical protection. Included in those standards

at 10 CFR 73.37(f)(4) is the requirement that a licensee notify the Governor or the Governor's Designee of any schedule change that differs by more than six hours from the schedule information previously furnished. In Vermont, the Governor's Designee is the State Secretary of Transportation.

Rule VI(B) requires transporters to notify the State Secretary of Transportation of any incident or situation anticipated to cause a delay in transportation through Vermont. The HMR require transporters of radioactive materials to operate in compliance with a physical protection plan as required by NRC regulations (10 CFR 73.37) or MTB-approved equivalent. The NRC regulations require shipment escorts to make calls to the communications center at least every two hours to advise of the status of the shipment. The communications center required by NRC regulations must be "staffed continuously by at least one individual who will monitor the progress of the spent fuel shipment and will notify the appropriate agencies in the event a safeguards emergency should arise."

Any schedule change or shipment delay of more than six hours must be reported under 10 CFR 73.37(f)(4). Delays of less than six hours may be caused by a variety of factors ranging from a safeguards emergency to simple traffic delay. Since the planned schedule necessarily projects estimated times of arrival, a certain margin is built into the schedule. Rule VI(A) would reduce this margin from six hours to one. Rule VI(B) would reduce it even further by requiring notification of any circumstance which could be anticipated to cause any degree of delay in the estimated travel time through Vermont. Clearly, the State of Vermont has a legitimate interest in knowing of shipment delays which could stem from or result in safeguards emergencies. The Federal regulations ensure that they receive such notice. No showing has been made of any safety problem unique to Vermont which requires carriers to report normal transportation delays of less than six hours. Therefore, were Vermont's requirements allowed to stand, any State could impose its own additional reporting requirements. This was the basis for finding inconsistency in IR–8 with regard to similar requirements imposed by the State of Michigan. The multiplicity of differing notification requirements impedes the Congressional objective of national uniformity in hazardous materials transportation safety regulation.

A further problem is presented by the requirement in Rule VI that transporters provide the required notification "not less than 4 hours prior to beginning movement in the State". If a shipment which had proceeded to a point within four hours of entry into Vermont were to encounter some circumstance resulting in a schedule change of one hour or the anticipation of any delay in Vermont, then, in order to comply with the requirement of at least four hours advance notification, the shipment would have to stop short of the Vermont border and wait out the clock. The HMR at 49 CFR 177.853 require that all shipments of hazardous materials be transported with unnecessary delay. This was the basis for finding a Rhode Island transportation permit requirement to be inconsistent in IR–2:

> The manifest purpose of the HMTA and the Hazardous Materials Regulations is safety in the transportation of hazardous materials. Delay in such transportation is incongruous with safe transportation. (44 FR 75571.)

In view of the foregoing, Rule VI impedes both the safety and uniformity objectives of the HMTA. Accordingly, I find Rule VI to be inconsistent with the HMTA.

Rule VII. Monitoring

Rule VII sets forth the following requirements:

> (A) Each motor vehicle shipment of RADWAS shall be monitored by:
> (1) a leading State Police vehicle occupied by at least one law enforcement officer;
> (2) a vehicle occupied by State Monitoring Team personnel; and
> (3) a trailing State Police vehicle occupied by at least one law enforcement officer.
> (B) Each shipment by railcar or barge through or in the state shall be accompanied as directed by the Secretary.
> (C) The ranking state police officer accompanying the shipment shall be the authority to modify the conditions of the approval in response to weather, accident or exigent circumstances which may affect the safety of the shipment. Any modification which will result in a delay of more than two hours in the time of departure of the shipment from Vermont shall be approved by the Secretary or his designee.

With regard to Rules VII (A) and (B), it is difficult to determine whether an obligation to act is being imposed on the transporter or the State Agency of Transportation. In other words, if a shipment arriving at the Vermont border is not met by the State officials assigned to monitor its progress, must the shipment stop and wait for them in order to ensure compliance with Rule VII? If this is the intended effect, then the requirement imposes a degree of delay which is incongruous with the safety objective of reducing time in transit. As stated in IR–2:

> Given that the materials are hazardous and that their transport is not risk-free, it is an important safety aspect of the transportation that the time between loading and unloading be minimized. (44 FR 75571.)

Therefore, to the extent that Rules VII (A) and (B) impose an obligation to act upon transporters of radioactive materials, they are inconsistent with the HMTA.

Rule VII(C) is a delegation of authority to modify the conditions of the written approval to transport radioactive materials in Vermont. Since the underlying requirement for obtaining prior State approval has been determined to be inconsistent, provisions for modifying the conditions of that approval need not be considered, because each element thereof would be inconsistent.

Rule VIII. Schedule information, confidentiality

Rule VIII sets forth the standards of confidentiality to be applied to radioactive materials shipment schedule information. The requirements set forth herein are the same as set forth in the NRC regulations (10 CFR 73.21, 73.37) on which the HMR rely. Accordingly, no inconsistency exists.

Rule IX. Transport inspection

Rule IX states that shipments of radioactive materials may be inspected by State personnel for compliance with applicable State and Federal statutes, rules and regulations. It should be noted that State statutes, rules, and regulations governing radioactive materials transportation are "applicable" only if they are not consistent with the HMTA. Having noted this distinction, I find that Rule IX constitutes a valid exercise of the State's inherent police powers. Ensuring that transport vehicles do not threaten public health and safety has long been recognized as a legitimate State function. Far from being an obstacle to the accomplishment of the HMTA, State enforcement of Federal and consistent State regulations on hazardous materials transportation is a critical element of a regulatory system of national applicability. MTB has sought to foster a Federal/State partnership in hazardous materials transportation safety and, to this end, has developed and implemented the State Hazardous Materials Enforcement Development Program, in which Vermont participates, to provide States with the financial and technical assistance necessary for enforcement of a nationally uniform system of hazardous materials transportation safety regulation. For

these reasons, I find Rule IX to be consistent with the HMTA and the regulations thereunder.

III. Ruling

For the foregoing reasons, I find that the radioactive materials transportation rules of the Vermont Agency of Transportation constitute a regulatory scheme which in many aspects is inconsistent with the HMTA and the regulations issued thereunder. Specifically, I find the following rules to be inconsistent and thus preempted under 49 U.S.C. 1811(a): Rules I(e), III(D)(3–4), III(E–L) and IV through VIII.

The following rules are not preempted: Rules I(a–d), I(f–g), II, III(A–C), III(D)(1–2), VIII, and IX.

Any appeal to this ruling must be filed within thirty days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on November 20, 1984.

Alan I. Roberts,

Associate Director, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84–30869 Filed 11–26–84; 8:45 am]

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federal register

Tuesday
November 27, 1984

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33
Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 3; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 27, 29, and 33

[Docket No. 24337; Notice No. 84-19]

Airworthiness Standards; Rotorcraft Regulatory Review Program Notice No. 3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice pertains primarily to the powerplant requirements for rotorcraft. This notice is based on a number of proposals discussed at the Rotorcraft Regulatory Review Conference held December 10–14, 1979, in New Orleans, Louisiana, and the Rotorcraft Regulatory Review Conference held August 18–20, 1980, in Washington, D.C. It includes additional proposals derived from previously issued Special Conditions and from an ongoing FAA review of Parts 1, 27, 29, and 33 for needed clarification, correction, or safety-related changes. These proposals arise out of the phenomenal growth of the rotorcraft industry and the recognition by both government and industry that updated safety standards are needed. These proposals attempt to recognize the need for a high level of safety in the design requirements for rotorcraft while removing or modifying existing rules which invoke unnecessary compliance burdens.

DATES: Comments must be received on or before March 26, 1985.

ADDRESSES: Comments related to this proposal should be mailed to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24337; 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. Comments delivered must be marked "Docket No. 24337." Comments may be inspected in Room 916 between 8:30 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Wilbur F. Wells, Regulations Program Management (ASW-111), Aircraft Certification Division, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2551.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting written data, views, or arguments as they may desire, including comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice. Communications should identify the regulatory docket and be submitted in duplicate to the address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped post card on which the following statement is made: "Comments on Docket No. 24337." The post card will be date/time stamped, and returned to the commenter.

For convenience, each proposal in this notice is numbered separately. When submitting comments, please refer to proposals by these numbers and by the section of the FAR to which they relate.

Availability of This Notice

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

Background

On January 15, 1979, the FAA gave notice of its Rotorcraft Regulatory Review Program and invited all interested persons to submit proposals for consideration during its forthcoming Rotorcraft Regulatory Review Conference, Notice 79-1 (44 FR 3250; January 15, 1979). In that notice, the FAA announced that it would prepare a conference agenda containing a compilation of the proposals submitted and other information on the conference arrangements.

In Notice 79-1A (44 FR 12685; March 8, 1979), the FAA extended the period for submission of proposals relating to Notice 79-1 to May 31, 1979. This action was in response to a Helicopter Association of America (HAA) letter dated February 12, 1979, which stated that they did not have sufficient manpower to translate the members' comments into constructive proposals and justifications within the time allotted. This action was further supported by a letter from the United Kingdom Civil Aviation Authority (CAA) dated February 14, 1979, which stated that staffing limitations prevented anything more than a broad survey of the proposals. They requested an extension of 90 days.

In light of these comments, the FAA concluded that it was in the public interest to encourage a thorough review of the regulations and that good cause existed for extending the date for submitting proposals.

The FAA received 613 proposals in response to Notice 79-1, of which 569 were placed on the conference agenda. The remaining 44 proposals were excluded because they fell outside the scope of the review program or for other reasons outlined in Notice 79-1. A separate printing of six other proposals inadvertently omitted from the compilation was distributed at the conference.

On October 22, 1979, the FAA announced that the Rotorcraft Regulatory Review Conference would be held in New Orleans, Louisiana, December 10-14, 1979, and that the conference agenda and compilation of proposals were available (Notice 79-1B; 44 FR 60747 October 22, 1979).

Subsequently, by Notice 79-1C (44 FR 67136; November 23, 1979), the FAA announced a change in the agenda for the Rotorcraft Regulatory Review Conference to divide the specialty areas into three rather than four separate sessions. Over 155 persons attended the conference which convened on December 10, 1979, remaining in session until each proposal had been discussed. A transcript of those discussions is in Docket Number 18689. However, this document is only limited use due to the poor quality of the transcription.

On March 24, 1980, the FAA received a letter from the Helicopter Association of America and the Aerospace Industries Association of America, Inc., requesting a meeting to present material

to the FAA to assure themselves that the industry logic was understood by the Rotorcraft Regulatory Review Team. The FAA gave careful consideration to the request and determined it would be in the best interest of all concerned to provide the requested meeting and that all interested persons should be afforded the same opportunity to listen to and comment on the industry logic. Accordingly, Notice 79–1D (45 FR 43202; June 26, 1980) announced a Rotorcraft Regulatory Review Conference which was held August 18–20, 1980, in Washington, D.C. A copy of the transcript of this meeting has been placed in Docket Number 18689.

This notice pertains to the rotorcraft certification rules in Parts 27 and 29 and related sections in Parts 1 and 33, as they apply to powerplant installation, rotor drive mechanisms, combustion equipment and associated systems, appliances, and instruments.

An appendix at the end of this notice includes a list of conference proposals which the FAA proposes to withdraw. The reasons for withdrawal are specified in the appendix. The proposal numbers in this appendix and the reference proposals listed with the explanatory notes in this notice pertain to the proposal numbering assigned for presentation to the Rotorcraft Regulatory Review Conference in New Orleans, Louisiana, in 1979.

Preliminary Economic Impact Evaluation

A preliminary economic evaluation has been prepared to provide a basis for the finding required by the Regulatory Flexibility Act and as directed by the applicable requirements of section 2 of Executive Order 12291 (46 FR 13193; February 19, 1981) and by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This evaluation consists of a detailed study of each proposal in this notice to derive and correlate the potential benefits and the potential costs to be expected if these proposals become rules.

This study disclosed that most of these proposals were found to incur negligible benefits or costs, usually because the proposal either reflects current practice or it clarifies, simplifies, or corrects existing rules. Proposals in this category are listed in Table I and the basis for this categorization is documented in the Regulatory Evaluation filed in the docket for this notice.

A second group of proposals listed in Table II includes significant cost items primarily as certification costs to the rotorcraft manufacturers; however, these proposals pertain to or provide safety standards for optional equipment or ratings. No economic analysis has been prepared for these proposals since it may be assumed that these equipment items, installations, or ratings will only be introduced into any model rotorcraft after industry-generated forcasts show that costs can be offset by the benefits to be expected. Notwithstanding this view, comments from the public are solicited regarding both the economic aspects and the extent of qualification suggested by these proposals.

A third group of proposals listed in Table III is identified as also incurring significant potential costs. For these proposals, the analysis of costs and of the assumed benefits (derived from assumed safety improvements and a corresponding reduction in accidents) fails to show that including these proposals is justified. These proposals are deferred for further study and may appear in subsequent notice, if justified by revised economic data.

TABLE I

Proposal No.	Regulation (FAR)	Subject	Evaluation
3–1	1.1	30-Minute rating	Definition.
3–2	1.2	Definition	Definition.
3–4	27.361(a)	Design Torque Limitations	Current practice.
3–5	27.833	Combustion heaters	Current practice.
3–6	27.859(c) thru (m)	Combustion heaters	Current practice.
3–7	27.901(c)	Powerplant installation	Current practice.
3–8	27.903(a), (b)	Powerplant cooling fans	Negligible Costs.
3–9	27.923(c), (d), (j)	Drive system tests	Negligible Costs.
3–10	27.927(b)	Drive systems	Clarification
3–11	27.954	Fuel system lightning protection	Current practice.
3–12	27.955	Fuel flow requirements	Current practice.
3–13	27.961	Fuel system hot weather tests	Current practice.
3–14	27.963(b), (f)	Fuel tank safety	Current practice.
3–15	27.969	Fuel expansion space	Negligible savings.
3–16	27.971	Fuel tank sump	Negligible costs.
3–17	27.975	Fuel tank vent arrangement	Current practice.
3–18	27.991	Fuel pump	Current practice.
3–19	27.993(f)	Fuel system lines and fittings	Negligible costs.
3–20	27.997	Fuel strainer	Current practice.
3–21	27.999	Fuel system drains	Current practice.
3–22	27.1011	Engine oil systems	Clarification.
3–23	27.1019	Oil strainer contamination indicator	Negligible savings.
3–24	27.1027	Transmission oil systems	Current practice.
3–25	27.1041	Powerplant cooling	Current practice.
3–26	27.1045	Powerplant cooling	Clarification.
3–27	27.1091	Engine induction system	Negligible savings.
3–28	27.1093	Engine ice and snow protection	Negligible savings.
3–29	27.1141	Powerplant valves	Current practice.
3–30	27.1143	Engine controls	Clarification.
3–31	27.1163	Powerplant accessories	Negligible savings.
3–32	27.1189	Flammable fluid shutoff valves	Current practice.
3–33	27.1193(f)	Cowling retention	Current Practice.
3–34	27.1305(l), (m), (q), (s)	Powerplant instruments	Negligible savings.
3–35	27.1337	Magnetic chip detectors	Negligible costs.
3–36	27.1521(g), (h)	Powerplant limitations	Clarification.
3–37	27.1549(e)	Powerplant instrument markings	Current practice.
3–38	29.45(c)	Powerplant instrument error	Clarification.
3–40	29.361(a), (b)	Design torque limitations	Negligible costs.
3–41	29.549(e)	Fuselage structural loads	Clarification.
3–42	29.901(b)(2), (b)(6)	Powerplant installation	Negligbile costs.
3–43	29.903(a), (b)(2), (c)(3)	Powerplant installation	Clarification.
3–44	29.908(a), (c)	Powerplant cooling fans	Negligible costs.
3–45	29.923(a) thru (h), (k)(1)	Drive system tests	Clarification.
3–46	29.927(c), (d), (f)	Drive system tests	Clarification.
3–47	29.954	Fuel system lightning protection	Current practice.

