

# Federal Register

Tuesday  
December 4, 1984



## Selected Subjects

- Animal Drugs**
  - Food and Drug Administration
- Aviation Safety**
  - Federal Aviation Administration
- Electronic Funds Transfers**
  - Federal Reserve System
- Endangered and Threatened Species**
  - Fish and Wildlife Service
- Fisheries**
  - National Oceanic and Atmospheric Administration
- Food Ingredients**
  - Food and Drug Administration
- Grant Programs—Natural Resources**
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- Hazardous Waste**
  - Environmental Protection Agency
- Marine Resources**
  - National Oceanic and Atmospheric Administration
- Mortgage Insurance**
  - Housing and Urban Development Department
- Organization and Functions (Government Agencies)**
  - Small Business Administration
- Postal Service**
  - Postal Service

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

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### Savings and Loan Associations

Federal Home Loan Bank Board

### Small Businesses

Small Business Administration

### Truth in Lending

Federal Reserve System

### Voting Rights

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# Rules and Regulations

Federal Register

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

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

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 101

[Rev. 2—Amdt 39]

#### Delegations of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

**SUMMARY:** The Administrator has approved a proposal for delegation of authority changes affecting field positions from the Office of External Awards. These changes include the establishment of uniform levels of delegated procurement authority for Regional Administrators, Deputy Regional Administrators, and Assistant Regional Administrators for Administration. Approved changes for other field positions include delegated procurement authority utilizing S.F. 1402's "Certificates of Appointment" on which are indicated the specific Contract Officer's scope of authority. Additionally, authority is given Assistant Regional Administrators for Administration (ARA/A's) to be accountable for all other administrative procurement positions in their respective regions certified as Contract Officers under the Federal Acquisition Regulations, Subparts 1.601 through 1.604.

EFFECTIVE DATE: December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** Ronald Allen, Information Resources Management Branch, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Telephone No. (202) 653-8538.

**SUPPLEMENTARY INFORMATION:** Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 are not

required and this amendment to Part 101 is adopted without resort to those procedures.

#### List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedures, Organization and functions (Government agencies).

#### PART 101—ADMINISTRATION

For the reasons set forth in the preamble and pursuant to authority in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3-2 is amended as set forth below:

##### § 101.3-2 [Amended]

\* \* \* \* \*

1. Part X.I.e., existing subparagraphs (1) through (19) are deleted and subparagraphs (1) through (6) are added as follows:

	Open market	Federal supply schedule (FSS)
(1) Regional Administrators.....	\$25,000	( <sup>1</sup> )
(2) Deputy Regional Administrators.....	25,000	( <sup>1</sup> )
(3) Assistant Regional Administrators for Administration (ARA/A's) *.....	25,000	( <sup>1</sup> )
(4) District Directors.....	2,500	\$2,500
(5) Deputy District Directors.....	2,500	2,500
(6) Branch Managers.....	2,500	2,500

<sup>1</sup> Unlimited.  
<sup>2</sup> ARA/A's (within their respective regions) are accountable for all Contract Officers certified under Federal Acquisitions Regulations (FAR), Subparts 1.601 through 1.604, using S.F. 1402, "Certificate of Appointments."

Dated: November 27, 1984.

James C. Sanders,  
 Administrator.

[FR Doc. 84-31595 Filed 12-3-84; 9:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 84-CE-35-AD, Amendment 39-4958]

#### Airworthiness Directives; Beech 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to certain models of the

Beech 200 series airplanes which requires inspection and repair of wing fuel bay upper panels. Entry of moisture through blind fastener rivets in the outer skin of the panels causes corrosion which results in debonding of these panels. Structural integrity of the panel may be impaired. The required action will correct any existing debonding and prevent entry of moisture which could result in additional debonding.

EFFECTIVE DATE: December 11, 1984.

Compliance: As prescribed in the body of the AD.

**ADDRESSES:** Beech Service Bulletin No. 2040 and Beech Service Instructions No. C-12-0094 applicable to this AD may be obtained from Beech Aircraft Corporation, Wichita, Kansas 67201. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

**SUPPLEMENTARY INFORMATION:** As early as April 1983, Beech began receiving reports of wrinkled upper wing panels in the area bounded by the fuselage, nacelle, front spar, and rear spar. This area is one piece of all-aluminum bonded honeycomb sandwich which serves as the fuel bay upper cover, as well as a load-carrying structural member. Debonding of the face sheet from the honeycomb core causes the visible wrinkling. The debonding is caused by moisture leaking into the honeycomb via blind fasteners (rivets) in the outer face sheet of the panel. The moisture causes corrosion to grow inside the honeycomb, which attacks the face sheet bonds. Without corrective maintenance, the debonding can progress to a point where safe flight is jeopardized. Beech has developed inspection and repair schemes for affected civil and military versions of the Beech Model 200 series. The inspections consist basically of searching for debonded areas by the "coin tap" method. If debonding is detected, the panel is repaired by potting-in extra fasteners provided in Beech service kits designed for this

purpose. To preclude entry of moisture into the honeycomb area it is necessary to seal each blind fastener in the upper surface of the fuel bay upper panel on all affected airplanes, regardless of condition.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring inspection and repair of upper wing panels on certain Beech 200 series airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

**Note.**—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

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

**Beech:** Applies to Models 200 and B200 (serial nos. BB-614 thru BB-1192 except BB-627, BB-647, BB-665, BB-798, BB-823, BB-1139, BB-1158, BB-1167, BB-1179, and BB-1189); 200C and B200C (serial nos. BL-7 thru BL-66 and BL-68 thru BL-71); 200 CT and B200CT (serial nos. BN-1 thru BN-4); 200T and B200T (serial nos. BT-20 thru BT-26, BT-28, and BT-30); C-12D and FWC-12D (serial nos. BP-1, BP-7 thru BP-11, BP-22, and BP-24 thru BP-45); RC-12D (serial nos. GR-1 thru GR-10); and UC-12B (serial nos. BJ-1 thru BJ-66) airplanes certificated in any category.

Compliance: Required within the next 75 hours time-in-service or six calendar months, whichever occurs first, after the effective date of this AD, unless already accomplished:

To assure the continued structural integrity of the wing fuel bay upper panels, accomplish the following:

(a) Inspect the wing center section upper skin panels for possible debonding in accordance with Beech Service Bulletin No. 2040 (for civil registered airplanes) or Beech Service Instructions No. C-12-0094 (for military airplanes).

(1) If no debonding is detected, proceed to paragraph (b) below.

(2) If debonding is detected in either panel, the discrepant panel must be repaired by installation of Kit No. 101-4032-1 (L.H.) or 101-4032-3 (R.H.), prior to proceeding to paragraph (b) below.

(b) Seal all accessible blind rivets in both wing center section fuel bay upper panels as described in Service Bulletin 2040 or Service Instructions C-12-0094 (as applicable).

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used, if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

This amendment becomes effective on December 11, 1984.

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

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 84-31570 Filed 12-3-84; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-NM-126-AD; Amdt. 39-4960]

**Airworthiness Directives: BFGoodrich Emergency Evacuation Slide/Rafts P/N's 7A1340 Series, 7A1342 Series, 7A1371 Series, 7A1373 Series, 7A1437 Series, 7A1439 Series, 7A1447 Series, and 7A1448 Series, Installed in Boeing Model 747 Airplanes in Accordance With Supplemental Type Certificates (STC) SA574GL, SA575GL, SA744GL, or SA745GL**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires the inspection and replacement of girt bar attachment assemblies of BFGoodrich Emergency Evacuation Slide/Rafts installed in certain Boeing Model 747 airplanes in accordance with

supplemental type certificates. This AD is prompted by the failure of a girt bar attachment assembly during an emergency evacuation. The inspection and replacement procedure contained in this amendment are necessary to prevent additional failures of these slides/rafts when needed during an emergency evacuation of the airplane.

**DATES:** Effective December 17, 1984.

Compliance is required within 15 days after the effective date of this AD, unless already accomplished.

**ADDRESSES:** The applicable service bulletin may be obtained from BFGoodrich Company, Attn: Mr. David Smith, Dept. 1809, Bldg. 17F, 500 South Main Street, Akron, Ohio 44318; telephone (216) 374-2886. A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

**FOR FURTHER INFORMATION CONTACT:** Charles Smalley, Aerospace Engineer, Systems Equipment Branch, ACE-130C, FAA, Central Region, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7126.

**SUPPLEMENTARY INFORMATION:** During an emergency evacuation of a Boeing Model 747 airplane on November 16, 1984, the slide/raft installed at door Number One Left became detached and fell from the aircraft. Several passengers were using the slide/raft as it fell to the ground; one passenger required hospitalization as a result of injuries sustained during the fall. It was found that the thread holding the loops to the girt bar attachment assembly broke, which allowed the slide/raft to fall from the aircraft. A second slide/raft on the airplane which had the same style girt bar attachment assembly began to exhibit the same failure mode while being buffeted by the wind after the evacuation was completed. This style girt bar attachment assembly has been replaced with a new style on the currently manufactured slide/rafts. To prevent additional failures of this type, an airworthiness directive is being issued which requires the replacement of the old style girt bar attachment assemblies on BFGoodrich Emergency Evacuation Slide/Rafts, P/N's 7A1340 series, 7A1342 series, 7A1371 series, 7A1373 series, 7A1437 series, 7A1439 series, 7A1447 series, and 7A1448 series.

Since a situation exists which requires immediate adoption of this amendment, it is found that notice and public procedure hereon are impracticable and

good cause exists for making this AD effective in less than 30 days.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**BFGoodrich:** Applies to BFGoodrich Emergency Evacuation Slide/Rafts P/N's 7A1340 series, 7A1342 series, 7A1371 series, and 7A1373 series installed on Boeing Model 747-100 and 747-200B airplanes in accordance with Supplemental Type Certificate (STC) SA574GL, and on Boeing Model 747-100B, 747SR, and 747-300 airplanes in accordance with STC SA575GL; and BFGoodrich Emergency Evacuation Slide/Rafts P/N's 7A1437 series, 7A1439 series, 7A1447 series, and 7A1448 series installed on Boeing Model 747-100 and 747-200B airplanes in accordance with STC SA744GL, and on Boeing Model 747-100B, 747SR, and 747-300 airplanes in accordance with STC SA745GL. Compliance is required as indicated, unless already accomplished.

Inspect and replace, as required, the girt bar attachment assemblies in accordance with the following:

A. Within the next 15 days after the effective date of this airworthiness directive (AD), inspect the applicable slide/rafts and replace the girt bar attachment assemblies in accordance with the procedures contained in BFGoodrich Alert Service Bulletin 25-093, Revision 1, dated November 21, 1984, or subsequent FAA approved revisions.