TABLE I—Continued

Proposal No.	Regulation (FAR)	Subject	Evaluation
3-48	29.955	Fuel flow requirements	Current practice.
3-49	29.961	Fuel system hot weather tests	Current practice.
3-50	29.963(b), (e)	Fuel tank safety	Negligible costs.
3-51	29.967(f)	Fuel tank installation requirements	Clarification.
3-52	29.969	Fuel expansion space arrangements	Negligible savings.
3-53	29.971	Fuel tank sump	No cost.
3-54	29.975	Fuel tank vent arrangement	Current practice.
3-55	29.991	Fuel pumps	Current practice.
3-56	29.993	Fuel system lines and fittings	Negligible costs.
3-57	29.997	Fuel strainer	Current practice.
3-58	29.999	Fuel system drains	Current practice.
3-60	29.1011	Engine oil systems	Clarification.
3-61	29.1019(a)	Oil strainer contamination indicator	Negligible savings.
3-62	29.1027	Transmission oil systems	Current practice.
3-63	29.1041	Powerplant cooling	Clarification.
3-64	29.1043	Powerplant cooling	Clarification.
3-67	29.1093	Engine ice and snow protection	Current practice.
3-68	29.1141	Powerplant valves	Current practice.
3-69	29.1143	Engine controls	Clarification.
3-70	29.1163	Powerplant accessories	Current practice.
3-71	29.1181	Designated fire zones	Definition.
3-72	29.1189(e), (f)	Flammable fluid shutoffs	Current practice.
3-73	29.1193(f)	Powerplant cowling retention	Current practice.
3-74	29.1305(a)(4), (a)(17), (a)(20), (a)(21), (a)(23)	Powerplant instruments	Negligible costs.
3-75	29.1337(e)	Magnetic chip detectors	Negligible costs.
3-76	29.1521(f), (g)	Powerplant limitations	No cost.
3-77	29.1549(e)	Powerplant instrument markings	Current practice.
3-78	29.1557(c)	Markings and placards	Negligible costs.

TABLE II.—PROPOSALS FOR OPTIONAL RATINGS OR EQUIPMENT

Proposal No.	Regulation (FAR)	Subject
3-3	27.67(a)(2), (a)(3), (b).	Continuous OEI Power.
3-9	27.923(d), (e), (j), (k).	Continuous OEI Power.
3-14	27.963(g)	Cabin Fuel Tanks.
3-36	27.1521(i)	Continuous OEI Power.
3-39	29.67(a)(2), (a)(3), (b).	Continuous OEI Power.
3-45	29.923(k)(2)	Continuous OEI Power.
3-59	29.1001	Fuel Jettisioning System.
3-65	29.1045(a)(4), (c).	Continuous OEI Power.
3-66	29.1047(a)	Continuous OEI Power.
3-76	29.1521(h)	Continuous OEI Power.
3-79	33.7(c)	Continuous OEI Power.
3-80	33.87(d)	Continuous OEI Power.

The appearance of a proposal number in both Table I and Table II indicates some aspects of the proposal exists in either category.

TABLE III.—PROPOSALS DEFERRED FOR FURTHER ECONOMIC STUDY

Proposal No.[1]	Regulation (FAR)	Subject
103	27.964	Fuel Cell Crashworthiness.
284	29.903	Engine Rotor Containment.
303	29.927	Overruning Clutch Test.
316	29.964	Fuel Cell Crashworthiness.
358	29.1305	Engine Failure Warning.

[1] For Table III only, proposal numbering agrees with numbering assigned to the proposal as presented to the New Orleans Rotorcraft Regulatory Review, December 1979.

Trade Impact

Since certification rules are applicable to both foreign and domestic manufacturing selling in the U.S., there will be no competitive advantage to either. Because of the large U.S. market, foreign manufacturers are likely to certificate their rotorcraft to U.S. rules and because of the negligible cost of the proposals, U.S. manufacturers will not be at a disadvantage in foreign markets.

Regulatory Flexibility Analysis

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) the proposed rule, at promulgation, will not have a significant economic impact on a substantial number of small entities.

The FAA estimates that there will be six new helicopters certificated by the year 2000. Of these, one is expected to be certificated by one of five small (less than 1,500 employees) firms. Since the FAA's criterion for a substantial number of small entities is at least 11, it is apparent that a substantial number of small entities will not be impacted. In addition the FAA expects the economic impact to be negligible.

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports.

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Safety, Tires, Rotorcraft.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

14 CFR Part 33

Engines, Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendments

Accordingly, it is proposed to amend Parts 1, 27, 29, and 33 of the Federal Aviation Regulations (14 CFR Parts 1, 27, 29, and 33) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

3–1. By amending § 1.1 by adding the definition of "Rated continuous OEI power," after the definition of "Public aircraft," and by revising the definitions of "Rated '30-minute power' " and "Rated '2½-minute power' " to read as follows:

§ 1.1 General definitions.

* * * * *

"Rated continuous OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33, and limited in use to the time required to complete the flight after the failure of one engine of a multiengine rotorcraft.

* * * * *

"Rated 30-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under statis conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33 and limited in use to a period of not

more than 30 minutes after the failure of one engine of a multiengine rotorcraft.

"Rated 2½-minute OEI power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under Part 33, and limited in use to a period of not more than 2½ minutes after the failure of one engine of a multiengine rotorcraft.

* * * * *

Explanation: This proposal will accomplish three objectives as follows:

(a) A definition of a new continuous one-engine-inoperative (OEI) power rating is added. This definition is needed to recognize and facilitate the use of this new rating. See the explanation for revised § 27.67.

(b) The existing definitions of "2½-minute power" and "30-minute power" should be revised to read "2½-minute OEI power" and "30-minute OEI power" in order to make these definitions consistent with the new continuous OEI power definition and to more closely relate the name of these power ratings with their intended usage; i.e., with one engine inoperative. Conference Proposal No. 3 suggested that the title of the new (proposed) continuous OEI rating be "intermediate contingency." This was rejected in favor of "continuous OEI" to clarify both the time frame (continuous) and the usage (OEI) for this rating, as well as to parallel the nomenclature used in existing OEI ratings.

(c) The conditions for establishing the 2½-minute OEI power and the 30-minute OEI power are revised by this proposal to eliminate terms such as "maximum" for horsepower and rotation speed. This change is needed to recognize the concept that "maximum" and "rated" horsepower, rotation speed, etc., need not be identical.

In addition a phrase would be added to the definition of "Rated 2½-minute power" and "Rated 30-minute power" to state clearly the operational limit on the use of these ratings, i.e., after failure of one engine of a multiengine rotorcraft. This change is needed to avoid the misconception that these ratings can be used anytime the operator desires. This unlimited usage could be unsafe since the qualification program for these ratings is limited to a degree associated with the very low frequency of occurrence of actual engine failure on a multiengine rotorcraft.

Ref: Proposals 2, 3, 14, 15, 95, 96, 167, 168, 169, 288, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 414, 415, 419, and 420; Committee II.

3–2. By amending § 1.2 by adding the definition of "OEI" after the definition of "NOPT" as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

"OEI" means one engine inoperative.

* * * * *

Explanation: The term "OEI," meaning one engine inoperative, has become widespread in the aircraft industry to designate the operational situation involving failure of an engine on a multiengine rotorcraft. This proposal merely adopts standard industry terminology for this condition.

Ref: Proposals 2, 3, 14, 15, 95, 96, 167, 168, 169, 288, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 414, 415, 419, and 420; Committee II.

PART 27—AIRWORTHINESS STANDARDS; NORMAL CATEGORY ROTORCRAFT

3–3. By amending § 27.65 by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 27.67 Climb: One engine inoperative.

* * * * *

(b) The critical engine inoperative and the remaining engines at either—

(1) Maximum continuous power and, for helicopters for which certification for the use of 30-minute OEI power is requested, at 30-minute OEI power; or

(2) Continous OEI power for helicopters for which certification for the use of continuous OEI power is requested.

Explanation: This proposal is one of a series of revisions to Parts 1, 27, 29, and 33 in response to industry needs expressed in numerous proposals submitted for consideration at the Rotorcraft Regulatory Review Conference. Notwithstanding some detail deviations, these proposals generally were directed at creating a new continuous one-engine-inoperative (OEI) rotorcraft power rating. Under this concept, rotorcraft could be certificated with a continuous OEI rating instead of the current 30-minute OEI rating. As with the 30-minute OEI rating, the continuous OEI rating would be eligible for use only in the event of an engine failure, but not time limited, as is the case for the 30-minute OEI rating. Originally, the 30-minute rating was adequate for the relatively short route structure of first generation helicopter air carrier service. Industry needs for the new "continuous OEI rating" were generated primarily by the extensive operation of helicopters serving the distant offshore petroleum drilling and servicing activities. Many, if not most, of these activities involved dispatching helicopters on route structures which precluded a planned landing within 30 minutes in the event of an engine failure. This situation has been addressed by the European helicopter industry by creating a rating essentially identical to this proposed continuous OEI rating except that it was identified as an "intermediate contingency" rating. Without a similar rating, FAA-approved helicopters will suffer a distinct economic disadvantage.

Representations from the industry have been made that this continuous OEI rating could be established at a higher power than available from normal maximum continuous ratings (but less than the power associated with the 30-minute OEI rating) without adversely affecting safety. This concept is contingent on the special testing outlined in these proposals and the limitations on the use of this rating. As with the 30-minute OEI rating, the use of continuous OEI power would be limited to the duration and frequency of occurrence associated with continued safe flight to its destination after failure of one engine on multiengine rotorcraft.

Conference attendees from all phases of rotorcraft-related activities agree with the concept of a continuous OEI rating. However, one conferee questioned the feasibility of devising adequate powerplant instrument markings to reflect the various ratings. This comment was, in part, the primary reason for the FAA's decision to limit use of the OEI ratings to the 30-minute OEI rating or the continuous OEI rating, but not both, plus the 2½-minute rating, if requested, on any model rotorcraft.

In addition, this proposal would revise the existing term "30-minute power" to "30-minute OEI power" to agree with the revision to the term proposed for § 1.1. See the explanation and proposals for § 1.1.

Ref: Proposals 2, 3, 14, 15, 95, 96, 97, 167, 168, 169, 288, 291, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 399, 414, 415, 419, and 420; Committee II.

3–4. By revising § 27.361 to read as follows:

§ 27.361 Engine torque.

(a) For turbine engines, the limit torque may not be less than the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 27.923;

(3) The torque required by § 27.927;

(4) The torque imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming); or

(5) The torque imposd by power excursions associated with fuel control malfunction, and by inadvertent or abnormal control motions to be expected in service.

(b) For reciprocating engines, the limit torque may not be less than the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

Explanation: Conference discussions suggest that the current definition for limit torque for turbine engines may not be adequate since the maximum installed engine torque to be expected in service may be considerably higher than the torque for maximum continuous power multiplied by 1.25. This proposal would set forth additional criteria to ensure that the critical torque value is considered.

Ref: Proposal 48; Committee I.

3–5. By adding a new § 27.833 to read as follows:

§ 27.833 Heaters.

Each combustion heater must be approved.

Explanation: This proposal relocates a requirement in § 27.859(c) which pertains to heater approval and establishes it as new § 27.833. It is further generalized to make it applicable to all combustion heaters by deleting the words "gasoline-operated." Both these actions and the following proposals for changing § 27.859 are in response to an industry proposal to upgrade the combustion heaters standards in Part 27 to agree with combustion heater standards in Part 29.

Ref: Proposal 87 as revised by alternate proposal from HAA/AIA; Committee I.

3–6. By amending § 27.859 by revising paragraph (c) and by adding new paragraphs (d) through (k) to read as follows:

§ 27.859 Heating systems.

* * * * *

(c) *Combustion heater fire protection.* Except for heaters which incorporate designs to prevent hazards in the event of fuel leakage in the heater fuel system, fire within the ventilating air passage, or any other heater malfunction, each heater zone must incorporate the fire protection features of the applicable requirements of §§ 27.1183, 27.1185, 27.1189, 27.1191, and be provided with—

(1) Approved, quick-acting fire detectors in numbers and locations ensuring prompt detection of fire in the heater region.

(2) Fire extinguisher systems that provide at least one adequate discharge to all areas of the heater region.

(3) Complete drainage of each part of each zone to minimize the hazards resulting from failure or malufunction of any component containing flammable fluids. The drainage means must be—

(i) Effective under conditions expected to prevail when drainage is needed; and

(ii) Arranged so that no discharged fluid will cause an additional fire hazard.

(4) Ventilation, arranged so that no discharged vapors will cause an additional fire hazard.

(d) *Ventilating air ducts.* Each ventilating air duct passing through any heater region must be fireproof.

(1) Unless isolation is provided by fireproof valves or by equally effective means, the ventilating air duct downstream of each heater must be fireproof for a distance great enough to ensure that any fire originating in the heater can be contained in the duct.

(2) Each part of any ventilating duct passing through any region having a flammble fluid system must be so constructed or isolated from that system that the malfunctioning of any component of that system cannot introudce flammable fluids or vapors into the ventilating airstream.

(e) *Combustion air ducts.* Each combustion air duct must be fireproof for a distance great enough to prevent damage from backfiring or reverse flame propagation.

(1) No combustion air duct may connect with the ventilating airstream unless flames from backfires or reverse burning cannot enter the ventilating airstream under any operating condition, including reverse flow or malfunction of the heater or its associated components.

(2) No combustion air duct may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(f) *Heater control: General.* There must be means to prevent the hazardous accumulation of water or ice on or in any heater control component, control system tubing, or safety control.

(g) *Heater safety controls.* For each combustion heater, safety control means must be provided as follows:

(1) Means independent of the components provided for the normal continuous control of air temperature, airflow, and fuel flow must be provided for each heater to automatically shut off the ignition and fuel supply of that heater at a point remote from that heater when any of the following occurs:

(i) The heat exchanger temperature exceeds safe limits.

(ii) The ventilating air temperature exceeds safe limits.

(iii) The combustion airflow becomes inadequate for safe operation.

(iv) The ventilating airflow becomes inadequate for safe operation.

(2) The means of complying with paragraph (g)(1) of this section for any individual heater must—

(i) Be independent of components serving any other heater, the heat output of which is essential for safe operation; and

(ii) Keep the heater off until restarted by the crew.

(3) There must be means to warn the crew when any heater, the heat output of which is essential for safe operation, has been shut off by the automatic means prescribed in paragraph (g)(1) of this section.

(h) *Air intakes.* Each combustion and ventilating air intake must be located so that no flammable fluids or vapors can enter the heater system—

(1) During normal operation; or

(2) As a result of the malfunction of any other component.

(i) *Heater exhaust.* Each heater exhaust system must meet the requirements of §§ 27.1121 and 27.1123.

(1) Each exhaust shroud must be sealed so that no flammable fluids or hazardous quantities of vapors can reach the exhaust systems through joints.

(2) No exhaust system may restrict the prompt relief of any backfire that, if so restricted, could cause heater failure.

(j) *Heater fuel systems.* Each heater fuel system must meet the powerplant fuel system requirements affecting safe heater operation. Each heater fuel system component in the ventilating airstream must be protected by shrouds so that no leakage from those components can enter the ventilating airstream.

(k) *Drains.* There must be means for safe drainage of any fuel that might accumulate in the combustion chamber or the heat exchanger.

(1) Each part of any drain that operates at high temperatures must be protected in the same manner as heater exhausts.

(2) Each drain must be protected against hazardous ice accumulation under any operating condition.

Explanation: An industry proposal to expand the Part 27 combustion heater installation safety requirements to be equivalent in all respects to those

prescribed by Part 29 was discussed with complete agreement at the New Orleans conference. This included requirements for new systems such as fire detectors and fire extinguishers not previously deemed necessary for light rotorcraft. However, actual practice has been to incorporate into the heater unit itself certain design features, such as fuel line shrouds and explosive containment. In effect, this will exempt the heater installation from extensive fire protection features, including the fire detector and the fire extinguisher requirements. It is realistic to assume that future combustion heater installation design practice will follow this convention, thus the burden of the new detector and extinguisher requirements in this proposal will be minimal to nonexistent. However, to assure that new and innovative combustion heater designs incorporate adequate safety, this proposal presents expanded safety requirements which agree, in most respects, with Part 29, in accordance with the industry proposal.

Ref: Proposal 87; Committee I.

3–7. By amending § 27.901 by revising paragraph (b)(1); by removing the word "and" after the semicolon in (b)(2); by removing the period in (b)(3) and inserting a semicolon in its place; by removing the period in (b)(4) and inserting "; and" in its place; and by adding a new paragraph (b)(5) to read as follows:

§ 27.901 Installation.

* * * * *

(b) * * *

(1) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested;

* * * * *

(5) Design precautions shall be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

* * * * *

Explanation: This proposal would revise § 27.901(b)(1) to include effects of temperature extremes and high altitude into the qualification program. Various commenters at the Regulatory Review Conference indicated compliance with this proposal was obtained within the framework of existing rules, TSO requirements, and in some cases, function and reliability testing. However, the proposal would provide a basis for organized and consistent application of environmental qualification aspects. New § 27.901(b)(5) would require design features to minimize incorrect assembly of items such as fluid system check valves, control components, fasteners, etc., if incorrect assembly could be hazardous to future operation. Typically, these design features would involve asymmetric end fittings on components and wiring, unequal lengths of control rods, color coding, etc. Assemblies, which, if incorrectly installed, would preclude elementary operation of the rotorcraft, should not require special design precautions. An exclusionary phrase is included to recognize this concept.

Ref: Proposals 93, 276, and 279; Committee II.

3–8. By amending § 27.903 by revising paragraphs (a), (b), and (b)(3) and by adding new paragraph (b)(4) to read as follows:

§ 27.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) or be otherwise approved for the intended usage.