B. Destroy the replaced girt bar attachment assemblies to preclude their installation at a later date.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA, Central Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to BFGoodrich Company, Attn: Mr. David Smith, Dept. 1809, Bldg. 17F, 500 South Main Street, Akron, Ohio 44318; telephone (216) 374-2886. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This amendment becomes effective December 17, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49

U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C 106(g) (Revised, Pub. L 97-449, January 12, 1983); and (14 CFR 11.89)

**Note.**—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft equipment. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on November 27, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-31572 Filed 12-3-84; 8:45 am]

**BILLING CODE 4910-13-M**

**TENNESSEE VALLEY AUTHORITY**

**18 CFR Part 1302**

**Nondiscrimination In Federally Assisted Programs of TVA; Effectuation of Title VI of the Civil Rights Act of 1964; Correction**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a number of errors contained in the final rule amending Part 1302 of TVA's regulations which was published May 15, 1984 (49 FR 20480). Part 1302 implements the requirements of Title VI of the Civil Rights Act of 1964, as amended, insofar as that title applies to programs which receive financial assistance from TVA. The corrections to the final rule were suggested by the Department of Justice and the Office of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**

William L. Osteen, Jr., Associate General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, (615) 632-4142.

**DATED:** November 27, 1984.

**W. F. Willis,**  
*General Manager.*

**PART 1302—[AMENDED]**

Accordingly, TVA is correcting the amendments to 18 CFR Part 1302, which appeared as FR Doc. 84-12967 at pages 20480-4 in the issue of May 15, 1984, as follows:

**§ 1302.13 Definitions [Redesignated as § 1302.3]**

1. By redesignating § 1302.13 (appearing at page 20481, column one) as § 1302.3 and by correcting it by adding quotation marks to the terms defined in paragraphs (a)-(d) as follows:

- \* \* \* \* \*
- (a) "TVA" \* \* \*
- (b) "Recipient" \* \* \*
- (c) "Assistant Attorney General" \* \* \*
- (d) "Title VI" \* \* \*

**§ 1302.7 Compliance reviews and conduct of investigations.**

2. By correcting § 1302.7 by changing the reference to "paragraph (b)(5)" to "paragraph (b)(6)" where it appears in § 1302.7(b)(3)(iii) in column two of page 20482; by ending paragraph (b)(4) (page 20482, column two) with paragraph (iii), the end of which is revised to read " \* \* \* made." instead of " \* \* \* made; and,"; and by redesignating paragraph (b)(4)(iv) as paragraph (b)(5), and revising the paragraph to read as follows:

\* \* \* \* \*

(b) \* \* \*

(5) TVA's General Manager may extend the 180-day period set out in paragraph (b)(4) of this section for good cause shown.

In addition, § 1302.7 is further corrected by redesignating paragraphs (b)(5), (b)(6), and (b)(7) (page 20482, columns two and three) as paragraphs (b)(6), (b)(7), and (b)(8), respectively. Furthermore, the last sentence of § 1302.7(c)(4) (page 20483, column one) now reads:

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \* The determination is to be made no later than 14 days after conclusion of a 50-day negotiation period, whenever possible.

\* \* \* \* \*

The last sentence of § 1302.7(c)(4) is corrected to read:

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \* The determination is to be made no later than 14 days after conclusion of a 50-day negotiation

period. TVA's General Manager may extend the 14-day period for good cause shown.

§ 1302.8 Procedure for effecting compliance.

3. By correcting paragraph (b) of § 1302.8 (page 20483, column two) by adding the following phrase to the end of the paragraph:

(b) \* \* \* and for such purposes, the term "recipient" shall be deemed to include one which has been denied financial assistance.

§ 1302.10 [Redesignated as § 1302.11]

4. By redesignating § 1302.10 as § 1302.11.

[FR Doc. 84-31668 Filed 12-3-84; 8:45 am]  
BILLING CODE 8120-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 632

Job Training Partnership Act: Indian and Native American Employment and Training Programs; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Final designation procedures for grantees; correction.

**SUMMARY:** This document corrects a rule-related notice that appeared in the Federal Register of Tuesday, October 23, 1984. The wording at page 42561 incorrectly appeared to permit all applicants to request to serve only the members of specific tribes, rather than all Native Americans residing in an area.

**EFFECTIVE DATE:** October 23, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, 601 D Street, NW, Room 6122, Washington, D.C. 20213. Phone: (202) 376-6225.

**SUPPLEMENTARY INFORMATION:** The following corrections are made in Federal Register Doc. 84-27925 appearing on page 42559 in the issue of October 23, 1984:

On page 42561, Section II of the notice contained instructions for requesting specific population groups within a county and a sample county described as "Beaumont (only members of Aztec Tribe)." The Department of Labor wishes to make it known that these references were intended to apply only

to States of Oklahoma and Hawaii. Grantees in all other States are required to serve all eligible Native Americans residing in their assigned areas. The Department has maintained this policy for many years for the purposes of avoiding fragmentation of geographic areas.

This policy was restated clearly in the referenced Federal Register notice, under **SUPPLEMENTARY INFORMATION**. It applies whether the area is an entire county, only the reservation part of a county, or only the off-reservation part of a county. Applicants should be cognizant of this when preparing their final Notice of Intent under 20 CFR 632.11, which must be postmarked by January 1, 1985 or delivered no later than close of business on January 2, 1985.

Signed at Washington, D.C. this 27th day of November 1984.

Paul A. Mayrand,  
Director, Office of Special Targeted Programs.

[FR Doc. 84-31646 Filed 12-3-84; 8:45 am]  
BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 77G-0007]

Direct Food Substances Affirmed as Generally Recognized as Safe; Lactase Enzyme Preparation From *Kluyveromyces Lactis*

AGENCY: Food and Drug Administration.

ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is affirming that a lactase enzyme preparation derived from the yeast *Kluyveromyces lactis* is generally recognized as safe (GRAS) for use in the production of lactase-treated milk and lactose-reduced milk. This action responds to a petition filed by SugarLo Co.

**DATES:** Effective December 4, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 184.1388 effective on December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** Damon Larry, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

**SUPPLEMENTARY INFORMATION: Introduction**

Under the procedures described in § 170.35 (21 CFR 170.35), SugarLo Co., P.O. Box 1017, Atlantic City, NJ 08404, submitted a petition (GRASP 6G0077), requesting that FDA affirm as GRAS the use of a lactase enzyme preparation derived from the yeast *Kluyveromyces lactis* (*K. lactis*) (previously named *Saccharomyces lactis*) to produce lactase-treated milk, in which there is less lactose than regular milk, and lactose-reduced milk, in which 70 percent or more of the lactose has been converted to glucose and galactose.

FDA published a notice of the filing of this petition in the Federal Register of April 19, 1977 (42 FR 20348), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. FDA did not receive any comments in response to that notice. However, on April 30, 1979, a manufacturer of lactase enzyme preparations submitted a number of published reports on the occurrence of *K. lactis* in food to augment the safety data in the petition. FDA considers this submission to be a comment on the petition and has reviewed the reports submitted in the comment in its evaluation of the petition.

Lactase enzyme preparation from *K. lactis* is a soluble enzyme preparation. It is composed of the cellular fraction of *K. lactis* that contains lactase enzyme activity, residual amounts of processing aids used to separate this cellular fraction from the yeast cells, and substances added to this cellular fraction as stabilizers or diluents. The lactase enzyme preparation contains the enzyme B-galactoside galactohydase which catalyzes the hydrolysis of the disaccharide lactose to the monosaccharides glucose and galactose.

Lactase enzyme preparation from *K. lactis* has been commercially available to food processors in the United States since 1972 and since 1976 has been sold at the retail level for home use. This enzyme preparation also has been used experimentally in the United States in the manufacture of cheese. Lactose-reduced milk prepared from lactase enzyme preparation from *K. lactis* has been sold in some U.S. markets since 1978.

In evaluating this petition to affirm as GRAS the use of lactase enzyme preparation from *K. lactis* as a food ingredient, the agency has considered five aspects of its manufacture and use: (1) The source of the lactase enzyme

preparation, (2) the production and purification of the lactase enzyme preparation, (3) the use of the lactase enzyme preparation in food, (4) residual levels of the lactase enzyme preparation that may occur in the food, and (5) the safety of the lactase enzyme preparation and of the resulting hydrolyzed lactose (i.e., lactose that has been enzymatically converted to glucose and galactose).

#### Source of Lactase Enzyme Preparation

1. The source of this enzyme preparation is the yeast *K. lactis*. According to published reports included in the petition or submitted in the comment on the petition, *K. lactis* has been isolated from yogurt, certain cheeses, and fermented milks such as kefir. Published information shows that *K. lactis* appears to act synergistically with bacteria in yogurt culture. In addition, during cheese culture, *K. lactis* produces carbon dioxide, which is necessary to open the cheese (that is, to create air pockets in the cheese) before brining. This information shows that *K. lactis* is a normal, even necessary, constituent of many cultured dairy products. Published information in the petition also shows that the morphology life-cycle, and nutritional requirements of *K. lactis* have been well-characterized.

#### Production and Purification of the Lactase Enzyme Preparation

2. The methods by which microbial lactase enzyme preparations are made have been the subject of numerous scientific reviews (e.g., Refs. 1 through 4). Methods of partially purifying lactase enzyme preparations from various species of *Kluyveromyces*, including *K. lactis*, are described in Refs. 5 and 6.

The petition describes the commercial production of lactase enzyme preparation from *K. lactis*. Under the method of manufacture described in the petition, *K. lactis* is maintained as a pure culture under conditions that minimize any genetic changes and is grown in a pure culture fermentation. At the end of the fermentation, the cells are collected, washed with water, and ruptured with octanol. The insoluble cellular fragments are removed from the liquid fraction and discarded. Ethanol is then added to the liquid fraction to solidify the proteins, which include the enzyme. This insoluble material is separated from the liquid, washed with ethanol, and dried. Under this method of manufacturing this enzyme preparation, the processing aids used to separate the cellular fraction of the yeast cell that contains the enzyme activity and the substances added to this cellular fraction to stabilize or dilute the enzyme

preparation are either GRAS ingredients or approved food additives.

The petition shows that the enzyme preparation produced by this method of manufacture does not contain any viable yeast cells. It also shows that lactase enzyme preparation from *K. lactis* produced in this manner meets the general and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d Ed. (1981), and that this substance catalyzes the reaction described for lactase in the Food Chemicals Codex. The petition further shows that when lactase enzyme preparation from *K. lactis* is made under the method of manufacture that it describes, there is little variation in the specific activities of individual batches of enzyme preparation.

#### The Use of Enzyme Lactase Preparation in Food

3. Lactase enzyme preparation from *K. lactis* is added to milk to convert the lactose in the milk to glucose and galactose. Milk treated with the preparation therefore contains less lactose than regular milk. Milk with a reduced lactose content is sold to people with lactose intolerances.

#### Residual Levels of Lactase Enzyme from *K. lactis* That May Occur in Food

4. The petition contains information showing that the use of lactase enzyme preparation from *K. lactis* under current good manufacturing conditions to produce lactose-reduced milk results in levels of the enzyme preparation ranging up to 375 parts per million in the finished food.

According to the information in the petition, the level of the enzyme preparation from *K. lactis* used will vary depending upon the degree of hydrolysis desired, the incubation conditions, and the duration of incubation. Data in the petition show that the enzymatic activity of lactase enzyme preparation from *K. lactis* declines under acidic conditions and ceases when this lactase enzyme preparation is exposed to pH below 2. These data also demonstrate that this enzyme preparation shows maximal activity in the temperature range of 25 to 40 °C. The enzymatic activity of this enzyme preparation decreases at temperatures below 25 °C and ceases at temperatures of 60 °C or above.

According to information in the petition, mixtures of lactase enzyme preparation from *K. lactis* may be incubated at 35 °C for 6 hours or less or at refrigeration temperatures (i.e., 7 °C or below) for 24 hours or more to produce lactose-reduced milk, in which at least 70 percent of the lactose is

converted to glucose and galactose. If a lesser degree of lactose hydrolysis is desired, adjustments may be made in the level of lactase enzyme preparation that is added to the milk or in the length of the incubation of the mixture of milk and lactase enzyme preparation.

The variability of the conditions of use for lactase enzyme preparation from *K. lactis* suggests that there are no typical levels of use for this preparation. Aside from the finding that use of the enzyme preparation will result in no more than 375 parts per million of the enzyme preparation in the finished food, there is no set of percentage-by-weight use levels for addition of this lactase enzyme preparation to food that would be applicable under the wide variety of conditions under which this enzyme product is used.

#### Safety of Use of Lactase Enzyme Preparation and of the Resulting Hydrolyzed Lactose

5-A. The petition contains unpublished animal feeding studies of lactase enzyme preparation from *K. lactis* that show that this enzyme preparation was not harmful under the conditions of the test. However, FDA finds that the design of these animal feeding studies does not meet the criteria established in the "Toxicological Principles for the Safety Assessment of Direct Food Additives and Color Additives Used in Food" (1982). Therefore, these animal feeding studies do not constitute sufficient evidence to support the petition.

FDA nonetheless finds that sufficient information is available to establish the safety of lactase enzyme preparation from *K. lactis*. The agency is basing this finding on evidence that the yeast *K. lactis* is safe, evidence that the materials used to make the enzyme preparation are safe, and information about the amount of exposure to this lactase enzyme preparation and to dried *K. lactis* yeast.

#### Safety of the Yeast

5-B. The comment on GRASP 6G0077 contains published information that establishes the safety of the yeast *K. lactis*. Among this published information is information that establishes that *K. lactis* is a normal, even necessary component of many cultured dairy products, and that no reports of toxicity or pathogenicity have ever been associated with the presence of *K. lactis* in food (Refs. 7 and 8). Additionally, the comment includes published studies in which subjects were fed 10 grams or more per day of dried *K. lactis* as a dietary supplement in a variety of

clinical situations (Refs. 9 and 10). These studies also did not reveal any health hazard attributable to the consumption of dried *K. lactis*. Finally, FDA is aware that dried *K. lactis* is consumed as a dietary supplement in Europe (Ref. 9).

#### Safety of Materials Used to Make the Enzyme Preparation

5-C. FDA finds that the process of extracting the lactase-containing cellular fraction of *K. lactis* during the manufacture of the lactase enzyme preparation does not create any basis for concern about the safety of the preparation. As discussed in paragraph 2 above, the cellular fraction of the yeast that contains lactase enzyme activity is separated from the yeast cell by physical means. As explained in paragraph 2, under the conditions described in the petition, the solvents used in the extraction of the lactase-containing cellular fraction of *K. lactis* are unlikely to change the cellular fraction in any chemically significant way. Moreover, as stated above, information in the petition shows that the substances used to extract the cellular fraction or to stabilize or to dilute the lactase enzyme preparation are either GRAS ingredients or food additives approved for this use.

#### Exposure Data

Use information contained in the petition demonstrates that consumption of the lactase enzyme preparation from *K. lactis* (including diluents and stabilizers as well as cellular material derived from *K. lactis*) resulting from its use in milk will not exceed 250 milligrams per person per day (Ref. 11). Even if it is assumed that the entire enzyme preparation is composed of cellular material, this amount of cellular material is much less than the amount of such cellular material that was consumed by the subjects in the clinical studies of the use of dried *K. lactis* as a dietary supplement (Refs. 9 and 10). Thus, because the level of exposure to this cellular material from consuming dried *K. lactis* as a dietary supplement is safe, and because that exposure is much greater than the level of exposure to the cellular material that results from the consumption of milk treated with lactase enzyme preparation from *K. lactis*, FDA concludes that the levels of lactase enzyme preparation from *K. lactis* used in the production of lactase-treated and lactose-reduced milk are safe.

#### Other Information

The petition also contains published clinical studies on the consumption of lactose-reduced milk that has been

prepared with this enzyme preparation. These studies show that lactose-reduced milk, which contains residual amounts of the enzyme preparation, has been ingested by lactose intolerant people without ill effects. Data in the petition also show that the monosaccharides galactose and glucose occur in equal proportions in lactose-reduced milk, and that the quantity of glucose and galactose in lactose-reduced milk does not exceed the quantity of these monosaccharides derived from lactose that is ingested when an equal volume of regular milk is consumed. FDA finds that this information corroborates its conclusion that lactase enzyme preparation from *K. lactis* is safe for use in the production of lactase-treated milk and lactose-reduced milk.

#### Conclusions

The agency has evaluated all the information related to the use of lactase enzyme preparation from *K. lactis* and has reached the following conclusions:

1. The enzyme preparation is not GRAS based upon history of common use in food.
2. The enzyme preparation is GRAS based upon scientific procedures. This conclusion is based upon FDA's evaluation of information provided in published studies that relate to the safety of the yeast *K. lactis*, the procedures used to produce the enzyme preparation, and the safety of milk that has been treated with the enzyme product.
3. Lactase enzyme preparation from *K. lactis* is technically effective for producing lactase-treated milk or lactose-reduced milk.
4. It is both impractical and unnecessary for FDA to delineate the levels of lactase enzyme preparation from *K. lactis* used in milk. FDA has determined that the amount of active enzyme that is added to milk is variable because of the variable conditions of use, and that a set of percentage-by-weight levels of use for lactase enzyme preparation would not be useful. In addition, there are no safety concerns to warrant establishment of use levels for lactase enzyme preparation from *K. lactis*.

Therefore, the agency is affirming that lactase enzyme preparation from *K. lactis* is GRAS when used under current good manufacturing practice conditions in accordance with § 184.1(b)(1). To make clear, however, that the affirmation of the GRAS status of this substance is based on the evaluation of limited uses, the regulation sets forth the technical effect and food uses of this ingredient that FDA evaluated.

#### Environmental Effects

The agency has determined pursuant to 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### Economic Effects

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that the rule is not a major rule as defined by that Order. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

#### References

The following information has been placed on display with the Dockets Management Branch (address above).

1. Pomeranz, Y., "Lactase (Beta-D-Galactosidase) I. Occurrence and Properties," *Food Technology*, 68:682-687, 1964.
2. Wallenfels, K., and O.P. Malhorta "B-Galactosidase (Crystalline)," in "Methods in Enzymology," Vol. V, S.P. Colowick and N.O. Kaplan, eds., Academic Press, New York, pp. 212-219, 1960.
3. Underkofler, L.A., R.R. Barton, and S.S. Rennert, "Microbiological Process Report," *Applied Microbiology*, 8:212-221, 1956.
4. Beckhorn, E.J., M.D. Labbee, and L.A. Underkofler, "Production and Use of Enzymes for Food Processing," *Journal of Agriculture and Food Chemistry*, 13:30-34, 1965.
5. Beirmann, L. and M.D. Glantz, "Isolation and Characterization of B-Galactosidase from *Saccharomyces lactis*," *Biochimica et Biophysica Acta*, 1:67:373-377, 1968.
6. Fenton, D.M., "Solvent Treatment for B-D-Galactosidase Release from Yeast Cells," *Enzyme Microbiological Technology* 4:229-232, 1982.
7. Memorandum dated December 13, 1983, from P. Mislivec to S. Shibko, "Saccharomyces lactis Lactase Enzyme."
8. Memorandum dated June 5, 1978, from P. Mislivec to V. Prunier, "Lactase Enzyme Derived from *Kluyveromyces lactis*."
9. Vignaud, Y., "Levure Lactique," *Revue de l'Institut Pasteur de Lyon*, 4:147-165, 1971, translation provided by G.B. Fermentation Industries, Inc., as part of a comment on GRASP 6C0077.
10. Gervais, Cl., "Effet bénéfique d'une levure lactique chez l'enfant Bialfrais dénutri," *Bulletin de la Société de Pathologie Exotique*, 66:445-450, 1973, translation provided by G.B. Fermentation Industries, Inc., as part of a comment on GRASP 6C0077.
11. Memorandum dated March 15, 1978, from L.W. Schroeder to V.G. Prunier, "Review of

Submissions of 1-19-78 and 12/5/77 Lactose Enzyme (LE) from *Kluyveromyces lactis*."

**List of Subjects in 21 CFR Part 184**

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 184 is amended by adding new § 184.1388, to read as follows:

**PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE**

**§ 184.1388 Lactase enzyme preparation from *Kluyveromyces lactis*.**

(a) This enzyme preparation is derived from the nonpathogenic, nontoxicogenic yeast *Kluyveromyces lactis* (previously named *Saccharomyces lactis*). It contains the enzyme B-galactoside galactohydase (CAS Reg. No. CBS 683), which converts lactose to glucose and galactose. It is prepared from yeast that has been grown in a pure culture fermentation and by using materials that are generally recognized as safe or are food additives that have been approved for this use by the Food and Drug Administration.

(b) The ingredient meets the general and additional requirements for enzyme preparations in the Food Chemicals Codex, 3d Ed. (1981), p. 107-110, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in §170.3(o)(9) of this chapter to convert lactose to glucose and galactose.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice. Current good manufacturing practice is to use this

ingredient in milk to produce lactase-treated milk, which contains less lactose than regular milk, or lactose-reduced milk, which contains at least 70 percent less lactose than regular milk.

*Effective date.* This regulation shall become effective December 4, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: November 5, 1984.

**William F. Randolph,**  
*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 84-31583 Filed 12-3-84; 8:45 am]

**BILLING CODE 4160-01-M**

**21 CFR Part 510**

**New Animal Drugs; Change of Sponsor Name**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a sponsor name change for several new animal drug applications (NADA's) from Byk-Gulden, Inc., to Altana, Inc.

**EFFECTIVE DATE:** December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** John W. Borders, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

**SUPPLEMENTARY INFORMATION:** Byk-Gulden, Inc., 60 Baylis Rd., Melville, NY 11747, advised the Center for Veterinary Medicine of a change in corporate name to Altana, Inc. This is an administrative change which does not in any other way affect the approval of the firm's NADA's. The regulations in 21 CFR 510.600(c) are amended accordingly.

**List of Subjects in 21 CFR Part 510**

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

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.33), Part 510 is amended in § 510.600 in paragraph (c)(1) by removing the entry for "Byk-Gulden, Inc.," and by alphabetically adding a new entry for "Altana, Inc.," and in paragraph (c)(2) in the entry for "025463" by removing the sponsor name "Byk-

Gulden, Inc.," and inserting in its place "Altana, Inc.," to read as follows:

**PART 510—NEW ANIMAL DRUGS**

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

Firm name and address	Drug labeler code
Altana, Inc., 60 Baylis Rd., Melville, NY 11747	025463

(2) \* \* \*

Drug labeler code	Firm name and address
025463	Altana, Inc., 60 Baylis Rd., Melville, NY 11747

*Effective date.* December 4, 1984.  
(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))  
Dated: November 28, 1984.