(b) *Engine or drive system cooling fan blade protection.* If an engine or rotor drive system cooling fan is installed, there must be a means to protect the rotorcraft and allow a safe landing if a fan blade fails. This must be shown by showing that:

(1) * * *

(2) * * *

(3) Each fan blade can withstand an ultimate load of 1.5 times the centrifugal force resulting from operation limited by the following:

(i) For fans driven directly by the engine—

(A) The terminal engine r.p.m. under uncontrolled conditions; or

(B) An overspeed limiting device.

(ii) For fans driven by the rotor drive system, the maximum rotor drive system rotational speed to be expected in service, including transients.

(4) Unless a fatigue evaluation under § 27.571 is conducted, it must be shown that cooling fan blades are not operating at resonant conditions within the operating limits of the rotorcraft.

Explanation: Section 33.49(d) of Part 33 sets forth a special test program required for reciprocating engines to make them eligible for use in helicopters. This requirement should be added to Part 27 to ensure that reciprocating engines used in helicopters are properly qualified. The first part of this proposal would accomplish this.

The safety standards for engine cooling fans would be revised to include rotor drive system cooling fans in order to ensure that these fans are properly qualified, since current Part 27 does not include qualification standards for these fans. A separate overspeed test is included for rotor drive system cooling fans since the overspeed conditions applicable to these fans may be different from those applicable to engine driven fans. Since cooling fans may be subjected to vibratory loads and fan failures from these loads have occurred, a new paragraph is added to assure consideration of this aspect.

Ref: Proposal 94; Committee II.

3–9. By amending § 27.923 by revising paragraphs (c), (d), (e), and (j) and by adding new paragraph (k) to read as follows:

§ 27.923 Rotor drive system and control mechanism tests.

* * * * *

(c) A 60-hour part of the test prescribed in paragraph (b) of this section must be run at not less than maximum continuous torque and the maximum speed for use with maximum continuous torque. In this test, the main rotor controls must be set in the position that will give maximum longitudinal cyclic pitch change to simulate forward flight. The auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(d) A 30-hour or, for rotorcraft for which the use of either 30-minute OEI power or continuous OEI power is requested, a 25-hour part of the test prescribed in paragraph (b) of this section must be run at not less than 75 percent of the maximum continuous torque and the minimum speed for use with 75 percent of maximum continuous torque. The main and auxiliary rotor controls must be in the position for normal operation under the conditions of the test.

(e) A 10-hour part of the test prescribed in paragraph (b) of this section must be run at not less than takeoff torque and the maximum speed for use with takeoff torque. The main and auxiliary rotor controls must be in the normal position for vertical ascent. For multiengine helicopters for which the use of 2½-minute OEI power is requested, 12 runs during the 10-hour test must be conducted as follows:

(1) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(2) Each run must consist of at least one period for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

* * * * *

(j) For multiengine rotorcraft for which the use of 30-minute OEI power is requested, five runs must be made at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque, in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 30-minute period.

(k) For multiengine rotorcraft for which the use of continuous OEI power is requested, five runs must be made at continuous OEI torque and the maximum speed for use with continuous OEI torque in which each engine, in sequence, is made inoperative and the remaining engine(s) is run for a 1-hour period.

Explanation: This rule was revised by Amendment 27–12, effective May 2, 1977 (42 FR 15034; March 17, 1977), to include tests for "30-minute" power and "2½-minute" power. However, the degree of added testing was minimal and intended to be basically a demonstration that the rotor drive system could absorb the torque of engines operating at 2½-minute and 30-minute OEI power. This was justified in the preamble of that amendment on the basis that these ratings were not incorporated into the performance standards and no performance credit is realized from their use. Subsequently, Amendment 27–14, effective March 1, 1978 (43 FR 2324; January 16, 1978), revised §§ 27.67 and 27.75, and Amendment 27–16, effective December 1, 1978 (43 FR 50578; October 30, 1978), revised § 27.79 to allow performance credit for one-engine-inoperative ratings. No corresponding changes to § 27.923 were provided to assure continued airworthiness of the drive system components under this usage. This proposal would correct that deficiency by appropriate extensions of the test requirements for the 2½-minute OEI and 30-minute OEI ratings. Additionally, this proposal adds test requirements for a new continuous OEI rating (to correspond with new performance rule changes associated with this rating). To minimize the burden of testing associated with the 30-minute OEI or the continuous OEI ratings, the run time required by § 27.923(d) would be reduced to 25 hours, if such ratings are requested.

Editorial changes would clarify the torque and speed requirements for given test conditions and, where applicable, to delete the term "engine" to avoid the implication that a test must be conducted at a specified percent of "engine" power when the declared "rotorcraft" power is being addressed. The terms "30-minute power" and "2½-minute power" are being revised to "30-minute OEI power" and "2½-minute OEI power," respectively, to agree with the revised terminology in proposed § 1.1.

Ref: Proposals 95, 96, and 97; Committee II.

3–10. By amending § 27.927 by revising paragraph (b)(3) to read as follows:

§ 27.927 Additional tests.

* * * * *

(b) * * *

(3) The tests prescribed in this paragraph must be conducted on the rotorcraft at the maximum rotational speed intended for the power condition of the test and the torque must be absorbed by the rotors to be installed, except that other ground or flight test facilities with other appropriate methods of torque absorption may be used if the conditions of support and vibration closely simulate the conditions that would exist during a test on the rotorcraft.

* * * * *

Explanation: The test condition of paragraph (b)(3) of this section is not adequately defined without a reference to the rotational speed to be used during the test. A reference to "maximum rotational speed" would, accordingly, be added to complete the definition of this test.

Ref: None.

3–11. By adding a new § 27.954 to read as follows:

§ 27.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; or

(c) Corona and streamering at fuel vent outlets.

Explanation: A number of lightning strikes to rotorcraft have been reported. This proposal would adopt for Part 27 essentially the same lightning strike protection for rotorcraft fuel systems as is currently required by Parts 23 and 25 for fixed-wing aircraft fuel systems.

Conference proposals in this area would have limited application of the requirement for lightning protection to rotorcraft certificated for instrument flight; however, lightning strikes can occur during visual flight rules flight in the vicinity of clouds. Also, it would not be appropriate to approve fuel system configurations with unusal operational restrictions, i.e., VFR only. A corresponding change proposed for Part 29 and Proposal 2–14 of Notice No. 2 of the Rotorcraft Regulatory Review (47 FR 37806; August 26, 1982) would require lightning protection for airframe components other than fuel systems.

Ref: Proposals 99, 306, and 307; Committee II.

3–12. By revising § 27.955 to read as follows:

§ 27.955 Fuel flow.

(a) *General.* The fuel system for each engine must be shown to provide the engine with at least 100 percent of the fuel required under each operating and maneuvering condition to be approved for the rotorcraft including, as applicable, the fuel required to operate the engine(s) under the test conditions required by § 27.927. Unless equivalent methods are used, compliance shall be shown by test during which the following provisions are met:

(1) The fuel pressure, corrected for critical accelerations, must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 27.959, plus the minimum additional fuel necessary to conduct the test.

(3) The fuel head between the tank outlet and the engine inlet must be critical with respect to rotorcraft flight attitudes.

(4) The critical fuel pump (for pump-fed systems) is installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from pump failure. (Ref. § 27.991.)

(5) Critical values of engine rotation speed, electrical power, or other sources of fuel pump motive power shall be applied.

(6) Critical values of fuel properties which adversely affect fuel flow shall be applied.

(7) The fuel filter required by § 27.997 shall be blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 27.1305(q), plus the contamination to be expected from full fuel tankage of the rotocrcraft using fuel contaminated to the degree expected in normal service.

(b) *Fuel transfer systems.* If normal operation of the fuel system requires fuel to be transferred to an engine feed tank, the transfer must occur automatically via a system which has

been shown to maintain the fuel level in the engine feed tank within acceptable limits during flight or surface operation of the rotorcrafts.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel system must, in addition to having appropriate manual switching capability, be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation, and any other tank that normally supplies fuel to the engine alone contains usable fuel.

Explantion: This proposal would reorganize and restate the engine fuel flow requirements and would add the following new system design and performance requirements:

1. Adequate fuel flow would be required for engine overtorque or power excursions to be expected from governor-controlled engines as defined by § 27.927. This aspect of the proposal would make the fuel system performance requirements consistent with other proposed rules and existing rules that require structural qualification for high-power transients.

2. Rotorcraft vertical accelerations associated with maneuvers would be required to be considered. This aspect could be significant for suction feed systems supplying fuel to engines which cannot tolerate momentary fuel flow interruptions. Critical rotorcraft flight attitudes, fuel properties, and minimum fuel pump performance would also have to be considered to assure that adequate fuel is available.

3. The quantity of fuel allowed in the tank during fuel flow testing is restated to avoid misinterpretation.

4. The pump redundancy requirements of existing § 27.955(a)(3) are clarified and restated to assure that appropriate failure modes are considered and to delete unnecessarily restrictive wording regarding methods of compliance.

5. Amendment 27-9 prescribes fuel filter design requirements which introduced the concepts of minimum filter capacity (§ 27.997(d)), and an indicator to signal the crew when the filter capacity is being approached (§ 27.1305(q)). However, the corresponding adverse effect on fuel flow by fuel contaminates collecting on the filter was not addressed. This proposal would rectify that inconsistency by specifying fuel system performance under conditions of fuel contamination. Both military and civil specifications exist to define the degree of contamination to be expected.

6. Other new requirements in this proposal provide design standards for transfer fuel tanks and for fuel systems which supply fuel to the engine from more than one tank. These standards require that, for normal operation, all fuel intended for an engine would be automatically fed to that engine. Manual override of automatic switching devices would also be required. These provisions would alleviate crew workload associated with fuel system management.

Ref: None.

3-13. By revising § 27.961 to read as follows:

§ 27.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems with features conducive to vapor formation must be shown by test to operate satisfactorily (within certification limits) when using fuel at a temperature of 110 °F under critical operating conditions, including if applicable, the engine operating conditions defined by § 27.927(b)(1) and § 27.927(b)(2).

Explanation: Certain fuel systems could be demonstrated to be "free from vapor lock" as required by this rule but still not satisfactory with respect to the engine pump inlet requirements thus possibly resulting in excessive wear from pump cavitation erosion. This proposed change would set forth a more generalized requirement compatible with the capability of the engine pump to accept fuel with entrained vapor. The term "critical operating conditions" may not, in some cases, have been interpreted to include the overtorque conditions to be expected with derated or governor-controlled engines as defined in § 27.927. A phrase is added to ensure consideration of these conditons.

Ref: None.

3-14. By amending § 27.963 by redesignating existing paragraphs (b), (c), and (d) as (c), (d), and (e), respectively; and by adding new paragraphs (b), (f) and (g) to read as follows:

§ 27.963 Fuel tanks: General.

* * * * *

(b) Under emergency landing conditions, each fuel tank and its installation must be designed or protected to retain fuel without leakage under the following ultimate inertia forces relative to surrounding structure:

(1) Upward—1.5g.
(2) Forward—6.0g.
(3) Sideward—4.0g.
(4) Downward—8.0g.

* * * * *

(f) The maximum exposed surface temperature of any component in the fuel tank shall be less, by a safe margin as determined by the Administrator, than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all failure or malfunction conditions of all components inside the tank.

(g) Each fuel tank installed in personnel compartments must be isolated by fume proof and fuel proof enclosures that are drained and vented to the exterior of the rotorcraft. The design and construction of the enclosure shall provide necessary protection for the tank and be adequate to withstand loads and abrasions to be expected in personnel compartments.

Explanation: The higher load factors proposed by new paragraph (b) will provide better assurance that fuel tanks will retain their contents in the event of an otherwise survivable crash, thus reducing the possibility of extremely hazardous postcrash fuel fires.

It is essential to establish under all conditions of operation, including failure and malfunction conditions, that ignition sources do not exist nor can be created which can cause explosions inside fuel tanks. New paragraph (f) woud provide requirements to ensure such explosions will not occur. No pertinent requirements or safety standards exist in this part applicable to fuel tanks installed in passenger compartments. New paragraph (g) would provide standards to ensure that such fuel tanks would be installed safely.

Ref: Proposals 102, 313, and 314; Committee II.

3-15. By revising § 27.969 to read as follows:

§ 27.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

Explanation: This proposal would alleviate an unnecessary requirement that each tank in an interconnected group of tanks must have its own expansion space. Adequate, effective fuel expansion space in one tank or in a special expansion tank is acceptable.

Ref: Proposals 104 and 318; Committee II.

3-16. By revising § 27.971 to read as follows:

§ 27.971 Fuel tank sump.

(a) Each fuel tank must have a drainable sump with an effective capacity in any ground attitude to be expected in service of 0.25 percent of the tank capacity or 1/16 gallon, whichever is greater, unless—

(1) The fuel system has a sediment bowl or chamber that is accessible for preflight drainage and has a minimum capacity of 2 ounces for every 20 gallons of fuel tank capacity; and

(2) Each fuel tank outlet is located so that in any ground attitude to be expected in service, water will drain from all parts of the tank to the sediment bowl or chamber.

(b) Each sump, sediment bowl, and sediment chamber drain required by this section must comply with the drain provisions of § 27.999(b) of this part.

Explanation. This proposal introduces finite minimum values for fuel tank sump capacity and authorizes an appropriately sized and located fuel sediment bowl as an alternative if a sump is not provided. This change would bring this rule into alignment with existing § 23.971 for fuel systems in light fixed-wing aircraft as well as into alignment with current design practice. In addition, this proposal would require the sump to be effective in any ground attitude expected in service. These requirements are needed to ensure that the contents of the sump are not ingested into the engine fuel system and that adequate sump space is available in the event the rotorcraft is serviced while parked on uneven surfaces to be expected with off-airport or off-heliport sites.

Ref: Proposal 105; Committee II.

3–17. By amending § 29.975 by designating existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 27.975 Fuel tank vents.

* * * * *

(b) The venting system shall be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operation unless such an event is extremely remote.

Explanation: This proposal is intended to require designs which reduce the fuel system postcrash fire hazards by locating or routing fuel tank vent systems to minimize the possibility that fuel will spill to an ignition source via the vent system if the rotorcraft rolls over during landing or ground operation. This proposal is one of a series of proposals intended to improve fuel system crash protection.

Ref: Proposal 305; Committee II.

3–18. By revising § 27.991 to read as follows:

§ 27.991 Fuel pumps.

Compliance with § 27.955 shall not be jeopardized by failure of—

(a) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(b) Any component required for pump operation except, for engine driven pumps, the engine served by that pump.

Explanation. This proposal would delete unnecessary definitions and detail design requirements in favor of a succinct objective statement requiring pump redundancy. The rule is further extended to require consideration of failure of any pump motivation device such as a generator, for electrically driven pumps. A complementary change to delete the requirements of existing § 27.955(a)(3) is included in this notice.

Ref: None.

3–19. By amending § 27.993 by adding a new paragraph (f) to read as follows:

§ 27.993 Fuel system lines and fittings.

* * * * *

(f) Flammable fluid lines must be constructed and routed to withstand the inertia loads of § 27.963 without hazardous leakage.

Explanation: Flammable fluid line failures resulting in fire during a survivable crash constitute a significant avoidable hazard. This change would require designs of flammable fluid systems to be resistant to failures under these crash conditions. This change is consistent with concurrent changes to the fuel tank structural requirements of § 27.963.

Ref: Proposals 106 and 321; Committee II.

3–20. By amending § 27.997 by revising both the introductory text and paragraph (d) to read as follows:

§ 27.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper rotorcraft fuel system or engine fuel system operation.

Explanation: This proposed change would assure that the required fuel filter is located in the fuel system to protect all components in the system needing protection rather than just the fuel metering device or a positive displacement pump. In addition, paragraph (d) is revised to limit its scope to providing adequate filtration, since the capacity aspect of the filter (as related to the effective contaminate collection area) is addressed by corresponding proposals to revise §§ 27.955 and 27.1305.

Ref: Proposal No. 107; Committee II.

3–21. By amending § 27.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 27.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to assure positive closure in the off position; and

* * * * *

Explanation: This proposal would complement the proposed change to § 27.971 to assure that other fuel system components are properly drained with the rotorcraft resting on uneven terrain. This may be significant for rotorcraft being operated from unimproved ground sites. In addition, this proposal would revise paragraph § 27.999(b)(2) to clarify the existing requirement for a positive locked drain valve. A spring loaded valve, which provides a positive force against a seal, has been found to be satisfactory on many past certifications, and would be acceptable under the proposed wording.

Ref: Proposal 105; Committee II.

3–22. By revising the title of § 27.1011 as follows:

§ 27.1011 Engines: General.

* * * * *

Explanation: A new § 27.1027, proposed in this notice, provides comprehensive lubrication system requirements for transmissions and drive systems. Existing § 27.1011, entitled "General.", should therefore be retitled "Engines: General." to reflect clearly that it applies to engine lubrication systems and not to transmission or drive system lubrication systems.