**Marvin A. Norcross,**  
*Acting Associate Director for Scientific Evaluation.*

[FR Doc. 84-31584 Filed 12-3-84; 8:45 am]

**BILLING CODE 4160-01-M**

**21 CFR Part 558**

**Animal Drugs, Feeds, and Related Products; Change of Sponsor**

*Correction*

In FR Doc. 84-26551 beginning on page 39539 in the issue of Tuesday, October 9, 1984, make the following correction:

On page 39539, third column, under "Part 558", "\$ 558.321" should have read "\$ 558.325".

**BILLING CODE 1505-01-M**

**21 CFR Part 1020**

[Docket No. 76N-0308]

**Diagnostic X-Ray Systems and Their Major Components; OMB Approval and Effective Date**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the Office of Management and

Budget (OMB) has approved the information collection requirements in the final rule amending the performance standard for diagnostic x-ray systems and their major components to add requirements concerning computed tomography x-ray (CT) systems. FDA also is affirming the effective date of the amendments.

**EFFECTIVE DATE:** September 3, 1985, except for § 1020.30 (a), (b)(36)(iii)-(v), (58)-(62), (h)(3)(iv)-(viii), and (n); §§ 1020.31 and 1020.32 (introductory texts); § 1020.33 (a), (b), and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2), all of which are effective November 29, 1984.

**FOR FURTHER INFORMATION CONTACT:** Joseph Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of August 31, 1984 (49 FR 34698), FDA published a final rule amending the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32) and adding new requirements in 21 CFR 1020.33. The final rule adds new provisions to the standard to address the radiation safety aspects of CT systems. The rule requires manufacturers of CT systems to provide user information to purchasers of CT systems concerning conditions of use, dose, and imaging.

#### OMB Approval

In paragraph 78 of the preamble to the final rule, FDA advised that the collection of information requirements contained in § 1020.33 (c), (d), (g), and (j) would be submitted to OMB for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The agency also stated that the requirements under § 1020.33 (c), (d), (g), and (j) would not be effective until FDA obtained OMB approval of these information collection requirements. FDA also advised that it would publish a notice in the Federal Register concerning OMB approval of the requirements.

On October 24, 1984, OMB approved without change the collection of information requirements, under OMB control number 0910-0025.

#### List of Subjects in 21 CFR Part 1020

Electronic products, Ionizing radiation, Medical devices, Radiation protection, Standards, Television receivers, X-rays.

### PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

#### § 1020.33 [Amended]

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f) and under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040-1042 as amended, 1049-1051 as amended, 1055-1056 as amended (21 U.S.C. 321, 351, 352, 371)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1020 is amended in § 1020.33 *Computed tomography (CT) equipment* in paragraphs (c), (d), (g), and (j) by adding the number "0910-0025" at the end of the parenthetical statement appearing at the end of each paragraph.

**Effective date.** This regulation shall be effective September 3, 1985, except for the following, which shall be effective November 29, 1984: § 1020.30 (a), (b)(36)(iii)-(v), (58)-(62), (h)(3)(vi)-(viii), and (n); §§ 1020.31 and 1020.32 (introductory texts); § 1020.33 (a), (b), and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2).

(Sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f); secs. 201, 501, 502, 701, 52 Stat. 1040-1042 as amended, 1049-1051 as amended, 1055-1056 as amended (21 U.S.C. 321, 351, 352, 371))

Dated: November 27, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-31582 Filed 11-29-84; 10:43 am]

BILLING CODE 4160-01-W

### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

#### 24 CFR Part 234

[Docket No. R-84-1215; FR-2030]

#### Condominium Mortgage Insurance: Maximum Mortgage Amounts for Nonoccupant Mortgagors

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Department's regulation prescribing maximum mortgage limits for nonoccupant owners of HUD-insured condominium units. This amendment is promulgated to conform HUD regulations to the National Housing Act,

as amended by the Housing and Urban-Rural Recovery Act of 1983.

**EFFECTIVE DATE:** March 29, 1985.

**FOR FURTHER INFORMATION CONTACT:** Brian Chappelle, Acting Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6720. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The National Housing Act (NHA) (12 U.S.C. 1701-1749) authorizes HUD/Federal Housing Administration (FHA) to insure mortgage for single family residences, including one-family units in condominiums [see section 234 of the NHA].

HUD/FHA insures lenders against losses on insured home mortgages, thereby lowering lenders' risk and encouraging a flow of credit for homeownership. The Department's insurance program has increased the opportunity for homeownership—one of the fundamental objectives of the Department. The limits on how much the Department may insure are set by the National Housing Act. Maximum mortgage amounts depend on whether the buyer intends to live in the home, the appraised value of the property, the number of family units in the dwelling and the prevailing housing prices in the area. The insured mortgage amount cannot exceed a fixed percentage of the appraised value, called the loan-to-value ratio.

Section 425 of the Housing and Urban-Rural Recovery Act of 1983 (1983 Act) amended the NHA to increase the maximum insurable amount of a mortgage on a dwelling owned by a nonoccupant mortgagor. Today's final rule implements section 425 for condominiums. HUD implemented this provision for single family residences in a final rule published on March 30, 1984 (see 49 FR 12693, 12696), but did not include amendments implementing section 425 of the 1983 Act for condominium units in that rule.

The Department is issuing today's rule as a final rule. As a matter of policy, the Department submits most of its rulemakings for public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that good cause exists for publishing this document as a final rule without public comment. The Department believes that prior public comment is unnecessary, because the revision to the Department's regulation grants a benefit to a class of

persons potentially eligible to participate in a HUD program.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981.

Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export market.

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule merely carries out a statutory policy and does not impose any new administrative or economic burdens on small entities.

This rule was listed as item number 89 in the Department's Semiannual Agenda of Regulations published on October 22, 1984 (49 FR 41684, 41710) under Executive Order 12291 and the Regulatory Flexibility Act.

The applicable Catalog of Federal Domestic Assistance program number is 14.133.

#### List of Subjects in 24 CFR Part 234

Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR Part 234 as follows:

#### PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Section 234.27 is amended by revising

paragraphs (d)(1) and (d)(2) as set forth below:

#### § 234.27 Maximum mortgage amounts.

(d) \* \* \*

(1) The lesser of the amount computed under paragraph (a) of this section or 85 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance; or

(2) The amount computed under paragraph (a) of this section (even if it is greater than 85 percent of the appraised value of the family unit as of the date the mortgage is accepted for insurance), if the mortgage covers a unit and the Commissioner is furnished with certificates indicating that:

(i) The mortgagor will not rent (except for a rental term of not less than 30 days and not more than 60 days), sell (except where the insured mortgage is paid in full as an incident of the sale), or occupy the family unit before the 18th amortization payment of the mortgage except with the prior written approval of the Commissioner;

(ii) Not less than 15 percent of the original principal amount of the mortgage proceeds has been deposited in an escrow, trust, or special account;

(iii) The mortgagor agrees that, if the family unit is not sold before the due date of the 18th amortization payment of the mortgage to a purchaser, acceptable to the Commissioner, who will occupy the family unit, assume, and agree to pay the mortgage indebtedness, the amount held in escrow, trust, or special account will be applied in reduction of the outstanding principal amount of the mortgage as of the due date of the 18th amortization payment of the mortgage; and

(iv) The mortgagee agrees that any portion of the fund held in escrow, trust, or special account, not applied to the mortgage in accordance with the provisions of this paragraph, shall be deducted from the amount of the insurance benefits to which the mortgagee would otherwise be entitled if a claim for insurance benefits is filed.

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

Dated: November 28, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 84-31605 Filed 12-3-84; 8:45 am]

BILLING CODE 4210-01-M

#### POSTAL SERVICE

#### 39 CFR Parts 10 and 111

#### Incorporation by Reference, Conformance of Regulations to Current Practice

AGENCY: Postal Service.

ACTION: Final rule.

**SUMMARY:** This final rule removes certain obsolete references in existing domestic and international postal regulations. The obsolete references provide that the Director of the Federal Register's approval of the incorporation by reference of certain documents will expire unless renewed and extended by the Director upon annual application by the Postal Service. Current Federal Register practice in relation to documents incorporated by reference is that there is no automatic annual expiration of approval, and therefore there is no need for an agency to reapply each year for approval. A document that meets the requirements of 1 CFR Part 51 will be approved for incorporation by reference if requested, and no formal annual review of that approval is required. For these reasons the Postal Service is revising its regulations to conform to the current practice.

**EFFECTIVE DATE:** December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Kemp, (202) 245-4638.

#### List of Subjects in 39 CFR Parts 10 and 111

Incorporation by reference, Postal Service.

Accordingly, 39 CFR is amended as follows:

#### PART 10—INTERNATIONAL POSTAL SERVICE

1. Revise § 10.4 to read as follows:

#### § 10.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the International Mail Manual was approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51 on June 24, 1981.

#### PART 111—GENERAL INFORMATION ON POSTAL SERVICE

2. Revise § 111.4 to read as follows:

#### § 111.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the Domestic Mail Manual was approved by the Director of the Federal Register under 5

U.S.C 552(a) and 1 CFR Part 51 on March 29, 1979.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3218, 3403-3405, 3601, 3621; 42 U.S.C. 1973cc-13, 1973cc-14)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 84-31621 Filed 12-3-84; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 270

[SWH-FRL-2729-8]

### Hazardous Waste Management System: General; and EPA Administered Permit Programs; the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

**ACTION:** Notice of availability of technical corrections to EPA test manual; amendment to final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today making corrections to and updating the second edition of the test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1982) (EPA Publication No. SW-846) which was incorporated by reference into 40 CFR Parts 260 and 270 in the Federal Register on September 21, 1982 (47 FR 41563). Present references in 40 CFR Parts 260 and 270 to SW-846 are being amended to reflect these revisions to the test manual. These corrections and changes were made due to typographical errors in the original edition and for purposes of clarification.

**EFFECTIVE DATE:** December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** The RCRA Hotline at (800) 424-9346 toll free, or (202) 382-3000. For technical information contact David Friedman,

Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4770.

#### SUPPLEMENTARY INFORMATION:

##### I. Corrections to Test Methods Manual

EPA announced the availability of the second edition of its test methods manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1982) (EPA Publication No. SW-846) in the Federal Register on September 21, 1982 (47 FR 41563). Upon review and following questions received from the public, it was determined that several errors existed in the test methods manual. To alleviate confusion arising from apparent errors or confusing wording in the test methods, corrections and clarifications were deemed necessary.

Table 1 summarizes the corrections being made in the second edition of the methods manual.