Ref: None.

3–23. By amending § 27.1019 by revising paragraph (a)(3) to read as follows:

§ 27.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

Explanation: The existing requirement for "an indicator that will indicate" contamination is unduly restrictive. This proposal would substitute the words "a means to indicate" to allow a wider range of methods to provide compliance.

Ref: Proposals 108 and 327; Committee II.

3–24. By adding a new § 27.1027 following existing § 27.1021 to read as follows:

§ 27.1027 Transmissions and gear boxes: General.

(a) Pressure lubrication systems for transmissions and gearboxes must comply with the engine oil system requirements of §§ 27.1011, 27.1013 (except paragraph (c)), 27.1015, 27.1017, 27.1021, and 27.1337(d).

(b) Each pressure lubrication system must have an oil strainer or filter through which all of the lubricant flows and must—

(1) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree;

(2) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass required by paragraph (b)(3) of this section; and

(3) Be equipped with a bypass constructed and installed so that—

(i) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(ii) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath.

(c) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (a)(1) of this section. The requirements of paragraph (a)(1) do not apply to screens installed at lubricant tank or sump outlets.

(d) Splash type lubrication systems for rotor drive system gearboxes must comply with §§ 27.1021 and 27.1337(d).

Explanation: Existing requirements for lubrication systems are engine oriented and are not, in all instances, appropriate for transmissions and drive systems. This proposal would set forth design requirements directly applicable to transmission and gearbox oil systems and omit unnecessary engine related requirements.

Ref: None.

3–25. By amending § 27.1041 by revising paragraph (a) to read as follows:

§ 27.1041 General.

(a) Each powerplant cooling system must be able to maintain the temperatures of powerplant components within the limits established for these components under critical surface (ground or water) and flight operating conditions for which certification is required, and after normal shutdown. Powerplant components to be considered include engines, rotor drive system components, auxiliary power units, and the cooling or lubricating fluids used with these components.

* * * * *

Explanation: This proposal would provide clarification and definition of powerplant components required to be considered when evaluating the performance of the powerplant cooling systems and arrangements. It is needed to avoid extensive interpretation or extrapolation of the existing rule to apply to powerplant components not specifically listed by the existing rule.

Ref: Proposal 109; Committee II.

3–26. By amending § 27.1045 by revising paragraph (c)(1) to read as follows:

§ 27.1045 Cooling test procedures.

* * * * *

(c) * * *

(1) The temperatures stabilize or 5 minutes after the occurrence of the highest temperature recorded, as appropriate to the test condition;

* * * * *

Explanation: For some cooling tests such as climb cooling, component or system temperatures cannot be expected to stabilize, as required by the current rule. This proposal would introduce into this section alternate criteria for cooling tests, applicable to cooling parameters which cannot be expected to stabilize.

Ref: Proposal 111; Committee II.

§ 27.1091 [Amended]

3–27. By amending § 27.1091 by removing paragraph (d) in its entirety and by redesignating paragraph (e) as paragraph (d).

Explanation: This proposal would delete rules which specify a test condition which may be meaningless or not critical for a specific helicopter design. Further, existing § 27.1091(e)(2) provides an adequate rule for evaluating the location of engine air inlets with respect to foreign object ingestion.

Ref: Proposal 112; Committee II.

3–28. By amending § 27.1093 by revising paragraph (b)(1) to read as follows:

§ 27.1093 Induction system icing protection.

* * * * *

(b) *Turbine engines.*

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of Part 29 of this Chapter; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

Explanation: This proposal would revise and clarify (by rewording and rephrasing) existing § 27.1093(b). This change is needed because the phrasing and paragraphing of existing paragraph (b) and its subparagraphs imply that the phrase, "within the limitations established for the rotorcraft," in (b)(1) applies equally to (b)(1)(i) and (b)(1)(ii). This implication was not intended by Amendments 27–12 and 27–9 which, respectively, introduced the requirements for consideration of inlet components when evaluating atmospheric ice and the (optional) requirements for demonstrating flight into snow. This proposal, by still further rewording and rephrasing, will restate these requirements in their original context.

The reference to Appendix C of Part 25 would be changed to Appendix C of Part 29. This change is needed to ensure that any changes made to the icing criteria for rotorcraft, reflected by Appendix C of this Part, will automatically apply to powerplants required to comply with this Part.

Ref: None.

3–29. By amending § 27.1141 by revising introductory text of paragraph (c) to read as follows:

§ 27.1141 Powerplant controls: General.

* * * * *

(c) Controls of powerplant valves required for safety must have—

* * * * *

Explanation: This proposal would remove from consideration any powerplant valves not required for safety. In addition, it would extend the applicability of the rule to powerplant valves controlled at locations other than in the cockpit, such as used in automatic fuel transfer systems, single point refueling panels, flow switches, etc.

Ref: Proposal 341; Committee II.

3–30. By amending § 27.1143 by revising paragraphs (a) and (c) and introductory tests of paragraphs (b) and (d) to read as follows:

§ 27.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be grouped and arranged to allow—

* * * * *

(c) Each power control must provide a positive and immediate responsive means of controlling its engine.

(d) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

* * * * *

Explanation: This proposal would replace the terms "throttle control" and "thrust control," which are peculiar to certain engines, with the more general term "power control." This change is needed to avoid misunderstandings and possible equivalent safety findings when turboshaft engines are employed in rotorcraft. A similar change is proposed for § 29.1143.

Ref: Proposals 116 and 343; Committee II.

3–31. By amending § 27.1163 by revising paragraph (b) to read as follows:

§ 27.1163 Powerplant accessories.

* * * * *

(b) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

Explanation: A strict interpretation of existing § 27.1163(b) would require torque limiting means for accessory drives to be included with the transmission and drive system rather than in the accessory itself. This proposed amendment would allow flexibility in the method of compliance. In addition, the proposal is generalized to assure protection from accessory overtorque for any part of the transmission and drive system.

Ref: Proposal 117; Committee II.

3–32. By amending § 27.1189 by revising paragraph (c) to read as follows:

§ 27.1189 Shutoff means.

* * * * *

(c) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from an engine fire.

Explanation: The existing rule would not preclude attaching shutoff valves directly to the remote side of firewalls, although this condition could jeopardize valve function due to heat transfer through the wall in the event of an engine fire. This proposed revision would allow design flexibility as well as assure proper valve function under engine fire conditions. A similar change is proposed for § 29.1189.

Ref: Proposal No. 119; Committee II.

3–33. By amending § 27.1193 by adding a new paragraph (f) to read as follows:

§ 27.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retaining each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of structural or mechanical failure of the normal retention means, unless such failure is extremely improbable.

Explanation: Conventional cowl fasteners subject to frequent operation by line maintenance personnel are known to fail due to wear and vibration. This proposal is intended to require special provisions to preclude panels, cowling, and covers from entering or interfering with rotors or controls in the event of a failure in the retention means.

Ref: Proposal 120; Committee II.

3–34. By amending § 27.1305 by revising paragraphs (l), (m), (q), and (s) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(l) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(1) Provide a warning to the flightcrew when approximately 10 minutes of usable fuel remains in the tank; and

(2) Be independent of the normal fuel quantity indicating system.

(m) Means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 27.955.

* * * * *

(q) An indicator for the fuel filter required by § 27.997 to indicate the occurrence of contamination of the filter at the degree established by the applicant in compliance with § 27.955.

* * * * *

(s) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components.

Explanation: This proposal would extend the low fuel warning device requirements of paragraph (1) to include all tanks which can feed an engine. Since this would apply to "last use" tanks as well as initial or interim use tanks, an earlier warning of inpending fuel exhaustion is appropriate and flexibility for the designer to optimize this time increment is provided. The existing requirement for considering the most adverse fuel feed situation would be deleted since it is redundant with the term "usable fuel." A requirement for the low fuel warning device to be separate from the normal fuel quantity indicating system is included since inaccurate or malfunctioning fuel quantity indicating systems are a major contributor to fuel exhaustion power loss events.

Paragraph (m) would be revised to provide to the crew direct information on the pump failure situation and alleviate the need for equivalent safety findings when the emergency fuel pumps are operated continuously as back-up pumps or transfer pumps. Paragraph (q) would be revised to apply to all rotorcraft and is reworded to allow the applicant to establish an indicator setting compatible with other fuel system parameters involved with establishing compliance with § 27.995. Paragraph (s) would be revised to avoid the requirement for annunciating the function of completely automatic fuel heater devices which do not require crew attention.

Ref: Proposals 122 and 124; Committee II.

3–35. By amending § 27.1337 by adding a new paragraph (e) to read as follows:

§ 27.1337 Powerplant instruments.

* * * * *

(e) Rotor drive system transmissions and gearboxes utilizing ferromagnetic materials shall be equipped with chip detectors designed to indicate or reveal

the presence of ferromagnetic particles resulting from damage or excessive wear. Chip detectors shall—

(1) Incorporate means to indicate the accumulation of ferromagnetic particles on the magnetic poles; or

(2) Be readily removable for inspection of the magnetic poles for metallic chips. Means shall be provided to prevent loss of lubricant in the event of failure of the retention device for removable chip detector components.

Explanation: This proposal would add a requirement for installation of ferromagnetic chip detectors in transmissions and gearboxes. These chip detectors are needed to intercept impending failure of ferromagnetic components in transmissions and gearboxes.

Ref: Proposal 125; Committee II.

3–36. By amending § 27.1521 by adding new paragraphs (g), (h), and (i) to read as follows:

§ 27.1521 Powerplant limitations.

* * * * *

(g) *Two and one-half-minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 2½ minutes after failure of an engine. The use of 2½-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(h) *Thirty-minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(i) *Continuous OEI power operation.* Unless otherwise authorized, the use of continuous OEI power shall be limited to multiengine, turbine-power rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

Explanation: These proposed new paragraphs would set forth powerplant limitations associated with OEI ratings applicable only to multiengine, turbine-powered rotorcraft. These paragraphs are needed to assure that the appropriate parameters are recognized as limitations under § 27.1583(b). See proposed changes to §§ 1.1, 1.2, 27.67, and 29.1521 for further explanations.

Ref: None.

3–37. By amending § 27.1549 by adding a new paragraph (e) to read as follows:

§ 27.1549 Powerplant instruments.

* * * * *

(e) For multiengine rotorcraft, each OEI limit or range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

Explanation: This proposal would prescribe rules to ensure that the OEI limits, which are rarely used in the course of flight operations, are adequately marked on powerplant instruments to enable the crew to quickly and accurately set and monitor power during the emergency situation related to engine failure. Although originally proposed as a change to § 29.1549, this proposal is equally applicable to Part 27 rotorcraft.

Ref: Proposal 399; Committee II.

PART 29—AIRWORTHINESS STANDARDS TRANSPORT CATEGORY ROTORCRAFT

3–38. By amending § 29.45 by revising the introductory text of paragraph (c) to read as follows:

§ 29.45 General.

* * * * *

(c) The available power must correspond to engine power adjusted for powerplant instrument error, not exceeding the approved power, less—

* * * * *

Explanation: Powerplant instrument error can result in power settings which may not produce the rotorcraft performance needed for safety. This proposal is needed to assure that this error is accounted for.

Ref: Proposal 283; Committee II.

3–39. By amending § 29.67 by revising paragraphs (a)(2)(i), (a)(3)(i), and (b) to read as follows:

§ 29.67 Climb: one engine inoperative.

(a) * * *

(2) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power;

(B) Thirty-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(C) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(3) * * *

(i) The critical engine inoperative and the remaining engines at—

(A) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for use of 30-minute OEI power is requested); or

(B) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested);

* * * * *

(b) For multiengine Category B helicopters meeting the requirements for category A in § 29.79, the steady rate of climb (or descent) must be determined at the speed for the best rate of climb (or minimum rate of descent) with one engine inoperative and the remaining engine at either—

(1) Maximum continuous power and at 30-minute OEI power (for helicopters for which certification for the use of 30-minute OEI power is requested); or

(2) Continuous OEI power (for helicopters for which certification for the use of continuous OEI power is requested).

Explanation: See the explanation and proposal for §§ 1.1 and 27.67.

Ref: Proposals 2, 3, 14, 15, 95, 96, 97, 167, 168, 169, 288, 291, 292, 296, 331, 332, 333, 334, 335, 336, 394, 395, 399, 414, 415, 419, and 420; Committee II.

3–40. By revising § 29.361 to read as follows:

§ 29.361 Engine torque.

The limit engine torque may not be less than the following:

(a) For turbine engines, the highest of—

(1) The mean torque for maximum continuous power multiplied by 1.25;

(2) The torque required by § 29.923;

(3) The torque required by § 29.927;

(4) The torque imposed by sudden engine stoppage due to malfunction or

structural failure (such as compressor jamming); or

(5) The torque imposed by power excursions associated with fuel control malfunction or by inadvertent or abnormal control motions to be expected in service.

(b) For reciprocating engines, the mean torque for maximum continuous power multiplied by—

(1) 1.33, for engines with five or more cylinders; and

(2) Two, three, and four, for engines with four, three, and two cylinders, respectively.

Explanation: See the explanation for proposed § 27.361.

Ref: Proposal 48; Committee I.

3–41. By amending § 29.549 by revising paragraph (e) to read as follows:

§ 29.549 Fuselage and rotor pylon structures.

* * * * *

(e) If approval for the use of 2½-minute OEI power is requested, each engine mount and adjacent structure must be designed to withstand the loads resulting from a limit torque equal to 1.25 times the mean torque for 2½-minute OEI power combined with 1g flight loads.

Explanation: This proposal would merely revise the term "2½-minute power" to "2½-minute OEI power" to agree with the proposed change to § 1.1.

Ref: None.

3–42. By amending § 29.901 by revising paragraph (b)(2); by adding new paragraph (b)(6); and by revising introductory text of paragraph (c) to read as follows:

§ 29.901 Installation.

* * * * *

(b) * * *

(2) Each component of the installation must be constructed, arranged, and installed to ensure its continued safe operation between normal inspections or overhauls for the range of temperature and altitude for which approval is requested.

* * * * *

(6) Design precautions shall be taken to minimize the possibility of incorrect assembly of components and equipment essential to safe operation of the rotorcraft, except where operation with the incorrect assembly can be shown to be extremely improbable.

(c) For each powerplant and auxiliary power unit installation, it must be established that no single failure or malfunction or probable combination of related secondary failures will jeopardize the safe operation of the rotorcaraft except that—

* * * * *

Explanation: For an explanation of the revision to paragraph (b)(2) and new paragraph (b)(6), see the explanation for § 27.901.

Paragraph (c) is revised to replace the words "or probable combination of failures" with the words "or probable combination of related secondary failures." A concern expressed at the conference was that interpretation of the existing words could lead to a proliferation of endless failure modes and effect analyses. This change is intended to alleviate this by limiting the area of concern to related secondary failures.

Ref: Proposals 276 and 279; Committee II.

3–43. By amending § 29.903 by revising paragraph (a); by revising paragraph (b)(2); by removing the "or" at the end of paragraph (c)(1); by removing the period at the end of (c)(2) and replacing it with "; or"; and by adding a new paragraph (c)(3) to read as follows:

§ 29.903 Engines.

(a) *Engine type certification.* Each engine must have an approved type certificate. Reciprocating engines for use in helicopters must be qualified in accordance with § 33.49(d) or be otherwise approved for the intended usage.

(b) * * *

(2) Require immediate action, other than normal pilot action with primary flight controls, by any crewmember to maintain safe operation.

(c) * * *

(3) Engine restart capability must be established throughout a flight envelope to the rotorcraft.

* * * * *

Explanation: For an explanation of the change to paragraph (a) see the explanation for § 27.903(a). The proposed change to paragraph (b)(2) would clarify the crew action to be expected in event of an engine failure. This clarification is needed since the integration of powerplant controls and flight controls on most rotorcraft may result in confusion regarding this concept. New paragraph (c)(3) is intended to require the means to restart any engine required by paragraph (c) to be effective across a flight envelope appropriate to the rotorcraft. This is needed since the current requirement for restart capability could be interpreted to apply to an extremely limited part of the flight envelope, and thus not provided the safety intended by paragraph (c).

Ref: Proposals 282 and 285; Committee II.

3–44. By amending § 29.908 by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 29.908 Cooling fans.

* * * * *

(a) *Category A.* For cooling fans installed in Category A rotorcraft, it must be shown that a fan blade failure will not prevent continued safe flight either because of damage caused by the failed blade or loss of cooling air.

* * * * *

(c) *Failure evaluation.* Unless a fatigue evaluation under § 29.571 is conducted, it must be shown that cooling fan blades are not operating at reasonant conditions within the operating limits of the rotorcraft.

Explanation: This proposed change to paragraph (a) would require safe operation, including adequate cooling, following a cooling fan failure. This change is needed since the existing rule would accept fan failure modes which could result in hazards to the rotorcraft from fan fragmentation or from loss of cooling air to critical powerplant components.

New paragraph (c) would require determination that cooling fans which are not part of the rotor drive system are safe from failure to be expected if fan blade resonant conditions exist within the operating range. This change is needed to ensure proper fatigue evaluation of fans which by location or definition may not be included in other fatigue tests or evaluations.

Ref: Proposals 281 and 287; Committee II.

3–45. By amending § 29.923 by revising paragraphs (a)(1), (a)(3) (introductory text), (a)(3)(ii), (b), introductory text of (c), (d) through (h), and (k) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

(a) * * *

(1) Ten-hour test cycles shall be used, except that the test cycle shall be entended to include the OEI test of paragraphs (b)(2) and (k), if OEI ratings are requested.

(2) * * *

(3) The test torque and speed must be—

(i) * * *

(ii) Absorbed by the rotors to be approved for the rotorcraft.

(b) *Endurance tests, takeoff run.* The takeoff run must be conducted as follows:

(1) Except as prescribed in paragraph (b)(2) of this section, the takeoff run must consist of 1 hour of alternate runs of 5 minutes each at takeoff torque and the maximum speed for use with takeoff torque, and 5 minutes each at as low an engine idle speed as practicable. The engine must be declutched from the rotor drive system, and the rotor brake, if furnished and so intended, must be applied during the first minute of the idle run. During the remaining 4 minutes of the idle run, the clutch must be engaged so that the engine drives the rotor at the minimum practical r.p.m. The engine and the rotor drive system must be accelerated at the maximum rate. When declutching the engine, it must be decelerated rapidly enough to allow the operation of the overrunning clutch.

(2) For helicopters for which the use of 2½-minute OEI rating is requested, the takeoff run must be conducted as prescribed in paragraph (b)(1) of this section, except for the third and sixth runs for which the takeoff torque and the maximum speed for use with takeoff torque are prescribed in that paragraph. For these runs, the following apply:

(i) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(ii) Each run must consist of at least one period, for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at the 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

(c) *Endurance tests; maximum continuous run.* Three hours of continuous operation at maximum continuous torque and the maximum speed for use with maximum continuous torque must be conducted as follows:

* * * * *

(d) *Endurance tests; 90 percent of maximum continuous run.* One hour of continuous operation at 90 percent of maximum continuous torque and the maximum speed for use with 90 percent of maximum continuous torque must be conducted.

(e) *Endurance tests; 80 percent of maximum continuous run.* One hour of continuous operation at 80 percent of maximum continuous torque and the minimum speed for use with 80 percent of maximum continuous torque must be conducted.

(f) *Endurance tests; 60 percent of maximum continuous run.* Two hours or, for helicopters for which the use of either 30-minute OEI power or continuous OEI power is requested, 1 hour of continuous operation at 60 percent of maximum continuous torque and the minimum speed for use with 60 percent of maximum continuous torque must be conducted.

(g) *Endurance tests; engine malfunctioning run.* It must be determined whether malfunctioning of components such as the engine fuel or ignition systems, or whether unequal engine power can cause dynamic conditions detrimental to the drive system. If so, a suitable number of hours of operation must be accomplished under those conditions, 1 hour of which must be included in each cycle, and the remaining hours of which must be accomplished at the end of the 20 cycles. If no detrimental condition results, an additional hour of operation in compliance with paragraph (b) of this section must be conducted in accordance with the run schedule of paragraph (b)(1) without consideration of paragraph (b)(2).

(h) *Endurance tests; overspeed run.* One hour of continuous operation must be conducted at maximum continuous torque and the maximum power-on overspeed expected in service, assuming that speed limiting devices, if any, function properly.

* * * * *

(k) *Endurance tests; OEI torque.*—(1) 30-minute OEI run: For rotorcraft for which the use of 30-minute OEI torque is requested, a run at 30-minute OEI torque and the maximum speed for use with 30-minute OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for a 30-minute period.

(2) Continuous OEI run: For rotorcraft for which the use of continuous OEI torque is requested, a run at continuous OEI torque and the maximum speed for use with continuous OEI torque must be conducted as follows: For each engine, in sequence, that engine must be inoperative and the remaining engines must be run for 1 hour.

(3) The number of periods prescribed in paragraph (k)(1) or (k)(2) of this section may not be less than the number of engines, nor may it be less than two.

* * * * *

Explanation: These proposed changes include editorial changes, additional testing needed to qualify the rotor drive system for a new continuous OEI rating, and clarification of the torque and r.p.m. relation for the various power ratings involved in this test, as follows.

Paragraph (a)(1) would be revised to require the test cycle to be extended beyond 10 hours if OEI rating tests are to be included in the test program. This change is needed to maintain the cyclic aspect of the test if OEI ratings are included.

Paragraph (a)(3) would be revised to include speed as a part of the test. This change is needed because the term torque by itself does not adequately define the test.

Paragraph (a)(3)(ii) is revised for clarity.

Paragraph (b)(2), (f), and (k) would be revised to add the test requirements for the new continuous OEI rating and retain as an alternate the 30-minute OEI rating tests for those applicants who may request this rating. This change is needed to provide a regulatory test basis for qualifying the rotor drive system for optional OEI ratings.

Paragraph (g) would be revised to delete the inferred requirement for repeating the 2½-minute OEI runs if the takeoff run must be reconducted. This change is needed since additional testing for the 2½-minute rating is unnecessary for safety.

Additional revisions are proposed for § 29.923(b), (c), (d), (e), (f), (h), and (k) to clarify the power parameter words to ensure that appropriate torque and rotational speeds are used during the tests.

Ref: Proposals 288, 291, 292, and 296; Committee II.

3–46. By amending § 29.927 by revising paragraphs (c), (d) (introductory text), (d)(2), and by adding new paragraph (f) to read as follows:

§ 29.927 Additional tests.

* * * * *

(c) *Lubrication system failure.* For lubrication systems, the function of which is required for operation of the rotor drive system, the following apply:

(1) *Category A.* It must be shown by tests that each rotor drive system, where the probable failure of any element could result in the loss of lubricant, is capable of continued operation, although not necessarily without damage, for a period of at least 30 minutes at a torque and rotational speed prescribed by the applicant for continued flight, after indication to the flightcrew of the loss of lubricant.

(2) *Category B.* It must be shown by tests that the rotor drive system is capable of operating under autorotative conditions, although not necessary without damage, for 15 minutes after indication to the flightcrew of the loss of lubricant.

(d) *Overspeed test.* The rotor drive system must be subjected to 50 overspeed runs, each 30±3 seconds in duration, at not less than the higher of the rotational speed to be expected from an engine control failure or 105 percent

of the maximum rotational speed, including transients, to be expected in service. These runs must be conducted as follows:

(1) * * *

(2) Acceleration and deceleration must be accomplished in a period not longer than 10 seconds (except where maximum engine acceleration rate will require more than 10 seconds), and the time for changing speeds may not be deducted from the specified time for the overspeed runs.

* * * * *

(f) Each test prescribed by this section must be conducted without intervening disassembly and, except for the lubrication system failure test required by paragraph (c), each part tested must be in a serviceable condition at the conclusion of the test.

Explantation: This proposed revision would impose more realistic rotor drive system lubricant failure considerations for Category A rotorcraft and clarify the test requirement for Category B rotorcraft. The overspeed run required by this section would be revised to delete the existing 120 percent overspeed test and to introduce test speed requirements related to the overspeed to be expected from operational situations which may occur in service. The overspeed test procedures would be revised to accommodate slower engine acceleration rates to be expected from certain engines.

The objectives of the tests prescribed by paragraphs (a) thru (d) of this section may not be met if intervening disassembly were allowed or, except for paragraph (c), if parts were rendered unserviceable by the test. New paragraph (f) is added to control this facet.

Ref: Proposals 297, 300, and 325; committee II.

3–47. By adding a new § 29.954 to read as follows:

§ 29.954 Fuel system lightning protection.

The fuel system must be designed and arranged to prevent the ignition of fuel vapor within the system by—

(a) Direct lightning strikes to areas having a high probability of stroke attachment;

(b) Swept lightning strokes to areas where swept strokes are highly probable; and

(c) Corona and streamering at fuel vent outlets.

Explanation: See the explanation for proposed § 27.954.

Ref: Proposals 99, 306, and 307; Committee II.

3–48. By revising § 29.955 to read as follows:

§ 29.955 Fuel flow.

(a) *General.* The fuel system for each engine must provide the engine with at least 100 percent of the fuel required under all operating and maneuvering conditions to be approved for the rotorcraft, including, as applicable, the fuel required to operate the engines under the test conditions required by § 29.927. Unless equivalent methods are used, compliance shall be shown by test during which the following occur:

(1) The fuel pressure, corrected for accelerations (load factors), must be within the limits specified by the engine type certificate data sheet.

(2) The fuel level in the tank may not exceed that established as the unusable fuel supply for that tank under § 29.959, plus that necessary to conduct the test.

(3) The fuel head between the tank and the engine must be critical with respect to rotorcraft flight attitudes.

(4) The fuel flow transmitter, if installed, and the critical fuel pump (for pump-fed systems) shall be installed to produce (by actual or simulated failure) the critical restriction to fuel flow to be expected from component failure (Ref. § 29.991).

(5) Critical values of engine rotational speed, electrical power, or other sources of fuel pump motive power shall be applied.

(6) Critical values of fuel properties which adversely affect fuel flow are applied during demonstrations of fuel flow capability.

(7) The fuel filter required by § 29.997 is blocked to the degree necessary to simulate the accumulation of fuel contamination required to activate the indicator required by § 29.1305(a)(17), plus the contamination to be expected from full fuel tankage of the rotorcraft, using fuel contaminated to the degree expected in normal service.

(b) *Fuel transfer system.* If normal operation of the fuel system requires fuel to be transferred to another tank, the transfer must occur automatically via a system which has been shown to maintain the fuel level in the receiving tank with acceptable limits during flight or surface operation of the rotorcraft.

(c) *Multiple fuel tanks.* If an engine can be supplied with fuel from more than one tank, the fuel system, in addition to having appropriate manual switching capability, must be designed to prevent interruption of fuel flow to that engine, without attention by the flightcrew, when any tank supplying fuel to that engine is depleted of usable fuel during normal operation and any other tank that normally supplies fuel to that engine alone, contains usuable fuel.

Explanation: See the explanation for § 27.955.

Ref: Proposal 100; Committee II.

3–49. By revising § 29.961 to read as follows:

§ 29.961 Fuel system hot weather operation.

Each suction lift fuel system and other fuel systems conducive to vapor formation must be shown to operate satisfactorily (within certification limits) when using fuel at the most critical temperature for vapor formation under critical operating conditions expected in service.

Explanation: See the explanation for § 27.961. Existing § 29.961 contains both general and detail requirements which are to some extent redundant, are not necessarily critical, and could arbitrarily require hot fuel flight tests of systems which are not subject to failure due to hot fuel vapor formations. These details of testing are more appropriately covered by advisory material than by rule. This proposal would substitute a simple, succinct statement of the basic requirement.

Ref: None.

3–50. By amending § 29.963 by revising paragraph (b) and by adding a new paragraph (e) to read as follows:

§ 29.963 Fuel tanks: General.

* * * * *

(b) Under emergency landing conditions, each fuel tank and its installation must be designed or protected to retain fuel without leakage when subjected to the following ultimate inertia forces relative to the surrounding structure:

(1) Upward—1.5g.

(2) Forward—6.0g.

(3) Sideward—4.0g.

(4) Downward—8.0g.

* * * * *

(e) The maximum exposed surface temperature of all components in the fuel tank shall be less by a safe margin, than the lowest expected autoignition temperature of the fuel or fuel vapor in the tank. Compliance with this requirement must be shown under all operating conditions and under all normal or malfunction conditions of all components inside the tank.

Explanation: Revised paragraph (b) of this proposal is one of several proposals intended to improve the fuel system crashworthiness of rotorcraft. This proposal would increase the forward, sideward, and downward load factors to

be used in designing fuel tank support structure. The 1.5g upward load factor in current § 29.561 would be retained. Proposed paragraph (e) is intended to require assurance that there is no possibility that hot spots or ignition points sufficient to ignite fuel or fuel vapors can be created by normal operation or by malfunction of equipment, such as pumps, quantity indicating systems, motor or solenoid valves, etc., installed inside fuel tanks.

Ref: Proposals 313 and 314; Committee II.

§ 29.967 [Amended]

3–51. By amending § 29.967 by removing paragraph (f).

Explanation: Paragraph (f) is redundant to § 29.963(b).

Ref: None.

3–52. By revising § 29.969 to read as follows:

§ 29.969 Fuel tank expansion space.

Each fuel tank or each group of fuel tanks with interconnected vent systems must have an expansion space of not less than 2 percent of the tank capacity. It must be impossible to fill the fuel tank expansion space inadvertently with the rotorcraft in the normal ground attitude.

Explanation: See the explanation for proposed § 27.969.

Ref: Proposals 104 and 318; Committee II.

3–53. By amending § 29.971 by revising paragraph (c) to read as follows:

§ 29.971 Fuel tank sump.

* * * * *

(c) Each fuel tank must allow drainage of hazardous quantities of water from each part of the tank to the sump with the rotorcraft in any ground attitude to be expected in service.

* * * * *

Explanation: This proposal would require fuel tank sumps to be designed or arranged to collect water or other contaminants in the tank with the rotorcraft in any expected ground attitude. This change is needed since the existing requirement for consideration of "normal ground attitude" may result in inadequate sump drainage in some ground attitudes.

Ref: Proposal 319; Committee II.

3–54. By amending § 29.975 by removing the word "and" after the semicolon in paragraph (a)(5); by removing the period at the end of paragraph (a)(6)(ii) and inserting "; and" in its place; and by adding a new paragraph (a)(7) to read as follows:

§ 29.975 Fuel tank vents and carburetor vapor vents.

(a) * * *

(7) The venting system shall be designed to minimize spillage of fuel through the vents to an ignition source in the event of a rollover during landing or ground operations, unless a rollover is shown to be extremely remote.

* * * * *

Explanation: See the explanation for § 27.975.

Ref: Proposals 103, 305, 314, and 316; Committee II.

3–55. By revising § 29.991 to read as follows:

§ 29.991 Fuel pumps.

(a) Compliance with § 29.955 shall not be jeopardized by failure of—

(1) Any one pump except pumps that are approved and installed as parts of a type certificated engine; or

(2) Any component required for pump operation except the engine served by that pump.

(b) The following fuel pump installation requirements apply:

(1) When necessary to maintain the proper fuel pressure—

(i) A connection must be provided to transmit the carburetor air intake static pressure to the proper fuel pump relief valve connection; and

(ii) The gauge balance lines must be independently connected to the carburetor inlet pressure to avoid incorrect fuel pressure readings.

(2) The installation of fuel pumps having seals or diaphragms that may leak must have means for draining leaking fuel.

(3) Each drain line must discharge where it will not create a fire hazard.

Explanation: See the explanation for § 27.991.

Ref: None.

3–56. By amending § 29.993 by adding a new paragraph (f) to read as follows:

§ 29.993 Fuel system lines and fittings.

* * * * *

(f) Flammable fluid lines must be constructed and routed to withstand the inertia loads of § 29.963 without hazardous leakage.

Explanation: See the explanation for proposed § 27.993.

Ref: Proposals 106 and 321; Committee II.

3–57. By amending § 29.997 by revising the introductory text and paragraph (d) to read as follows:

§ 29.997 Fuel strainer or filter.

There must be a fuel strainer or filter between the fuel tank outlet and the inlet of the first fuel system component which is susceptible to fuel contamination, including the fuel metering device or an engine positive displacement pump, whichever is nearer the fuel tank outlet. This fuel strainer or filter must—

* * * * *

(d) Provide a means to remove from the fuel any contaminant which would jeopardize the flow of fuel through rotorcraft or engine fuel system components required for proper rotorcraft or engine fuel system operation.

Explanation: See the explanation for proposed § 27.997.

Ref: Proposal 322; Committee II.

3–58. By amending § 29.999 by revising paragraphs (a) and (b)(2) to read as follows:

§ 29.999 Fuel system drains.

(a) There must be at least one accessible drain at the lowest point in each fuel system to completely drain the system with the rotorcraft in any ground attitude to be expected in service.

(b) * * *

(2) Have manual or automatic means to ensure positive closure in the off position; and

* * * * *

Explanation: See the explanation for proposed § 27.999.

Ref: Proposal 322; Committee II.

3–59. By adding a new § 29.1001 after § 29.999 to read as follows:

§ 29.1001 Fuel jettisoning.

If a fuel jettisoning system is installed, the following apply:

(a) Fuel jettisoning must be demonstrated to be safe in all normal flight regimes, including partial power descent and emergency descent, except that takeoff, hover, and in-ground-effect maneuvers may be excluded provided appropriate limitations are prescribed.