TABLE 1.—CORRECTIONS FOR SW-846, 2ND EDITION

Method	Page and section No. of change	Reason for change
1110—Corrosivity Toward Steel	Page 3, section 4.5.2	Typographical error.
1310—Extraction Procedure (EP) Toxicity Test Method and Structural Integrity Test	Page 1, section 4.1	Glas-Col Apparatus Co. took over Kraft Apparatus
	Page 10, section 7.7.2	Typographical error.
3010—Acid Digestion Procedure for Flame Absorption Spectroscopy	Page 1, section 1.1	Clarification.
3030—Acid Digestion of Oils, Greases or Waxes	Page 1, section 1.1	This test method is inappropriate for high levels of barium and lead as precipitate forms.
3050—Acid Digestion of Sludges	Page 1, section 2.1	Barium was inadvertently left out of the discussion.
	Page 2, section 7.1	To be consistent with apparatus specified in Sect. 4.1 of this method.
	Page 3, section 7.5	Barium was inadvertently left out of the discussion.
	Page 3, section 7.5	Typographical error.
	Page 3, section 7.6	Barium was inadvertently left out of the discussion.
3060—Alkaline Digestion	Page 2, section 5.6	Typographical error.
	Page 3, section 8.1	Inappropriate reference.
5030—Purge-and-Trap Method	Page 4, table 1	Column for Method 8015 inadvertently left out of the discussion.
7061—Arsenic (Atomic Absorption, Gaseous Hydride)	Page 4, section 7.1	This procedure should be run on a digested sample rather than directly on the sample.
7080—Barium (Atomic Absorption, Direct Aspiration Method)	Page 1, section 2.2	Deuterium background correction is difficult above 400 nm.
7196—Hexavalent Chromium: Colorimetric Method	Page 2, section 4.2	Separatory funnels are not used in this method.
	Page 3, section 7.2.1	Clarification.
7197—Hexavalent Chromium: Chelation/Extraction	Page 2, section 5.4	Typographical error.
7471—Mercury in Solid or Semisolid Waste (Manual Cold-Vapor Technique)	Page 5	A handling method for solids or semisolids was not provided in the original version of method.
7741—Selenium (Atom Absorption, Gaseous Hydride)	Page 4, section 7.1.1	This procedure should be run on a digested sample rather than directly on the sample.
7760—Silver (Atomic Absorption, Direct Aspiration Method)	Page 3, section 7.2.1	This precaution was added due to comments received.
7761—Silver (Atomic Absorption, Furnace Method)	Page 3, section 7.2.1	This precaution was added due to comments received.
8020—Aromatic Volatile Organics	Page 1, section 2.1	Maximum sensitivity is necessary for the analysis of ground water. This may be achieved with the use of a photoionization detector.
	Page 1, section 2.1	FID achieves appropriate degree of sensitivity for waste analysis.
	Page 9, table 1	See reason for change in section 2.1.
8080—Organochlorine Pesticides and PCB's	Page 5, section 6.1	Clarification.
8150—Chlorinated Herbicides	Page 1, section 2.0	The Boron trifluoride/methanol option was inadvertently left out in the original version of this method.
	Page 6, section 5.7	Benzene was inadvertently left out of the discussion.
	Page 7, section 5.0	Necessary information required for change in Sect. 2.0 of this method.
	Page 10, section 7.1.2.8	This information is necessary for the use of Boron trifluoride/methanol.
	Page 10, section 7.1.2.9	This change is necessary in section numbering due to the insertion of new 7.1.2.8
	Page 11	This information is necessary for the use of Boron trifluoride/methanol.
9010—Total and Amenable Cyanide	Page 1, section 1	Autoanalyzer method is incorporated into this revised method.
	Page 1, section 2	Detection limit for colorimetric method is approximately one hundred times lower than titrimetric. The colorimetric method allows for less error since measurements are determined spectrophotometrically rather than by eye.
	Page 1, section 3	Fatty acids do not interfere with manual distillation and colorimetric analysis.
	Pages 1-2, section 4	The equipment specified is necessary to perform colorimetric analysis.

TABLE 1.—CORRECTIONS FOR SW-846, 2ND EDITION—Continued

Method	Page and section No. of change	Reason for change
	Page 2, section 5.....	AgNO <sub>3</sub> is not needed for the colorimetric method. Sulfamic acid solution: Reagent added to prevent organics and nitrites from forming cyanide under rigorous distillation conditions. Bismuth nitrite solution: Preferred reagent in preventing positive interference from sulfide. Lead acetate is a suspected carcinogen. Barbituric acid-chloramine-T complex used in place of AgNO <sub>3</sub> solution.
	Pages 4-6, section 7.0.....	Detection limit for colorimetric method is approximately one hundred times lower than titrimetric. The colorimetric method allows for less error since measurements are determined spectrophotometrically rather than by eye.

**II. Availability Of Updates**

The EPA manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," (1982) (EPA Publication No. SW-846) is incorporated by reference in several sections of EPA's regulations. Today's corrections to the test methods manual are now also incorporated by reference by virtue of their incorporation into this manual. This incorporation by reference was approved by the Director of the Federal Register on December 4, 1984.

These technical corrections will be referred to as "Update I to SW-846" and are available from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3228) (GPO Number 055-002-81001-2). Persons holding a subscription to the second edition of SW-846 will automatically receive this amendment. Others may purchase both the second edition of the manual and this amendment from the GPO.

EPA has determined under section 553(b) of the Administrative Procedures Act, 5 U.S.C. 553(b) that there is good cause for promulgating these amendments without prior notice. These amendments are entirely technical in nature and do not change any substantive requirement.

Dated: November 20, 1984.  
 Jack McGraw,  
*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 260—[AMENDED]**

1. The Authority citation for Part 260 reads as follows:

**Authority:** Secs. 1006, 2002(a), 3001 through 3007, 3010 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930 and 6974).

**§ 260.11 [Amended]**

2. Section 260.11 is amended by

revising the fourth reference in paragraph (a) to read as follows:

(a) \* \* \*

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984)]. The second edition of SW-846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3228, on a subscription basis.

**§ 260.21 [Amended]**

3. Section 260.21 is amended by removing the comment at the end of this section.

**PART 270—[AMENDED]**

4. The authority citation for Part 270 reads as follows:

**Authority:** Secs. 1006, 2002, 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927 and 6974).

5. Section 270.6 is amended by revising the first reference in paragraph (a) to read as follows:

**§ 270.6 References.**

(a) \* \* \*

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Second Edition, 1982 as amended by Update I (April, 1984)]. The second edition of SW-846 and Update I are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3228, on a subscription basis.

[FR Doc. 84-31607 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 271**

[SW-3-FRL-2730-1]

**Commonwealth of Virginia; Final Authorization of State Hazardous Waste Management Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final determination on the Commonwealth of Virginia's application for final authorization.

**SUMMARY:** Virginia has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Virginia's application and has made the final decision that Virginia's hazardous waste management program satisfies all of the requirements necessary to qualify for Final Authorization. Thus, EPA is granting final authorization to the State to operate its program in lieu of the Federal program.

**EFFECTIVE DATE:** Final Authorization for Virginia, for purposes of judicial review, shall be effective at 1:00 p.m. Eastern Standard Time on December 18, 1984.

**FOR FURTHER INFORMATION CONTACT:** John A. Armstead, Program Manager, State Programs Section, US EPA Region III, 6th and Walnut Streets, Philadelphia, PA 19106, (215) 597-7259.

**SUPPLEMENTARY INFORMATION:** Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must: (1) Be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of 42 U.S.C. 6226(b)).

On June 26, 1984, Virginia submitted a complete application to obtain final authorization to administer the RCRA program. On September 13, 1984, EPA published a tentative decision announcing that Virginia's hazardous waste program did satisfy all of the

requirements necessary for final authorization.

The Commonwealth agreed to maintain a level of effort in compliance and enforcement which ensures an effective program consistent with EPA's Compliance and Enforcement Strategy (June 12, 1984). Since the publication of the tentative determination, Virginia has shown the ability to maintain this level of performance and fulfilled the commitments included in the Memorandum of Agreement. Therefore, EPA has determined that the Commonwealth's hazardous waste program satisfies all the necessary requirements for final authorization. Further background on the tentative decision to grant authorization appears in Vol. 49 No. 170 FR 35966, September 13, 1984.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of public hearing on the application. The public hearing was not held as scheduled on October 16, 1984, since neither EPA nor the Commonwealth received significant interest in holding the hearing.

The Commonwealth does not seek authority to impose its hazardous waste regulatory program over Indian lands. Therefore, EPA will be administering the RCRA program directly over the Mattaponi Indian Reservation, Box 178, West Point, Virginia 23181 and the Pamunkey Indian Reservation, Pamunkey, Virginia 28086.

#### Decision

I conclude that Virginia's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the Commonwealth of Virginia is granted Final Authorization to operate its hazardous waste management program. The Commonwealth now has the responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program authorized today. Virginia also has primary enforcement responsibility, although EPA retains the right to take enforcement action under Section 3008 of RCRA.

#### Compliance With Executive Order 12291

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

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this

authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Virginia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the Commonwealth. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and record keeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: November 8, 1984.

Thomas P. Eichler,  
Regional Administrator.

[FR Doc. 84-31611 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

#### OFFICE OF PERSONNEL MANAGEMENT

#### 45 CFR Part 801

#### Voting Rights Program; Appendix A: Alabama

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management is establishing a new office for filing of applications or complaints under the Voting Rights Act of 1965, as amended, in Monroe County, Alabama. The Attorney General has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

**DATES:** This rule is effective December 4, 1984. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before January 3, 1985.

**ADDRESS:** Send or deliver comments to Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, Room 5532 1900 E Street, NW, Washington, D.C. 20415.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brooks, Coordinator, Voting Rights Program (202) 632-5544.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Monroe County, Alabama, as an additional examination point under the provisions of the Voting Rights Act of 1965, as amended. He determined on August 31, 1984, that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

#### E.O. 12291, Federal Regulation

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

#### Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of a new location to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

#### List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

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

#### PART 801—VOTING RIGHTS PROGRAM

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Monroe County, to the listing for Alabama, to read as follows:

##### § 801.202 Times and places for filing and forms of application.

\* \* \* \* \*

##### Appendix A

\* \* \* \* \*

##### Alabama

County; Place for filing; Beginning date.

\* \* \* \* \*

Monroe—Room 112, Monroe Motor Court South, Highway 21, Monroeville, Alabama. August 31, 1984.

\* \* \* \* \*

(5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g))

[FR Doc. 84-31624 Filed 12-3-84; 8:45 am]

BILLING CODE 6325-01-M

#### 45 CFR Part 801

##### Voting Rights Program; Appendix A: South Carolina

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Office of Personnel Management is establishing three new offices for filing of applications or complaints under the Voting Rights Act of 1965, as amended. The Attorney General has determined that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution.

**DATES:** This rule is effective immediately upon publication. In view of the need for its publication without an opportunity for prior comment, comments will still be considered. To be timely, comments must be received on or before January 3, 1985.

**ADDRESS:** Send or deliver comments to Ronald E. Brooks, Coordinator, Voting Rights Program, Office of Personnel Management, Room 5532 1900 E Street, NW, Washington, D.C. 20415.

**FOR FURTHER INFORMATION CONTACT:** Ronald E. Brooks, Coordinator, Voting Rights Program, (202) 632-5544.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated

Bamberg, Colleton, and Hampton Counties, South Carolina as additional examination points under the provisions of the Voting Rights Act of 1965, as amended. He determined on October 10, 1984, that these designations are necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote and Federal observers to observe local elections.

Pursuant to section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 U.S.C. 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be federally listed and become eligible to vote, and where Federal observers can be sent to observe local elections.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to register voters immediately in view of the pending elections to be held in the subject counties, where Federal observers will observe elections under the authority of the Voting Rights Act of 1965, as amended.

##### E.O. 12291, Federal Regulation

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

##### Regulatory Flexibility Act

I certify that this regulation will not have significant economic impact on a substantial number of small entities because its purpose is the addition of three new locations to the list of counties in the regulations concerning OPM's responsibilities under the Voting Rights Act.

##### List of Subjects in 45 CFR Part 801

Administrative practice and procedures, Voting rights.

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

#### PART 801—VOTING RIGHTS PROGRAM

Accordingly, the Office of Personnel Management amends 45 CFR 801.202, Appendix A, by alphabetically adding Bamberg County, Colleton County, and Hampton County, South Carolina, to read as follows:

##### § 801.202 Times and places for filing and forms of application.

\* \* \* \* \*

##### Appendix A

\* \* \* \* \*

##### South Carolina

County; Place for filing; Beginning date.

\* \* \* \* \*

Bamberg—Room 6, Farmers Home Administration, J. Carl Kershe Agriculture Building, Calhoun Street, Bamberg, South Carolina; Colleton—Soil Conservation Service, Room 203, 119 Benson Street, Walterboro, South Carolina; Hampton—Farmers Home Administration, 1st Floor, 1003 Elm Street, Hampton, South Carolina. October 10, 1984.

\* \* \* \* \*

(5 U.S.C. 1103; secs. 7, 9, 79 Stat. 440, 411 (42 U.S.C. 1973c, 1973g))

[FR Doc. 84-31625 Filed 12-3-84; 8:45 am]

BILLING CODE 6325-01-M

#### FEDERAL MARITIME COMMISSION

##### 46 CFR Parts 500, 501, 502, 503, 504 and 505

[Docket No. 84-20 for Part 505]

##### Corrections to Final Rules in Subchapter A General And Administrative Provisions

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rules; correction.

**SUMMARY:** This document corrects final rules in Subchapter A containing general and administrative provisions that appeared in the Federal Register of Tuesday, November 6, 1984, beginning at 49 FR 44362. This action is necessary to correct typographical and other errors in the Supplementary Information and in the text of the regulations.

**DATES:** Parts 500-505 effective December 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

**SUPPLEMENTARY INFORMATION:** The following corrections are made in FR Doc. 84-29100 beginning on page 44362 in the issue of Tuesday, November 6, 1984:

1. On page 44362, in the first column, in the first paragraph of the **SUPPLEMENTARY INFORMATION**, third line, "[40 FR 16994]" should be "[49 FR 16994]".

#### **PART 500—[CORRECTED]**

##### **§ 500.207 [Corrected]**

2. On page 44365, in the third column, in § 500.207, last line, "dispute" should be "disputed".

##### **§ 500.211 [Corrected]**

3. On page 44366, in the first line of the second column, in § 500.211, "76 CFR Part 503" should be "46 CFR Part 503".

##### **§ 500.212 [Corrected]**

4. On page 44367, in the second column, in the last line of § 500.212(c)(9)(iii), "hearing examiner" should be "examiner".

#### **PART 502—[CORRECTED]**

##### **§ 502.11 [Corrected]**

5. On page 44372, in the second line of the first column, in § 502.11(b)(2), "constructed" should be "construed".

##### **§ 502.32 [Corrected]**

6. On page 44373, in the second column, in § 502.32(a)(2), "paragraph (a)" should be "paragraph (a)(1)"; in § 502.32(a)(4), "paragraph (c)" should be "paragraph (a)(3)"; on page 44374, in the first column, in § 502.32(c)(4), in the first line, "(1)" should be "(i)"; and, in the third line of § 502.32(c)(4), remove the phrase "the Chairman or".

##### **§ 502.67 [Corrected]**

7. On page 44377, in the second column, in the fourteenth line of § 502.67(b)(2), remove the phrase "the Secretary of", and in § 502.67(c), in the last line, remove the phrase "[Rule 74]".

##### **§ 502.68 [Corrected]**

8. On page 44378, the eleventh line of the second column in § 502.68(b) should read: "complaint under section 22 of the".

#### **Exhibit No. 1 to Subpart E [Corrected]**

9. On page 44380, in the third column, in Exhibit No. 1 to Subpart E, remove the second paragraph beginning "Under the Shipping Act . . ." and insert:

Under the Shipping Act of 1984 [foreign commerce], the complaint must be filed within three (3) years from the time the cause of action accrues and may be brought against any person alleged to have violated the 1984 Act to the injury of complainant.

Under the Shipping Act, 1916 and the Intercoastal Shipping Act, 1933 [domestic commerce], the complaint must be filed within two (2) years from the time the cause of action accrues and may be brought only against a "person subject to the Act", e.g., a common carrier, terminal operator or freight forwarder.

10. On page 44381, in the first column, in Exhibit No. 1 to Subpart E, in paragraph No. 6, seventh line, "relating of" should be "relating to".

##### **§ 502.93 [Corrected]**

11. On page 44382, in the first column, in § 502.93, "Appendix A to this part (#4)" should be "Exhibit No. 1 to Subpart O".

##### **§ 502.112 [Corrected]**

12. On page 44384, in the first column, in the eleventh line of § 502.112(b), "Appendix" should be "Exhibit".

##### **§ 502.143 [Corrected]**

13. On page 44385, in the third column, in § 502.143, eighth line, "issued" should be "issues".

##### **§ 502.147 [Corrected]**

14. On page 44386, in the twenty-ninth line of the second column, in § 502.147(a), "office" should be "officer".

##### **§ 502.157 [Corrected]**

15. On page 44387, in the first column, in § 502.157(a), second line, "restored" should be "resorted".

##### **§ 502.201 [Corrected]**

16. On page 44390, in the third line of the first column, in § 502.201(i)(1)(viii), "enveloped" should be "envelopes".

##### **§ 502.203 [Corrected]**

17. On page 44390, in the penultimate line of the third column, in § 502.203(c), "objection party of deponent" should be "objecting party or deponent".

##### **§ 502.205 [Corrected]**

18. On page 44391, in the third column, in the fourth line of § 502.205(c), the cross-reference "§ 502.210(h)" should be "§ 502.201(h)".

##### **§ 502.209 [Corrected]**

19. On page 44393, in the second column, the fifth line of § 502.209(b)(3), should read: "affirmation, or in the conduct of parties".

##### **§ 502.210 [Corrected]**

20. On page 44393, in the third column, in § 502.210(a)(3), fifth line, "thereof" should be "thereto".

##### **§ 502.230 [Corrected]**

21. On page 44395, in the first column, the heading of § 502.230 should read:

"Reopening by presiding officer or Commission."

##### **§ 502.287 [Corrected]**

22. On page 44397, in the second column, in § 502.287, thirteenth line, "depose" should be "be deposed".

##### **§ 502.305 [Corrected]**

23. On page 44398, in the third column, in § 502.305, in the fourth and fifth lines of the regulatory text, "[Rule 321]" should be "[Rule 305]".

#### **Exhibit No. 1 to Subpart S [Corrected]**

24. On page 44399, in the first column, in the seventh line of the first full paragraph of "Information to Assist in Filing Informal Complaints" in Exhibit No. 1 to Subpart S, "Subchapter S" should be "Subpart S", and, in the second column, in Exhibit No. 1 to Subpart S, first full paragraph, first and second lines, remove the words: "If the claim is for 'damages' as defined in § 502.303" and capitalize the first word "a".

##### **§ 502.312 [Corrected]**

25. On page 44399, in the third column, in § 502.312, in the fifth line, "complaint" should be "complainant".

##### **§ 502.315 [Corrected]**

26. On page 44399, in the third column, in § 502.315, in the second line, "complainants" should be "complaints" and in the eighth line, "complaints" should be "complainants".

#### **PART 503—[CORRECTED]**

##### **Part 503 Table of Contents [Corrected]**

27. On page 44401, in the third column, in the Table of Contents, "503.87 Effect of provisions of this subpart on any other subpart" should be "503.87 Effect of provisions of this subpart on other subparts".

##### **§ 503.13 [Corrected]**

28. On page 44402, in the first column, the heading of § 503.13 should read: "Incorporation by reference".

##### **§ 503.25 [Corrected]**

29. On page 44402, in the third column, in § 503.25(c), "Report" should be "Reports".

##### **§ 503.34 [Corrected]**

30. On page 44403, in the third column, in the fifth line of § 503.34(d), the citation "5 U.S.C. 522" should be "5 U.S.C. 552".

##### **§ 503.35 [Corrected]**

31. On page 44404, in the first column, in § 503.35(a)(5), "Interagency or interagency" should be "Interagency or intraagency".

**§ 503.59 [Corrected]**

32. On page 44407, in the second column, in § 503.59(f)(2), in the second line, "authorized" should be "unauthorized" and, in the fourth line of the third column, in § 503.59(k), "Office" should be "Officer".

**§ 503.60 [Corrected]**

33. On page 44408, in the second column, in § 503.60(h), sixth line, "indentifiable" should be "identifiable".

**§ 503.61 [Corrected]**

34. On page 44408, in the second column, in § 503.6(c)(1), in the first line, "offices" should be "officers".

**§ 503.63 [Corrected]**

35. On page 44408, in the third column, in § 503.63(a), in the third line, "of the section" should be "of this section" and, in the fifth and sixth lines, "system or records" should be "system of records".

**§ 503.65 [Corrected]**

36. On page 44409, in the second column, in § 503.65(c)(iii), "will be make" should be "will be made".

**§ 503.66 [Corrected]**

37. On page 44409, in the second column, in the heading of § 503.66(b), "request" should be "requesting".

**§ 503.73 [Corrected]**

38. On page 44410, in the third column, the heading of § 503.73 should read: "Exceptions-meetings".

**§ 503.75 [Corrected]**

39. On page 44412, in the first column, the third line of § 503.75(h) should read: "observation a portion of a meeting, no such."

**§ 503.79 [Corrected]**

40. On page 44413, in the first column, in the third line of § 503.79(g), "is" should be "if" and on page 44413, in the second line of the second column, in § 503.79(j), "disposition by the agency or a particular" should be "disposition by the agency of a particular".

**§ 503.80 [Corrected]**

41. On page 44413, in the second column, in the second line of § 503.80(b), the cross-reference "paragraph (b)" should be "paragraph (a)".

**§ 503.81 [Corrected]**

42. On page 44413, in the third column, the heading of § 503.81 should read: "Effect of vote to withhold information pertaining to meeting."

**§ 503.85 [Corrected]**

43. On page 44414, in the second column, in the twentieth line of

§ 503.85(b), "transcript of recording" should be "transcript or recording".

**§ 503.87 [Corrected]**

44. On page 44415, in the first column, the heading of § 503.87 should read: "Effect of provisions of this subpart on other subparts".

**PART 504—[CORRECTED]****§ 504.4 [Corrected]**

45. On page 44416, in the second column, in § 504.4(a)(12), "interchange of" should be "interchange or" and in § 504.4(a)(22), "Investigator" should be "Investigatory".