(b) In showing compliance with paragraph (a) of this section, it must be shown that—

(1) The fuel jettisoning system and its operation are free from fire hazard;

(2) The fuel discharges clear of any part of the rotorcraft;

(3) Fuel vapors do not enter any part of the rotorcraft; and

(4) Controllability of the rotorcraft remains satisfactory throughout the fuel jettisoning operation.

(c) Means must be provided to automatically prevent jettisoning fuel to below the level required for an all-engine climb at maximum continuous power from sea level to 5,000 feet altitude and thereafter allow cruise for

30 minutes at engine power for maximum range.

(d) The controls for any fuel jettisoning system must be designed to allow flight personnel (minimum crew) to safely interrupt fuel jettisoning during any part of the jettisoning operation.

(e) Fuel jettisoning system must be designed to comply with the powerplant installation requirements of § 29.901(c).

(f) An auxiliary fuel jettisoning system which meets the requirements of paragraphs (a), (b), (d), and (e) of this section may be installed to jettison additional fuel provided it has separate and independent controls.

Explanation: This proposed rule provides design and test standards for optional fuel jettisoning systems. These systems have been found useful in reducing the operating weight of rotorcraft to facilitate unplanned landings or other critical maneuvers.

Ref: Proposal 323 and 324; Committee II

§ 29.1011 [Amended]

3–60. By amending § 29.1011 by revising the section heading to read "Engine: General."; by removing existing paragraph (b), and by redesignating paragraphs (c), (d), and (e) as (b), (c), and (d), respectively.

Explanation: A new § 29.1027, proposed in this notice, provides comprehensive oil system requirements for transmissions and drive systems. Existing § 29.1011 would be retitled "Engine: General." and paragraphs (b), (b)(1), and (b)(2), which pertain to the trasmission and drive system, are deleted from this section and reinstated in new § 29.1027.

Ref: None.

3–61. By amending § 29.1019 by revising paragraph (a)(3) to read as follows:

§ 29.1019 Oil strainer or filter.

(a) * * *

(3) The oil strainer or filter, unless it is installed at an oil tank outlet, must incorporate a means to indicate contamination before it reaches the capacity established in accordance with paragraph (a)(2) of this section.

* * * * *

Explanation: See the explanation for proposed § 27.1019.

Ref: Proposals 108 and 327; Committee II.

3–62. By adding a new § 29.1027 after § 29.1025 to read as follows:

§ 29.1027 Transmission and gearboxes: General.

(a) The oil system for components of the rotor drive system that require continuous lubrication must be sufficiently independent of the lubrication systems of the engine(s) to ensure—

(1) Operation with any engine inoperative; and

(2) Safe autorotation.

(b) Pressure lubrication systems for transmissions and gearboxes must comply with the engine oil system requirements of §§ 29.1011, 29.1013, 29.1015, 29.1017, 29.1021, 29.1023, and 29.1337(d). In addition, the system must have—

(1) An oil strainer or filter through which all the lubricant flows, and must—

(i) Be designed to remove from the lubricant any contaminant which may damage transmission and drive system components or impede the flow of lubricant to a hazardous degree; and

(ii) Be equipped with a bypass constructed and installed so that—

(A) The lubricant will flow at the normal rate through the rest of the system with the strainer or filter completely blocked; and

(B) The release of collected contaminants is minimized by appropriate location of the bypass to ensure that collected contaminants are not in the bypass flowpath;

(iii) Be equipped with a means to indicate collection of contaminants on the filter or strainer at or before opening of the bypass;

(2) For each lubricant tank or sump outlet supplying lubrication to rotor drive systems and rotor drive system components, a screen to prevent entrance into the lubrication system of any object that might obstruct the flow of lubricant from the outlet to the filter required by paragraph (b)(1) of this section. The requirements of paragraph (b)(1) do not apply to screens installed at lubricant tank or sump outlets.

(c) Splash type lubrication systems for rotor drive system gearboxes must comply with §§ 29.1021 and 29.1337(d).

Explanation: See the explanation for proposed § 27.1027.

Ref: None.

3–63. By amending § 29.1041 by revising paragraphs (a) and (c) to read as follows:

§ 29.1041 General.

(a) The powerplant and auxiliary power unit cooling provisions must be able to maintain the temperatures of powerplant components, engine fluids, and auxiliary power unit components and fluids within the temperature limits established for these components and fluids, under ground, water, and flight operating conditions, for which certification is requested, and after normal engine or auxiliary power unit shutdown, or both.

* * * * *

(c) Except for ground-use-only auxiliary power units, compliance with paragraphs (a) and (b) of this section must be shown by flight tests in which the temperatures of selected powerplant component and auxiliary power unit component, engine, and transmission fluids are obtained under the conditions prescribed in those paragraphs.

Explanation: This change would revise paragraph (a) to add a phrase to make clear that the powerplant cooling tests requirements must correspond to the conditions for which certification is requested. Paragraph (b) would be revised to exempt ground-use-only auxiliary power units from a requirement for flight cooling tests. These changes are needed to avoid the inappropriate connotation in the existing rule that "ground-use-only" auxiliary power units must demonstrate adequate cooling in flight.

Ref: Proposal 328; Committee II.

3–64. By amending § 29.1043 by adding a new paragraph (a)(5) to read as follows:

§ 29.1043 Cooling tests.

(a) * * *

(5) For the purposes of the cooling tests, a temperature is "stabilized" when its rate of change is less than 2° F per minute.

* * * * *

Explanation: This proposal would provide a definition of the term "stabilized" as used in subsequent rules pertaining to powerplant cooling testing. This definition agrees with the definition of "stabilized" used in other parts of this subchapter. This proposal is needed to define more clearly the cooling test requirements and to eliminate prolonged and unnecessary extension of cooling tests which may occur if test parameters continue to change slightly during the cooling test.

Ref. Proposal 330; Committee II.

3–65. By amending § 29.1045 by revising paragraph (c) to read as follows:

§ 29.1045 Climb cooling test procedures.

* * * * *

(c) Each operating engine must—

(1) For helicopters for which the use of 30-minute OEI power is requested, be at 30-minute OEI power for 30 minutes, and then at maximum continuous power (or at full throttle when above the critical altitude);

(2) For helicopters for which the use of continuous OEI power is requested, be at continuous OEI power (or at full throttle when above the critical altitude); and

(3) For other rotorcraft, be a maximum continuous power (or at full throttle when above the critical altitude).

* * * * *

Explanation: This is part of a series of proposals related to introduction of a new "continuous OEI" rating. This proposal introduces into the climb cooling test procedure an alternate test for climb cooling similar to that prescribed for "30-minute OEI power" except that "continuous OEI power" is presecribed. This alternate test is needed because the existing cooling test requirements are not adequate to ensure safe operation with "continuous OEI power." See proposed § 27.67.

Ref: See the proposals for § 1.1; Committee II.

3–66. By amending § 29.1047 by removing the words "at least" from the end af the introductory text of paragraph (a)(4) and by revising paragraphs (a)(4)(i) and (a)(4)(ii) to read as follows:

§ 29.1047 Takeoff cooling test procedures.

(a) * * *

(4) * * *

(i) Thirty minutes, if 30-minute OEI power is used; or

(ii) At least 5 minutes after the occurrence of the highest temperature recorded, if continuous OEI power or maximum continuous power is used.

* * * * *

Explanation: See the explanation for proposed §§ 27.67 and 29.1045.

Ref: See the proposals for § 1.1; Committee II.

3–67. By amending § 29.1093 by revising paragraph (b)(1) to read as follows:

§ 29.1093 Induction system icing protection.

* * * * *

(b) *Turbine engines.*

(1) It must be shown that each turbine engine and its air inlet system can operate throughout the flight power range of the engine (including idling)—

(i) Without accumulating ice on engine or inlet system components that would adversely affect engine operation or cause a serious loss of power under the icing conditions specified in Appendix C of this part; and

(ii) In snow, both falling and blowing, without adverse effect on engine operation, within the limitations established for the rotorcraft.

* * * * *

Explanation: This proposal would revise and clarify (by rewording and rephrasing) existing paragraph (b). This change is needed because the phrasing and paragraphing of existing paragraph (b) and its subparagraphs imply that the phrase "within the limitations established for the rotorcraft" in (b)(1) applies equally to (b)(1)(i) and (b)(1)(ii). This implication was not intended by Amendments 29-13 and 29-10 which, respectively, introduced the requirements for considering inlet components when evaluating atmospheric ice and the (optional) requirement for demonstrating flight into snow. This proposal, by further rewording and rephrasing, would restate these requirements in their original context.

The reference to Appendix C of Part 25 would be changed to Appendix C of Part 29. See the explanation for § 27.1093.

Ref: None.

3–68. By amending § 29.1141 by revising the introductory text of paragraph (f) to read as follows:

§ 29.1141 Powerplant controls: General.

* * * * *

(f) Controls of powerplant valves required for safety must have—

* * * * *

Explanation: See the explanation for proposed § 27.1141.

Ref: Proposal 341; Committee II.

3–69. By revising § 29.1143 to read as follows:

§ 29.1143 Engine controls.

(a) There must be a separate power control for each engine.

(b) Power controls must be arranged to allow ready synchronization of all engines by—

(1) Separate control of each engine; and

(2) Simultaneous control of all engines.

(c) Each power control must provide a positive and immediate responsive means of controlling its engine.

(d) Each fluid injection control other than fuel system control must be in the corresponding power control. However, the injection system pump may have a separate control.

(e) If a power control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

Explanation: See the explanation for § 27.1143.

Ref: Proposals 343 and 116; Committee II.

3–70. By amending § 29.1163 by revising paragraph (d) to read as follows:

§ 29.1163 Powerplant accessories.

* * * * *

(d) Unless other means are provided, torque limiting means must be provided for accessory drives located on any component of the transmission and rotor drive system to prevent damage to these components from excessive accessory load.

Explanation: See the proposal and explanation for § 27.1163.

Ref: Proposal No. 117; Committee II.

3–71. By amending § 29.1181 by adding a new paragraph (b) to read as follows:

§ 29.1181 Designated fire zones: regions included.

* * * * *

(b) Each designated fire zone must meet the requirements of §§ 29.1183 through 29.1203.

Explanation: Adoption of Amendment 29–3 (33 FR 956; January 26, 1968) which revised paragraph (a) of this rule inadvertently dropped paragraph (b). This proposal would reinstate the original paragraph (b). This change is needed to emphasize the correlation between the fire zone definition and the areas of the rotorcraft which require fire protection.

Ref: None.

3–72. By amending § 29.1189 by revising paragraphs (e) and (f) to read as follows:

§ 29.1189 Shutoff means.

* * * * *

(e) Each shutoff valve and its control must be designed, located, and protected to function properly under any condition likely to result from fire in a designated fire zone.

(f) Except for ground-use-only auxiliary power unit installations, there must be means to prevent inadvertent operation of each shutoff and to make it possible to reopen it in flight after it has been closed.

Explanation: See the proposal and explanation for § 27.1189(c). Paragraph (f) is revised to exempt ground-use-only auxiliary power unit shutoff devices from the requirement for a guarded

control since no flight safety objective is involved.

Ref: Proposals 347 and 348; Committee II.

3–73. By amending § 29.1193 by adding a new paragraph (f) to read as follows:

§ 29.1193 Cowling and engine compartment covering.

* * * * *

(f) A means of retention for each openable or readily removable panel, cowling, or engine or rotor drive system covering must be provided to preclude hazardous damage to rotors or critical control components in the event of—

(1) Structural or mechanical failure of the nomal retention means, unless such failure is extremely improbable; or

(2) Fire in a fire zone, if such fire could adversely affect the normal means of retention.

Explanation: See the explanation for § 27.1193. In addition, the fire protection associated with the transport category rotorcraft requirements of §§ 29.1193 and 29.1195 could be compromised if engine cowling retention failed under fire conditions. Proposed paragraph (f)(2) would require means of cowl retention to prevent loss of cowl elements in the event of engine fire.

Ref: Proposal 349; Committee II.

3–74. By amending § 29.1305 by revising paragraphs (a)(4), (a)(17), (a)(19), (b)(2), (c)(1), and (c)(2); by adding new paragraphs (a)(20) through (a)(23); by removing the word "and" at the end of (a)(18); and by removing (c)(3) as follows:

§ 29.1305 Powerplant instruments.

* * * * *

(a) * * *

(4) A low fuel warning device for each fuel tank which feeds an engine. This device must—

(i) Provide a warning to the crew when approximately 10 minutes of usable fuel remains in the tank; and

(ii) Be independent of the normal fuel quantity indicating system.

* * * * *

(17) An indicator for the filter required by § 29.997 to indicate the occurrence of contamination of the filter to the degree established in compliance with § 29.955;

* * * * *

(19) An indicator to indicate the functioning of any selectable or controllable heater used to prevent ice clogging of fuel system components;

(20) An individual fuel pressure indicator for each engine, unless the fuel system which supplies that engine does not employ any pumps, filters, or other components subject to degradation or failure which may adversely affect fuel pressure at the engine;

(21) A means to indicate to the flightcrew the failure of any fuel pump installed to show compliance with § 29.955;

(22) Warning or caution devices to signal to the flightcrew when ferromagnetic particles are detected by the chip detector required by § 29.1337(e); and

(23) For auxiliary power units, an individual indicator, warning or caution device, or other means to advise the flightcrew that limits are being exceeded, if exceeding these limits can be hazardous, for—

(i) Gas temperature;

(ii) Oil pressure; and

(iii) Rotor speed.

(b) * * *

(2) An independent fuel pressure warning device for each engine or a master warning device for all engines with provision for isolating the individual warning device from the matter warning device; and

* * * * *

(c) * * *

(1) An individual oil pressure indicator for each engine; and

(2) Fire warning indicators, when fire detection is required.

Explanation: For the revisions to paragraphs (a)(4), (a)(17), and (a)(19), see the explanation for corresponding changes in proposed § 27.1305. New paragraph (a)(20) combines into one rule without substantative change the existing identical requirements for fuel pressure indicators currently in paragraphs (b)(2) and (c)(2) and further modifies the applicability of this requirement to only those fuel systems with devices or components which, in the event of failure or degradation, could adversely affect fuel pressure at the engine. The applicability change in (a)(20) is needed since fuel pressure gauges have little or no significant value when used in gravity or suction feed fuel systems.

New paragraph (a)(21) would require a warning device to indicate the failure of any fuel pump required for adequate fuel flow to the engine. This change is needed to alert the flightcrew that fuel flow and engine operation is now dependent on the emergency system and to institute precautionary operating procedures.

New paragraph (a)(22) would require a cockpit signal in the event ferromagnetic particles are detected by the chip detector required by new § 29.1337(d). For explanation of this change, see the explanation for § 29.1337(d).

New paragraph (a)(23) would require powerplant instruments or warning devices for auxiliary power units installed in rotorcraft. This change is needed to provide the flightcrew with information or warning devices needed to avoid possible unsafe operating conditions which may be expected with auxiliary power units.

The changes to paragraphs (b)(2) and (c)(2) are needed to coordinate the change to (a)(20).

Ref: Proposals 354, 355, 356, 357, and 360; Committee II.

3–75. By amending § 29.1337 by adding a new paragraph (e) to read as follows:

§ 29.1337 Powerplant instruments.

* * * * *

(e) Transmission gearboxes utilizing ferromagnetic materials shall be equipped with chip detectors designed to indicate the presence of ferromagnetic particles resulting from damage or excessive wear within the gearbox. Each chip detector shall—

(1) Be designed to provide a signal to the indicator required by § 29.1305(a)(22) when ferromagnetic particles exist in the vicinity of the detector; and

(2) Be provided with a means to allow crewmembers to check, in flight, the function of each detector electrical circuit and signal.

Explanation: This proposal would require rotorcraft transmission gearboxes to be equipped with chip detector systems which detect ferromagnetic particles and signal their presence to the flightcrew. This proposal is required to alert the flightcrew to impending failure of these gearboxes as indicated by small metallic chips or fragments which may break away from excessively loaded gears, bearings, or other components in the gearbox. The FAA realizes that not all failures will be detected by magnetic chip detectors. Thus, the proposed rule does not include extensive performance requirements. However, these devices have been found to be a relatively imexpensive and effective method of detecting most impending mechanical failures in gearboxes.

Ref: Proposal 125; Committee II.

3–76. By amending § 29.1521 by revising introductory texts of paragraphs (f) and (g) and by adding a new paragraph (h) to read as follows:

§ 29.1521 Powerplant limitations.

* * * * *

(f) *Two and one-half-minute OEI power operation.* Unless otherwise authorized, the use of 2½-minute OEI power shall be limited to multiengine.

turbine-powered rotorcraft for not longer than 2½ minutes after failure of an engine. The use of 2½-minute OEI power must also be limited by—

* * * * *

(g) *Thirty minute OEI power operation.* Unless otherwise authorized, the use of 30-minute OEI power shall be limited to multiengine, turbine-powered rotorcraft for not longer than 30 minutes after failure of an engine. The use of 30-minute OEI power must also be limited by—

* * * * *

(h) *Continuous OEI power operation.* Unless otherwise authorized, the use of continuous OEI power shall be limited to multiengine, turbine-powered rotorcraft for continued flight after failure of an engine. The use of continuous OEI power must also be limited by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value shown during the type tests.