**§ 504.7 [Corrected]**

46. On page 44417, in the first column, in § 504.7(a)(1), fifth line, "action to may" should be "action may" and in the second line of the second column, in § 504.7(b)(3), "[EIS]" should be "[EPA]".

**§ 504.9 [Corrected]**

47. On page 44417, in the third column, in § 504.9(c), in the sixth line, "informed" should be "informal", and, on page 44418, in the first line of the first column, in § 504.9(d), "the Shipping Act or section 15 of the" should be "the Shipping Act, 1916, or section 15 of the".

**PART 505—[CORRECTED]****§ 505.1 [Corrected]**

48. On page 44418, in the sixth line of the second column, in § 505.1, "designated provisions of the Shipping" should be "designated provisions of the Shipping Act, 1916, the Intercoastal Shipping Act, 1933, the Shipping".

By the Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 84-31623 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[BC Docket No. 82-538; RM-3983; Docket No. 18421]

**Hours of Operation of Daytime-Only AM Broadcast Stations; and Amendment Regarding Hours of Operation of Dominant and Secondary Stations; Order Staying Effective Date**

AGENCY: Federal Communications Commission.

ACTION: Final rule; stay of effective date.

SUMMARY: This action stays the changes made in the rules regarding post-sunset operation by daytime-only AM stations

pending action on petitions for reconsideration regarding those rule changes. The Final Rule in this proceeding was published on April 26, 1984 (49 FR 17942).

EFFECTIVE DATE: December 4, 1984.

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632-7792.

**SUPPLEMENTARY INFORMATION:****Order**

In the matter of Hours of Operation of Daytime-only AM Broadcast Stations; BC Docket No. 82-538, RM-3983; amendment of § 73.81 of the Commission's Rules (Hours of Operation of Dominant and Secondary Stations), Docket No. 18421.

Adopted: November 16, 1984.

Released: November 20, 1984.

By the Chief, Mass Media Bureau:

1. The Commission has before it the petitions for reconsideration of the *Memorandum Opinion and Order* in this proceeding<sup>1</sup> and responsive pleadings, as well as a Joint Motion For Final Orders and Termination of Proceeding filed by the Association for Broadcast Engineering Standards ("ABES") and the Daytime Broadcasters Association ("DBA").

2. The subject proceeding was begun in order to explore possible rule changes to help alleviate the difficulties daytime-only stations face because they are licensed to operate only between local sunrise and local sunset. Although provision had long been made for pre-sunrise operation by daytime-only stations, there was no opportunity for post-sunset operation. As a result, the proceeding focused primarily on the possibility of allowing such post-sunset operation.

3. Based on the record developed in the proceeding the Commission concluded that it was possible to authorize post-sunset operation for daytime-only stations, and it adopted a *Report and Order* amending the rules to permit such operation. Under these rules, Class III stations (those on regional channels) were permitted to operate two hours beyond local sunset with a maximum power of 500 watts, reduced as necessary in order to avoid interference. Most Class II stations, (those on clear channels), also were permitted to operate beyond local sunset, also with a maximum power of 500 watts. However, the specific power and period of post-sunset operation

<sup>1</sup> Petitions for reconsideration have been filed by the Association for Broadcast Engineering Standards; KCPX, Inc.; Summit Radio Corp.; The Henry Radio Company; and Harte-Hanks Radio, Inc.

varied depending on applicable interference protection requirements.

4. Although DBA supported the Commission's decision to allow post-sunset operation, it nonetheless sought partial reconsideration of the Commission decision to limit powers in order to avoid interference. According to DBA, the new rules imposed excessive limitations on the post-sunset power available to daytime-only stations, thus preventing many of them from being able to conduct effective post-sunset operation. Responsive pleadings were filed by ABES and others.

5. After review of the matters raised in the petition for reconsideration, the Commission adopted a *Memorandum Opinion and Order* amending the new rules to allow the use of greater power. Instead of making the calculations on a "worst case" basis, the power for Class III stations was increased by making the calculations at the midpoint of the first hour. The power calculated for the first hour can be used until 6:00 p.m. even if that extends beyond one hour. In addition, regardless of domestic interference, each Class III day-time only station would be able to use at least 100 watts during this pre-6:00 p.m. period. Although a similar arrangement for Class II stations was not feasible, other changes in the rules were made which make it possible for them to use more power during the first hour after sunset.

6. As noted above, ABES and several other parties sought reconsideration of the *Memorandum Opinion and Order* revising the rules. They asserted that the new rules will permit widespread destructive interference to the reception of full-time stations on the channel. Because of this, ABES also sought a stay of the revised rules pending examination of the issues raised in its petition for reconsideration. DBA opposed the stay and sought additional time to oppose the petitions for reconsideration. During this period, negotiations began between ABES and DBA to consider the possibility of a settlement between them which could then be recommended to the Commission as basis for resolving the outstanding issues in the proceeding. After a series of discussions the parties were able to reach an agreement which was embodied in a joint motion submitted by ABES and DBA. The compromise worked out by ABES and DBA makes provision for enhanced power for Class III stations during the first portion of the post-sunset period while at the same time attempting to

minimize the interference such operation would cause to the reception of full-time stations. Various parties, including all of those which have sought reconsideration, have expressed support of the joint motion. In so doing, several of these parties have provided extensive showings regarding the impact which they believe could be expected from adoption of the industry compromise provision.

7. In order to reach a judgment on how to deal with the issues in this proceeding it is necessary to evaluate the impact adoption of the joint proposal would have. To do so requires extensive computer programming in order to make it possible to calculate the powers and periods of operation the proposal would permit. This in turn makes it possible to examine the impact such operations would have. This process is well underway but has not yet been completed. In order to avoid confusion in this regard, we believe it is appropriate to stay the rule revision made by the *Memorandum Opinion and Order* pending action on the pleadings before the Commission. This means the original power levels as specified October 19, 1983, remain in effect and may be used under the terms and conditions then specified.

8. Accordingly, it is ordered, That the revisions to § 73.99 of the Commission's Rules contained in the subject *Memorandum Opinion and Order* (49 FR 17942) are stayed pending further consideration.

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

Federal Communications Commission.

James C. McKinney,  
Chief, Mass Media Bureau.

[FR Doc. 84-31536 Filed 12-3-84; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 81-11; Notice 9]

#### Federal Motor Vehicle Safety Standards: Lamps, Reflective Devices, and Associated Equipment

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Response to petition for reconsideration.

**SUMMARY:** On November 13, 1984 (49 FR 44899), NHTSA amended Motor Vehicle Safety Standard No. 108 to alter the corrosion test requirements and procedures applicable to semi-sealed replaceable bulb headlamps and lens/reflector components of such headlamps. The amendment was to become effective 30 days after publication in the *Federal Register*, i.e., December 13, 1984. Volkswagen of America, Inc., and its associated companies petitioned for reconsideration of the effective date to delay it until September 1, 1985, alleging insufficient time for revised certification procedures and modification if required. NHTSA has granted this petition and adopted a new effective date of September 1, 1985, to accord with manufacturer model-year practices and to alleviate any potential hardship to manufacturers of vehicles with replaceable bulb headlamps. Given the limited use of these headlamps in 1985 model cars, the existing test continues to meet the need for motor vehicle safety for the remainder of the model year.

**EFFECTIVE DATE:** September 1, 1985.

**ADDRESS:** Petitions for Reconsideration should refer to the docket number and notice number and be submitted to: Administrator, National Highway Traffic Safety Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-2720.

**SUPPLEMENTARY INFORMATION:** The purpose of this notice is to postpone the effective date of the amended corrosion test requirements and procedures applicable to semi-sealed replaceable bulb headlamps and lens/reflector components of such headlamps. These were adopted on November 13, 1984, with an effective date of December 13, 1984.

Under the test currently in effect, a replaceable bulb headlamp is tested for corrosion in a salt spray chamber with the bulb inserted at all times. Under the amendment adopted on November 13, 1984, effective December 13, 1984, the bulb is removed for the final hour of eight of the ten 24-hour test cycles, thereby exposing the interior of the lamp to the corrosive influence of the salt spray in the test chamber. On November 15, 1984, Volkswagen of America on

behalf of itself, Volkswagen AG, and Audi NSU Auto Union AG petitioned for a delay in the effective date of the requirements to September 1, 1985. Its reasons were as follows. First, NHTSA has generally reserved short time compliance schedules for relaxation of rules or optional procedures. Though installation of semi-sealed headlamps is optional, those who are committed to use this technology for the 1985-model year must meet new requirements with an extremely short leadtime. Second, petitioner anticipated that the final rule was to have become effective with a long enough leadtime for vendor contact and certification testing to the new corrosion resistance requirements. Finally, the petitioner notes that the imposition of new requirements in the middle of a model year is highly unusual action for the agency to take, and that "it is clearly impossible for a manufacturer to complete all of the tests and judgments necessary in a mere 30 days and to replace or modify designs without halting production on an entire model line."

The agency reviewed Volkswagen's arguments. Because of the criticality of reflector integrity to headlamp performance and the relationship of corrosion tests to it, the agency had found initially that an early effective date was in the public interest. The agency was unaware that an early effective date might have an adverse economic effect. It wishes to lessen the economic impact that an early implementation of the amendment would have in the course of the 1985 model year. The use of semi-sealed headlamps in the 1985 model year is not extensive, and the test that is currently specified in Standard No. 108 is deemed sufficient for motor vehicle safety, given the limited application of the new headlighting systems. Accordingly, the agency has granted Volkswagen's petition.

In consideration of the foregoing, the effective date of the amendments to paragraphs S4.1.1.36, S4.1.1.36(d)(4), S6.1., and S6.5 made at 49 FR 44901 is changed from December 13, 1984, to September 1, 1985.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued: November 28, 1984.

Howard M. Smolkin,  
Acting Administrator.

[FR Doc. 84-31589 Filed 11-29-84; 11:49 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitat for *Kokia drynarioides* (koki'o)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** The Service determines endangered status and critical habitat for the plant *Kokia drynarioides* (koki'o). This species is known only from one small wild population of about 15 individuals located in and near the Ka'upulehu Forest Reserve and the adjoining Pu'uwa'awa'a Ranch, county and island of Hawaii, State of Hawaii. The lone population is vulnerable to any substantial habitat alteration and faces numerous threats, including continued livestock damage, destruction of seeds by rodents, invasion of exotic species, and fire on and near the site where it occurs. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Kokia drynarioides* and its critical habitat.