(2) The maximum allowable gas temperature;

(3) The maximum allowable torque; and

(4) The maximum allowable oil temperature.

Explanation: Proposed changes to paragraphs (f) and (g) would introduce the term OEI. See the explanations for §§ 1.1 and 1.2. In addition, these paragraphs are revised to state clearly the limitations associated with the 2½-minute and 30-minute ratings, including the concepts involved in the original justification of these ratings. New paragraph (h) would set forth in a similar manner the limitations associated with a new continuous OEI power rating. This new paragraph would assure proper recognition of this rating in the rotorcraft flight manual. See the proposal for § 29.67 for further explanation.

The introductory term "unless otherwise authorized" in each of the OEI rating definitions is intended to facilitate the use of these ratings for use in OEI training activities when appropriate qualification testing or other adequate safety measures have been accomplished.

Ref: Proposals 394 and 395; Committee II.

3–77. By amending § 29.1549 by removing the work "and" at the end of paragraph (c); by removing the period at the end of paragraph (d) and inserting "; and " in its place; and by adding a new paragraph (e) to read as follows:

§ 29.1549 Powerplant instruments.

* * * * *

(e) For multiengine rotorcraft, each one-engine-inoperative limit or range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section.

Explanation: See the proposal and explanation for § 27.1549(e).

Ref: Proposal 399; Committee II.

3–78. By amending § 29.1557 by revising paragraph (c)(1)(iii) to read as follows:

§ 29.1557 Miscellaneous markings and placards.

* * * * *

(c) * * *

(1) * * *

(iii) For turbine-engine-powered rotorcraft, the permissible fuel designations, except that if impractical, this information may be included in the rotorcraft flight manual and the fuel filler may be marked with an appropriate reference to the flight manual; and

* * * * *

Explanation: This proposal would allow the use of flight manual listings of designated fuels in lieu of decals and placards at the fuel filler opening as required by the existing rule. This change is needed because in some instances, the list of designated fuels is so extensive as to be impractical to place the decal or placard in the space available.

Ref: Proposal 400; Committee II.

PART 33—AIRWORTHINESS STANDARDS—AIRCRAFT ENGINES

3–79. By amending § 33.7 by removing the word "and" from the end of (c)(1)(v); by redesignating (c)(1)(vi) as (c)(1)(vii); and adding a new (c)(1)(vi) to read as follows:

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(1) * * *

(vi) Rated continous OEI power; and

* * * * *

Explanation: This proposed change is part of a series of changes to create a new continuous one-engine-inoperative rating for multiengine rotorcraft. See the explanation for § 33.87.

Ref: Proposals 414 and 415; Committee II.

3–80. By amending § 33.87 by redesignating paragraph (e) as (f) without change; by revising paragraphs (a) (introductory text), (b) (introductory text), (b)(2), (c), (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5); by revising paragraph (d) and redesignating it as paragraph (e); and by adding a new paragraph (d) to read as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series or runs specified in paragraphs (b), (c), (d), (e), or (f) of this section. The following test requirements apply:

* * * * *

(b) *Engines other than certain helicopter engines.* For each engine except a helicopter engine for which a rating is desired under paragraph (c), (d), or (e) of this section, the applicant must conduct the following runs:

* * * * *

(2) *Rated maximum continuous and takeoff power and thrust.* Thirty minutes at—

(i) Rated maximum continuous power and thrust during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power and thrust during ten of the twenty-five 6-hour endurance test cycles.

* * * * *

(c) *Helicopter engines for which a 3-minute OEI power rating is desired.* For each helicopter engine for which a 30-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takeoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period, the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power-control level must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated 30-minute OEI power.* Thirty minutes at rated 30-minute OEI power.

(3) *Rated maximum continuous power.* Two hours at rated maximum continuous power.

(4) *Incremental cruise power.* Two hours at the successive power-lever positions corresponding with not less than 12 approximately equal speed and time increments between maximun continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(5) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than one second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

* * * * *

(d) *Helicopter engines for which a continuous OEI rating is desired.* For each helicopter engine for which a continous OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff and idling.* One hour of alternate 5-minute periods at rated takoff power and at idling power. The developed powers at takeoff and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. During any one period the rotor speed and power may be controlled manually while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented power rating. In changing the power setting after each period, the power-control lever must be moved in the manner prescribed in paragraph (c)(5) of this section.

(2) *Rated maximum continuous and takeoff power.* Thirty minutes at—

(i) Rated maximum continuous power during fifteen of the twenty-five 6-hour endurance test cycles; and

(ii) Rated takeoff power during ten of the twenty-five 6-hour endurance test cycles.

(3) *Rated continuous OEI power.* One hour at rated continuous OEI power.

(4) *Rated maximum continuous power.* One hour at rated maximum continuous power.

(5) *Incremental cruise power.* Two hours at the successive power lever positions corresponding with not less than 12 approximately equal speed and time increments between maximum continuous engine rotational speed and ground or minimum idle rotational speed. For engines operating at constant speed, power may be varied in place of speed. If there are significant peak vibrations anywhere between ground idle and maximum continuous conditions, the number of increments chosen must be changed to increase the amount of running conducted while being subjected to the peak vibrations up to not more than 50 percent of the total time spent in incremental running.

(6) *Acceleration and deceleration runs.* Thirty minutes of accelerations and decelerations, consisting of six cycles from idling power to rated takeoff power and maintained at the takeoff power lever position for 30 seconds and at the idling power lever position for approximately 4½ minutes. In complying with this paragraph, the power control lever must be moved from one extreme position to the other in not more than 1 second, except that if different regimes of control operations are incorporated necessitating scheduling of the power control lever motion in going from one extreme position to the other, a longer period of time is acceptable, but not more than 2 seconds.

(7) *Starts.* One hundred starts, of which 25 starts must be preceded by at least a 2-hour engine shutdown. There must be at least 10 false engine starts, pausing for the applicant's specified minimum fuel drainage time, before attempting a normal start. There must be at least 10 normal restarts with not longer than 15 minutes since engine shutdown. The remaining starts may be made after completing the 150 hours of endurance testing.

(e) *Helicopter engines for which the 2½-minute OEI power rating is desired.* For each helicopter engine for which a 2½-minute OEI power rating is desired, the applicant must conduct the following series of tests:

(1) *Takeoff, 2½-minute OEI, and idling.* One of alternate 5-minute periods at rated takeoff power and at idling power except that, during the third and sixth takeoff power periods, only 2½ minutes need be conducted at rated takeoff power and the remaining 2½ minutes must be conducted at rated 2½-minute OEI power. The developed powers at takeoff, 2½-minute OEI, and idling conditions and their corresponding rotor speed and gas temperature conditions must be as established by the power control in accordance with the schedule established by the manufacturer. The applicant may, during any one period, control manually the rotor speed and power while taking data to check performance. For engines with augmented takeoff power ratings that involve increases in turbine inlet temperature, rotor speed, or shaft power, this period of running at rated takeoff power must be at the augmented rating. In changing the power setting after or during each period, the power-control lever must be moved in the manner prescribed in paragraph (d)(6) of this section.

(2) The tests required in paragraphs (b)(2) through (b)(6), or (c)(2) through (c)(6), or (d)(2) through (d)(6) of this section, as applicable, except that in one of the 6-hour test sequences, the last 5 minutes of the 30 minutes at takeoff power test period of (b)(2), or of the 30 minutes at 30-minute OEI power test period of (c)(2), or of the 1 hour at continuous OEI power test period of (d)(3), must be run at 2½-minute OEI power.

* * * * *

Explanation: These changes incorporate the endurance test requirements associated with the proposed rotorcraft engine rating of "continuous OEI power." This OEI rating is proposed in addition to the existing 30-minute OEI and 2½-minute OEI ratings. It should be noted that the proposals presented at the Rotorcraft Regulatory Review for the continuous OEI rating were not entirely consistent in that this rating was proposed by one group as a replacement for the existing 30-minute OEI rating and by two other groups as an additional rating. The explanation given for the latter discusses the proposal's intent to remove the 30-minute limit for the (en route) contingency rating.

Comments are specifically invited on this proposal which, in substance, provides test schedules for rotorcraft turbine engines which are to be qualified for a 2½-minute OEI rating, to also be qualified with and without the limited en route OEI ratings covered under § 33.87 (c) and (d). Additionally,

the proposal incorporates editorial changes to more accurately and clearly specify the requirements and deletes all references to "thrust" in § 33.87 (c) and (d) since the term is not applicable to turboshaft engines. The proposal essentially represents a consolidation of engine oriented proposals related to OEI ratings discussed at the Rotorcraft regulatory Review Conference held in December 1979.

Ref: Proposals 419 and 420; Committee II.

Appendix—Miscellaneous Proposals Significantly Revised or Removed From Further Consideration

Based on the FAA's review of the discussions at the Rotorcraft Regulatory Review conference and further evaluations in context with agency policy, the following proposals presented at the conference are removed from consideration or significantly revised for the reasons set forth below:

Proposal No.[1]	FAR Section	Proponent
9, 159, and 416	27/29.45/33.8	Aerospatiale Helicopter Div.
63 and 222	27/29.607	Pratt & Whitney of Canada, Ltd.
94 and 281	27/29.903	A.E.C.M.A.
97 and 293	27/29.923	Aerospatiale Helicopter Div.
98 and 301	27/29.927	Aerospatiale Helicopter Div.
100	27.955	FAA.
103	27.964 (Proposed).	FAA.
101 and 309	27/29.969	HAI and AIA.
113 and 339	27/29.1093	A.E.C.M.A.
114 and 338	27/29.1093	FAA.
115 and 340	27/29.1121	A.E.C.M.A.
118	27.1189	HAI and AIA.
44 and 200	27/29.309	A.E.C.M.A.
222	29.863	HAI and AIA.
271	29.901	HAI and AIA.
277	29.901	HAI and AIA.
278	29.901	HAI and AIA.
280	29.901	A.E.C.M.A.
283	29.903	FAA.
284	29.903	CAA (UK).
286	29.907	CAA (UK).
289	29.923	HAI and AIA.
290	29.923	HAI and AIA.
293	29.923	Aerospatiale Helicopter Div
294	29.923	FAA.
295	29.923	A.E.C.M.A.
298	29.927	CAA (UK).
299	29.927	HAI and AIA.
301	29.927	Aerospatiale Helicopter Div.
302	29.927	FAA.
304	29.931	CAA (UK).
305	29.951	HAI and AIA.
308	29.955	Pratt & Whitney of Canada, Ltd.
310	29.961	HAI and AIA.
315	29.963	FAA.
316	29.964 (Proposed).	FAA.
317	29.965	HAI and AIA.
326	29.1013	DOT, Australia.
329	29.1041	A.E.C.M.A.
337	29.1049	A.E.C.M.A.
342	29.1143	CAA (UK).
345	29.1181	HAI and AIA.
346	29.1183	HAI and AIA.
350	29.1203	FAA.
355	29.1305	HAI and AIA.
358	29.1305	FAA.
361	29.1305	Aerospatiale Helicopter Div.
362	29.1305	A.E.C.M.A.
363	29.1305	FAA.
378	29.1337	CAA (UK).

[1] This number corresponds to the number assigned to the proposal as presented to the New Orleans Rotorcraft Regulatory Review, December 1979.

Proposals 9, 159, and 416. These proposals would have amended §§ 27.45, 29.45, and 33.8 to specify that engine and rotorcraft performance must reflect "aging loss" or loss associated with engine power deterioration during the normal life of the engine. This concept is already addressed, in part, by Proposal No. 2–4 in Notice No. 2 (47 FR 37806; August 26, 1982) which would require provisions for a pretakeoff engine power check. This check would be based on the power specified under Part 33 for an airworthy engine which may have deteriorated to the overhaul limit. As a second concept, engines may, in some instances, be operated safely beyond the overhaul life with still further deterioration of power. Procedures and performance associated with this concept should be addressed on an individual engine/aircraft basis upon application by interested parties and not be included in rules since such operation itself is not required for safety.

Proposals 44 and 200. These proposals would have revised §§ 27.309 and 29.309, respectively, by adding a new paragraph listing the design transmission mean torque for turbine engines as a limitation on the rotorcraft. Other existing rules in Parts 27 and 29 adequately express or define this limitation and additional rules under §§ 27.309 and 29.309 are not required.

Proposals 63 and 222. These proposals would have amended §§ 27.607 and 29.607 to clearly eliminate any conception that the dual locking requirements for certain fasteners could be interpreted to apply to engine components approved under Part 33. Advisory circular material provides this clarification and further rulemaking toward this objective is inappropriate.

Proposals 94 and 281. These proposals would have required engine cooling fans to be free of resonant vibrations at normal operating conditions. These proposals were accepted with an exclusionary phrase to exempt cooling fans which are evaluated for vibratory loads under another rule.

Proposals 97 and 293. These proposals would have authorized bench tests or other special tests in lieu of full scale rotorcraft tests to qualify the rotor drive system for the critically high powers associated with one-engine-inoperative conditions. The FAA recognizes that conducting these tests constitutes a problem during hot weather when the power available from the engines may be low. However, the use of alternate tests methods or facilities should be based on a case-by-case evaluation which considers details of the test facility and the relative torque or power levels under consideration. Approval, if appropriate, could be made under equivalent safety concepts. A rule change is not required.

Proposals 98 and 301. These proposals were similar to Proposals 97 and 293 in that they would have authorized alternate test methodology in lieu of full-scale helicopter tests for certain high-power test conditions that may be difficult to obtain by using the installed engines. As noted above, this situation should be addressed on a case-by-case basis which considers all pertinent details. The arbitrary conservatisms suggested by the proposed rule may not always be adequate or appropriate.

Proposals 99 and 306. These proposals are included in the notice as proposed except the exclusionary phrase "for which certification for instrument operation is requested" is deleted. Lightning strikes must be expected during VFR as well as IFR operations.

Proposal 100. This proposal which constituted a detailed rewrite of existing fuel flow test requirements was withdrawn by its proponent and replaced with a revised proposal prepared by industry conferees. This revised proposal was not accepted verbatim but was used extensively in a subsequent FAA-developed proposal included as Items 3–14 and 3–50 of this notice.

Proposals 101 and 309. This proposal would have revised §§ 27.959 and 29.959 to specify that analytical (rather than test) methods shall be used to determine unusable fuel in fuel tanks. It would further limit the analysis to steady state flight regimes. The existing rule does not preclude analysis where such methods are valid; however, full-scale flight test methods are often necessary to evaluate unusable fuel in most fuel tank configurations. The proposal is unnecessary since analysis may be used when proven.

Proposals 103 and 305. These proposals were withdrawn by the proponents at the New Orleans Conference in favor of alternate proposals developed at the conference. Parts of these alternate proposals related to fuel spillage through fuel tank vents and to fuel tank structural strength are included in this notice as Items 3–14, 3–17, 3–50, and 3–54. The parts of these proposals that would require a fuel tank

drop test to demonstrate a measure of crashworthiness are being held out-of-notice pending development of favorable data to justify the cost and weight penalties associated with tanks capable of surviving this test.

Proposal 110. This proposal would provide for correcting a typographical error as it appears in at least one printing of § 27.1045(b)(1)(ii). This error does not exist in the Code of Federal Regulations; therefore, it can be corrected by administrative action which does not require rulemaking.

Proposal 111. Both existing § 27.1045(c)(1) and the revised words offered by Proposal 111 assume a powerplant component temperature response characteristic which may exist for a particular test or with a particular rotorcraft configuration. Still further rewording is now proposed in Item 3–26 which is generalized to consider a wider range of temperature response characteristics.

Proposals 113 and 339. Proposals 113 and 339 suggested that for rotorcraft not to be approved for flight into icing conditions, the engine air induction system could be approved with a limited icing qualification program, or no qualification program at all, if a 50 °F minimum operating temperature limit is applied. Proponents of these concepts note that relaxing of these types would enable use of sand or dust filters to avoid engine deterioration in warm climates. The limited icing qualification program, suggested by the proponent, i.e., level flight icing cloud penetration, is inappropriate since escape from inadvertent icing encounters likely will require climb or descent and assurance of satisfactory engine performance during these maneuvers is an appropriate requirement. Basic operating limitations on the rotorcraft that would clearly preclude deliberate or inadvertent icing encounters, such as the 50 °F minimum operating temperature limitation suggested by a proponent, could be applied without rule change. One proponent suggested that a determination of the efficiency of the ice protection system should be required. While information on this aspect may be useful, it would exceed the requirements for minimum airworthiness. These proposals further advocated exempting rotorcraft from the ground icing requirements if approval for flight icing was not requested. Current operating rules allow rotorcraft to be dispatched under VFR into forecast icing with no minimum visibility limitations and without equipment necessary for flight into icing. These rotorcraft will be dispatched into airport pretakeoff ground control procedures and will be expected to queue for takeoff with other airplanes. Thus, exposure to ground icing must be expected.

Proposals 114 and 338. These proposals were withdrawn by the proponent for further study.

Proposals 115 and 340. These proposals would have revised §§ 27.1121(d) and 29.1121(b), which require isolation or shielding of engine exhaust components from ignition sources, to limit their application to exhaust system components outside of fire zones. This proposal was not included since fires in any location including fire zones may be hazardous and other existing rules require designs to preclude fires and hazards of fires in areas outside of fire zones.

Proposal 118. This proposal would have extended the exemption from the oil system shutoff requirements now in § 29.1189 to Part 27 Rotorcraft. Amendment 27–20 (49 FR 6850; February 23, 1984) accomplishes this objective, therefore this proposal is not included.

Proposal 271. This proposal would have revised § 27.863(b)(1) to delete the phrase "and means of detecting leakage." The proposal was withdrawn by the proponent after assurance that the FAA was not interpreting this phrase as a basis for requiring sophisticated, expensive electronic flammable fluid leak detectors throughout an aircraft.

Proposal 277. This proposal would have reduced the required evaluation considerations of § 29.901(c) to single failure concepts only. The reduced level of safety associated with this change cannot be accepted; however, revised wording of the rule has been drafted for this notice to avoid an unintended proliferation of various failure combinations which might be argued with the existing wording.

Proposal 278. This proposal would have exempted components already approved under this subpart from consideration in the failure analysis required by § 29.901(c). Examples of these components would be engines approved under Part 33 and equipment items accepted as being in compliance with appropriate Technical Standard Order. Since the objective of § 29.901(c) is to identify and preclude approval of any powerplant installation device, component, system, or arrangement if failure could be hazardous, exemption of any components could seriously jeopardize the effectiveness of the rule.

Proposal 280. This proposal would have reduced the area of considerations for the fault analysis required by § 29.901(c) to only engines and auxiliary power units. The proponent is concerned that under the existing rule, major rotorcraft drive system component failure must be considered. The rule does, in fact, require consideration of drive system components; however, proper evaluation of these items under § 29.571 should provide a basis for subsequent exemption from § 29.901(c) as authorized by § 29.901(c)(1).

Proposal 283. Paragraph (a) of this proposal has been introduced as Item No. 2–33 of Notice 2 of the Rotorcraft Regulatory Review Program. Paragraph (b), with changes, is included as Item No. 3–39 of this notice.

Proposal 284. The first part of this proposal, which pertains to protection in the event of an engine rotor failure, is deferred for further study. The second part of the proposal, which requires considering possible engine case burn-through, was not included because service data do not indicate a problem in this area for Part 29 rotorcraft.

Proposal 286. This proposal would require precertification development of finite data describing vibration characteristics of the rotorcraft to assist subsequent inservice evaluation of possible excessive vibrations which may develop. Such information would be useful for some rotorcraft and, if needed for safety, may be required under existing § 29.1529 and presented as an item in the "Instructions for Continued Airworthiness" section of the rotorcraft's maintenance manual.

Proposal 289. This proposal would have authorized limited torque and speed trade-offs in the § 29.923 endurance test to facilitate achieving test parameters without jeopardizing the health of the engine used in the test. Such procedure, if acceptable, should be considered and justified on a case-by-case basis and approved as equivalent safety. A revision to the rules for this concept is not appropriate.

Proposal 290. This proposal would have prescribed finite test parameter adjustments to address the asymmetric torque to be expected due to tolerances in the torque sharing device usually provided with multiengine rotorcraft. This condition may vary widely in magnitude and in effect among engine/rotorcraft configurations which may be developed and a specific rule covering this aspect may not be appropriate. Asymmetric testing, where needed, can be negotiated under § 29.927(a).

Proposals 293 and 299. These proposals would have authorized configuration deviations and power adjustments to the tests prescribed by § 29.923. These changes, if justified,

should be considered as equivalent safety findings, and approved on a case-by-case basis.

Proposal 294. This proposal was withdrawn by the proponent.

Proposal 298. This proposal would have set forth a test intended to substantiate the fatigue aspects of gears, shafts, and gearboxes used in the rotor drive system. This aspect is already addressed in § 29.571 and further specific testing is not required.

Proposal 299. This proposal would have limited the speed to be used in the overspeed test of § 29.927(d) to a speed associated with the speed limiting device installed to protect the engine against the hazards of overspeed. This proposal is inappropriate since this speed is related to protection of the engine and this section is intended to qualify the rotor drive system. However, the existing rule may impose unnecessarily severe test conditions. A new proposal developed after FAA review is included as Item No. 3–46 to alleviate this condition.

Proposal 301. This proposal would have permitted the overtorque tests of § 29.927(b) to be limited to convenient test values provided a 10 percent overtorque test is accomplished using bench test facilities. Concern was expressed regarding the capability of the engine to withstand the mechanical stresses involved. It would not be appropriate to set forth regulatory criteria for what essentially would be an equivalent safety finding. This aspect should be addressed on a case-by-case basis with each combination of configuration and rating. Also, full assurance of the capability of the remaining engine(s) to tolerate the overtorque is needed to assure compliance with § 29.903(b).

Proposal 302. This proposal was withdrawn by the proponent.

Proposal 303. This proposal would have required special tests to qualify free-wheeling clutches used in rotor drive systems. The proposal was withdrawn by the proponent pending development of economic data to justify the cost of the qualification testing suggested by the proposal.

Proposal 304. This proposal would have listed finite values of rotor drive system overspeed to be considered in conducting whirlmode evaluations. The existing rule, which does not limit the range of investigation, is adequate.

Proposal 308. This proposal would have required the fuel flowmeter to be designed to not impede fuel flow in the event of maximum fuel contamination. Since § 29.997 requires filters to protect flowmeters and other fuel system components from contaminants, this proposal was not included. However, the existing requirement for fuel flowmeters to be "blocked" is not an appropriate requirement for all types of flowmeters and, accordingly, a generalized failure mode requirement is included in a revision to § 29.955 in this notice..

Proposal 310. This proposal properly recognizes that the "full fuel tank" requirement in existing § 29.961 does not represent the critical condition for hot fuel tests. This is recognized by a proposed change to § 29.961 that specifies that the test should be conducted under "critical operating conditions" which, for most systems, would include the low fuel condition addressed by this proposal.

Proposal 315. This proposal, which would have ensured that fuel tank explosions do not occur as a result of electrical malfunctions within a fuel tank, is withdrawn by the proponent in favor of a similar requirement in Proposal 313 which is included as proposed new paragraph (e) in § 29.963 in this notice.

Proposal 316. This proposal, which would have required improved crashworthiness of fuel tanks and fuel systems, was withdrawn by the proponent. See the comments in this appendix for Proposals 103 and 305.

Proposal 317. This proposal would provide for an alternative vibration frequency to be used when vibration testing fuel tanks to be used in turbine-powered rotorcraft. Existing § 29.965(d)(3)(i) contains provisions for testing with alternative frequencies if appropriate.

Proposal 326. This proposal, which would have excluded oil systems which are not subject to fires in a fire zone from the shutoff valve protection requirements of § 29.1013, was not included since the intent of the proposal was accomplished by a revision to § 29.1189 in Amendment 29.22 (49 FR 6850; February 23, 1984).

Proposal 329. This proposal, which would have required design provisions to ensure separation of engine inlets to avoid simultaneous clogging, was not included since the intent of this proposal is covered by existing § 29.903(b).

Proposal 337. This proposal, which would have required powerplant hover cooling tests to be continued until temperatures (of components and fluids) are stabilized, is not included since the existing requirements to continue the test until "5 minutes after the occurrence of the highest temperature record," is more appropriate for the flight condition involved.

Proposal 342. This proposal, which would have prescribed directional criteria for powerplant control motions, was not included since existing § 29.779(a) provides an adequate basis for requiring appropriate motions for powerplant controls.

Proposal 346. A part of this proposal would have added the term "components" to the list of items in a fire zone which may be excluded from compliance with this section if such components are part of a type certificated engine. This aspect was not included because certain engines eligible for installation in Part 29 rotorcraft, but certificated under obsolete certification rules, may include non-fire-resistant flammable fluid components. A second part of the proposal would have excluded lines, fittings, and components included as parts of TSO-qualified auxiliary power units from compliance with this section. This exclusionary phrase cannot be accepted because it would delegate responsibility for critical fire protection aspects to standards other than those specified in the certification basis for the aircraft.

Proposal 350. This proposal, which would prescribe detail criteria for installation of fire detector systems, was withdrawn by the proponent since the intent of the proposal can be achieved by application of other existing rules.

Proposal 355. This proposal, in part, would authorize a fuel flowmeter as an alternate to the fuel pressure indicator required by current rules. A detailed review of this concept and study of additional data submitted to support this contention disclosed that fuel flowmeters provide valuable information related to flight planning, as related to fuel consumption aspects, but do not necessarily supply information on airframe fuel sysem deterioration, as would be detected by a fuel pressure indicator. Since only this latter aspect is appropriate as an airworthiness requirement, authorization for this substitution has not been included. Another part of this proposal would have substituted the word "caution" in place of the word "warning" in existing § 29.1305(b)(2). Since fuel pressure loss can, in some instances, be indicative of an engine power loss, a warning is deemed necessary.

Proposal 358. This proposal, which would have required an engine failure warning device for certain rotorcraft, is being deferred pending further study and development of data which may justify the costs associated with development, qualification, and installation of this device.

Proposal 361. This proposal would have added a requirement for "a total

torque indication of all engines" to the list of required powerplant instruments in § 29.1305. A review of certification programs and service histories does not reflect a need for this instrument.

Proposal 362. This proposal would have deleted the requirement for gearbox oil pressure and temperature warning devices from the general list of instruments in paragraph (a) of § 29.1305 and added these same requirements into paragraphs (b) and (c) for Category A and Category B rotorcraft, respectively. This proposal was not included since the existing rules adequately state the requirements for these warning devices. In addition, the proposal would have deleted the existing requirement in paragraph (a)(14) for an engine tachometer for certain engines. Further studies of engine operating requirements indicate that certain hazardous conditions can exist undetected in rotorcraft not equipped with this tachometer. Therefore this proposal was not included.

Proposal 363. This proposal, which would add a requirement for a chip detector indicator, was withdrawn by the proponent in favor of indentical Proposal 360, which has been included in this notice.

Proposal 378. The first part of this proposal would have revised § 29.1305 to add specific requirements for independent operating systems for engine and transmission instruments required by this section. Subsequent FAA review of existing applicable rules indicated that adequate separation of operating system is covered, where applicable, by existing regulations. The second part of this proposal would require redundant power sources for mandatory engine and transmission instruments, if loss of power to these instruments could jeopardize continued safe flight. Existing rules pertaining to failures and hazards due to failures are adequate to ensure continued safe flight. Additional requirements for duplication of power sources to certain powerplant instruments are unnecessary.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423, and 1424); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983))

Note.—This document does not impose requirements that would result in any significant burden on the aviation community. Furthermore, this proposal, if adopted, is not likely to result in an annual effect on the economy of $100 million or more or a major increase in costs for consumers, industry, or federal, state, or local governments. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business in the United States. For the reasons stated earlier I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. In addition, it has been determined that the proposal does not involve a major proposal under Executive Order 12291 and is not significant under DOT Regulatory Policies (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Fort Worth, Texas, on October 10, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–30802 Filed 11–26–84; 8:45 am]

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federal register

Tuesday
November 27, 1984

Part IV

Department of Energy

Office of Fossil Energy

Program Announcement; Information Regarding Emerging Clean Coal Technologies; Notice

DEPARTMENT OF ENERGY

Office of Fossil Energy

Program Announcement; Information Regarding Emerging Clean Coal Technologies

AGENCY: Office of Fossil Energy.

ACTION: Program Announcement for Information Regarding Emerging Clean Coal Technologies.

SUMMARY:

Introduction

The United States Department of Energy (DOE), Office of Fosil Energy (FE), is issuing this announcement in response to Pub. L. 98–473, House Joint Resolution 648, making Continuing Appropriations for Fiscal Year 1985. DOE is responding to section 321 of that Act by hereby soliciting Statements of Interest and Informational Proposals. DOE expects to analyze the information submitted and to prepare a report to Congress by April 15, 1985. It should be emphasized that DOE has no resources to fund any of the proposed activities, does not anticipate funding any proposals that are submitted, and cannot reimburse submitters for any expenses they may incur in responding to this announcement. Respondents are referred to Pub. L. 98–473 for further information.

Examples of emerging clean coal technolgies include, but are not limited to the following:

(1) Advanced coal preparation and cleaning;

(2) Limestone injection multistage burners (LIMB);

(3) Fue gas desulfurization processes that produce only dry discharges;

(4) Regenerable flue gas desulfurization;

(5) Furnace retrofit of in-boiler sulfur control technology;

(6) Atmospheric fluidized bed combustion systems of a size appropriate to the electric utility market;

(7) Repowering applications of a pressurized fluidized bed in a large oil-fired boiler;

(8) Phosphoric acid fuel cell systems using coal-derived gas;

(9) Coal-fired gas turbines in second-generation combined-cycle systems; and

(10) Low cost, easily replicable, sources of fuel gas for multimarkets.

Objective

The objective of this announcement is to request Statements of Interest and Information Proposals from the privates sector for information regarding emerging clean coal technologies to allow for the Departmental submission of a report to Congress no later than April 15, 1985, which:

- Analyzes the information contained in such Statement of Interest and [Informational] Prosposals,
- Assesses the potential usefulness of each emerging clean coal technology for which a Statement of Interest or Informational Proposal has been received, and
- Identifies the extent to which Federal incentives, including financial assistance, will accelerate the commercial availability of these technologies.

Statements of Interest and Informational Proposals

Statements of Interest and Informational Proposal submitted under this announcement shall propose project employijng at least one emerging clean coal technology, shall be limited to a total of fifty (50) 8½" × 11" doublespaced pages, and shall include:

(1) A discription of the technology to be employed and of the overall project;

(2) A comparison of the proposed project with any similar project or facility in existence;

(3) The proposed ownership of the project facility;

(4) The projected capital, operating, and testing cost and a schedule for construction and testing of the project facility;

(5) The characteristics of the coal to be used;

(6) The emissions reductions to be achieved by the facility;

(7) The proposed financing of the project, including a statement of any cost sharing or incentives, including any financial assistance, that should be provided by the Federal Government and the justification for such incentives;

(8) A statement of the project economics which identifies the assumptions used; and

(9) A plan which outlines the uses for the products of the proposed facility.

Proprietary Information

If proprietary information is provided by a submitted which constitutes a trade secret, proprietary commercial or financial information, or confidential personal information, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the submitter with the term "Confidential Proprietary Information" and provided appropriate page numbers are inserted into the legend set forth below which must be placed on the submission cover sheet. The Government will limit dissemination of such information to within official channels. Any other legend may be unacceptable to the Government and will not be binding on the Government.

Notice Re Restriction on Disclosure and Use of Data

This submission includes data that shall not disclosed outside the Government and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to analyze information contained in this submission. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets (insert numbers or other identification of sheets).

Each sheet of data the submitter wishes to restrict must be marked with the following legend: "Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this submission."

Number of Copies Required and Marking of Submission

Each submission should be provided in one (1) original and nine (9) copies, and should clearly identify itself as a submission under this announcement by carrying the following legend on its face page:

This submission is provided in response to the DOE Program Announcement for Information Regarding Emerging Clean Coal Technologies.

Submission Preparation Costs

The Department is under no obligation to pay for any costs associated with the preparation of Statements of Interest or Informational Proposals.

Availability of Appropriations and Intent to Award

Funds are not available for support of submissions received under this announcement. Further, the Department does not intend to enter into contract awards with interested parties; rather, submissions are to be used solely for the purpose of analysis and report to Congress.

DATE: The deadline date for receipt of submissions at the addresses identified below is 3:30 p.m., e.s.t., on January 18, 1985.

ADDRESSES: Mailed submissions should be addressed to: Deputy Director for Coal Utilization, Advanced Conversion and Gasification; Fossil Energy, U.S. Department of Energy; FE–20, GTN; Washington, D.C. 20545.

Hand-delivered submissions should be brought Monday through Friday, except Federal holidays, between the hours of 8:30 a.m. to 3:30 p.m., to: North Lobby, U.S. Department of Energy, MD

Route 118; Germantown, Maryland.
ATTN: Fossil Energy, FE–20.

FOR FURTHER INFORMATION CONTACT:

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Issued in Washington, D.C., November 15, 1984.

Donald L. Bauer,

Acting Assistant Secretary, Fossil Energy.

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