**EFFECTIVE DATE:** The effective date of this rule is January 3, 1985.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Regional Office, 500 N.E. Multnomah Street, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Division Chief, Endangered Species, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Kokia drynarioides* (koki'o, hauhele'ula or Hawaii tree cotton) is a member of the mallow family (Malvaceae). It is one of four native Hawaiian species belonging to this endemic genus and is the only koki'o growing on the island of Hawaii. There are no other wild trees on Hawaii with a combination of large red malvaceous flowers, palmately lobed leaves, and three large involucre bracts at the base of the flower and fruit. Initially collected during Cook's second visit to the Hawaiian Islands and described by Seemann in 1865, the species has undergone a steady population decline to a point at which only 15 plants are now known in the wild. The population was estimated at about 200 trees in 1929

(Degener and Degener, 1965). Cattle and feral herbivores have been responsible for most of the population decline; however, the recent invasion of an exotic bunch grass (fountaingrass, *Pennisetum setaceum*) has served to inhibit regeneration as well as increase the probability, extent and intensity of wildfires (Lamoureux, 1981).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of this report as a petition within the context of subsection 4(c)(2) of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 18, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975 Federal Register publication. *Kokia drynarioides* was included in the July 1, 1975 notice and the June 18, 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978 Federal Register publication (43 FR 17909). The Endangered Species Act Amendments of 1978 (Pub. L. 95-632) required that all proposals over 2 years old be withdrawn. On December 10, 1979 the Service published a notice of the withdrawal of that portion of the June 18, 1976 proposal that had not been made final, along with other proposals that had expired (44 FR 70796). *Kokia drynarioides* was repropose for endangered status on September 12, 1983 (48 FR 40920). Critical habitat was proposed at that time.

#### Summary of Comments and Recommendations

In the September 12, 1983 proposed rule (48 FR 40920) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Hawaiian Star Bulletin* on October 5, 1983, which invited general public comment.

Five written comments were received. Very little new information was provided, but four of the comments endorsed the proposed rule. A response from the Department of Land and Natural Resources of the State of Hawaii reported that in the 1950's there were a number of groves of 15 or more large healthy trees, which no longer exist. The State spokesman concurred with the proposed endangered status for the koki'o. He also expressed concern over management of such a large land area and suggested that a practical approach to simplify management procedures would be to develop management plans that would consider the koki'o and also other rare species within the area.

The Office of the Mayor, Hawaii County, with the recommendation of the county's Arborist Advisory Committee, gave full endorsement for the proposed rule. Attention was directed to the fact that the Committee has proposed a *Kokia drynarioides* found in the Manuka State Park for consideration as an exceptional tree of Hawaii County.

An endorsement for listing and designation of critical habitat was received from a person who identified herself as kama'aina from Ka'upulehu. She referred to her family's enjoyment of the tree, the opportunity for educational and aesthetic benefits to the beneficiaries of the Bishop Estate and the State through protection of the koki'o and the possible enhancement of conservation efforts by the Pacific Tropical Botanical Gardens from the listing. She expressed concern over the possible response of lessees of these lands. Another favorable response was received from a resident with botanical training. He again expressed concern over the possible reaction of lessees, and supported a Natural Area Reserve for the Pu'uwa'awa'a area.

The only comments critical of the proposed listing and critical habitat designation were received from an estate manager representing a landowner, Kamehameha Schools, Bernice Pauahi Bishop Estate. In summary the principal concerns of the estate manager were: (1) the effects that listing would have on income realized by the landowner from private lands proposed for critical habitat, (2) whether trees of this species might be found in other areas, (3) the size of the critical habitat proposed, and (4) the size, accuracy, and clarity of the map included in the proposed listing. He also stated concern about appropriate notification of landowners prior to publication of such proposals.

In answer to the first concern expressed above, the designation of

critical habitat will not automatically reduce potential or realized income from that property. Unless Federal activities, funding, or permits are required for a proposed activity in the area, no direct constraints involving plants on private property are imposed by the Endangered Species Act. If activities having Federal involvement that may affect the plant are planned for the area, the affected Federal agency must consult with the U.S. Fish and Wildlife Service regardless of whether critical habitat has been designated (see section 7(a)(2) of the Act).

It is highly doubtful that new populations of *Kokia drynarioides* will be found. This species has been of special interest to professional and amateur botanists since the early 1900's, due to its rarity and its beauty. A plan was published in 1916 for protection of the Koki'o (Young and Popenoe, 1916), but was never fully implemented (Rock, 1919; Lamoureux, 1981).

In response to the question of critical habitat size, the designation includes areas that are considered important to the survival and recovery of the species. The surviving koki'o trees are not found in dense stands but are scattered as mature trees throughout the designated area. Critical habitat is based upon the biological needs of the species being considered and the designation is based upon information obtained from botanists from Federal, State, and private organizations. However, recovery efforts are expected to include additional species surveys which may lead to changes in critical habitat boundaries.

In response to landowner concerns regarding the critical habitat map, additional checking of available records indicates that the information presented in the proposed rule is correct. We welcome further information if there are errors in the maps presented. Mapping individual trees as suggested is not appropriate for critical habitat designations, however, because locations change as existing trees die and new seedlings become established.

Our office in Honolulu will help the landowner to locate existing trees if requested, and can also share available information on the presence and status of any candidate species for listing as endangered or threatened. A plant candidate species list was published in 1975 and has been revised at intervals subsequently; this koki'o was one of the species originally included in that list. The Service endeavors to notify all individuals, including landholders, likely to be affected by a proposed regulation in time for comments to be received prior to any final action.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Kokia drynarioides* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Kokia drynarioides* (Seem.) Lewt. (koki'o) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat for this species has been greatly modified by many years of management as rangeland for livestock (see Factor C. below). The recent invasion of the exotic fountaingrass has further degraded the suitability of the habitat for seedling survival, and threatens also to increase the frequency, intensity and extent of wildfires, which may eliminate adult trees as well.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to this species.

C. *Disease or predation.* This plant is extremely palatable to livestock. Cattle browse on the mature trees and graze any seedlings that may appear above the fountaingrass. Rodents, especially the introduced roof rat, *Rattus rattus*, eat the seeds, often before they fall from the tree.

D. *The inadequacy of existing regulatory mechanisms.* A plan to protect *Kokia drynarioides* was drawn up in about 1915 (Young and Popenoe, 1916), but never thoroughly carried out (Rock, 1919). Continued use of the habitat for cattle pasture and subsequent incursion of the introduced fountaingrass have led to a continued decline of the population.

E. *Other natural or manmade factors affecting its continued existence.* The reduction in number of individuals of this species probably has a detrimental effect on the breeding system and genetic recombination in the species. The wild population exists entirely within the potential destruction area of a dormant volcano, between lava tongues of its 1800-1801 eruption.

The Service has carefully assessed the best scientific and commercial

information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Kokia drynarioides* as endangered. Due to the low number of extant trees and the threats posed to the species, threatened status is not appropriate. The designation of critical habitat is discussed below.

#### Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for *Kokia drynarioides* to include three areas totaling approximately 2,600 acres in the North Kona District on the Island of Hawaii. The exact boundaries are given in the Regulations Promulgation section. The critical habitat provides the necessary areas for survival, growth, and reproduction of *Kokia drynarioides*.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Any activity that would significantly disturb the soil, topography, or other physical and biological components of the area in which *Kokia drynarioides* occurs could adversely modify its critical habitat. Existing and proposed land uses in the immediate locality of the population and in its surroundings must be carefully examined if such modifications are to be prevented. This might require exclosures to insure the establishment of seedlings and survival of existing trees and the removal of some lands from grazing. The State of Hawaii is currently considering Natural Area Reserve status for a portion of the Pu'uwa'awa'a Ranchlands.

Section 4(b)(2) of the Act requires the Service to consider economic and other

impacts of designating a particular area as critical habitat. The area designated as critical habitat covers some 3.86 square miles of private and State-owned land. This area is chiefly used for livestock grazing. No federal lands are involved, and the grazing requires no Federal funds or authorization. The main impact of designation as critical habitat is to restrict federally conducted, funded, or authorized activities. Thus designation of critical habitat will have no economic impact. Even if Federal activities were involved, they would not be barred unless their effect would be to jeopardize the species or to adversely modify that habitat. For these reasons, there should be no economic impact to the designation and restriction of critical habitat is unwarranted.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to the determination of endangered status and critical habitat for *Kokia drynarioides*, there are no known Federal actions that may be affected.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62,

and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Kokia drynarioides*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No such trade in this species is known. It is anticipated that few trade permits involving the species will ever be requested.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to *Kokia drynarioides*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Kokia drynarioides* is known only from State and private lands. It is anticipated that few if any permits for collecting will be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not

constitute a major action under Executive Order 12291 and certifies that this designation 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.*). No significant economic or other impacts are expected to result from the designation of critical habitat for the koki'o. The critical habitat area is located on State and private lands in Hawaii County, State and island of Hawaii. There is no known involvement of Federal funds or permits for the State or private lands within the critical habitat designation. No direct costs, enforcement costs or information collection or recordkeeping requirements are imposed on small entities by the designation. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon.

**Literature Cited**

Literature Cited  
 Degener, O., and I. Degener. 1965. Flora Hawaiiensis. Family: 221. Genus: *Kokia*. Species: *drynarioides*. Honolulu.  
 Lamoureux, C.H. 1981. Status report on *Kokia drynarioides*. Research Corporation of the University of Hawaii under Contract 14-16-0001-79096 to the U.S. Fish and Wildlife Service. 28 pp.  
 Rock, J.F. 1919. The Hawaiian genus *Kokia*, a relative of the cotton. Terr. Hawaii Bd. Agr. For. Botanical Bull. 6:1-22.  
 Young, R.A., and P. Popenoe. 1916. Saving the Kokio tree. J. Heredity 7(1):24-28.

**Author**

The primary author of this rule is Carol A. Wilson, U.S. Fish and Wildlife Service, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131). George E. Drewry of the Service's Washington Office served as editor.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Malvaceae to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Malvaceae—Mallow Family:						
<i>Kokia drynarioides</i> .....	koki'o (= Hau-hele'ula or Hawaii tree cotton).	U.S.A. (HI).....	E		17.96(a)	NA.

1. The authority citation for Part 17 reads as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

3. Amend § 17.96(a) by adding critical habitat of *Kokia drynarioides* as follows (the position of this entry under § 17.96(a) will follow the same sequence as the species occurs in § 17.12):

**§ 17.96 Critical habitat—plants.**

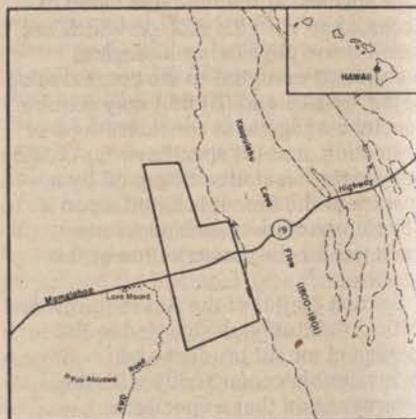
(a) \* \* \*

Malvaceae—*Kokia drynarioides*

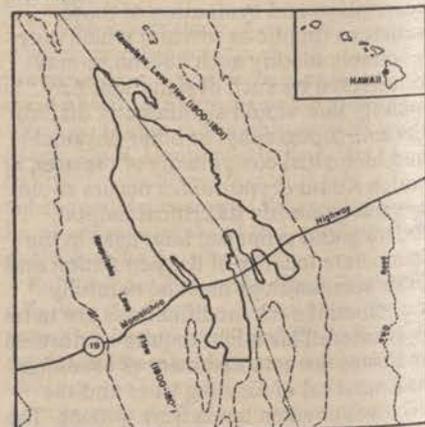
*Kokia drynarioides* (koki'o)

Hawaii, Island and County of Hawaii, North Kona District, three areas totaling approximately 2,600 acres.

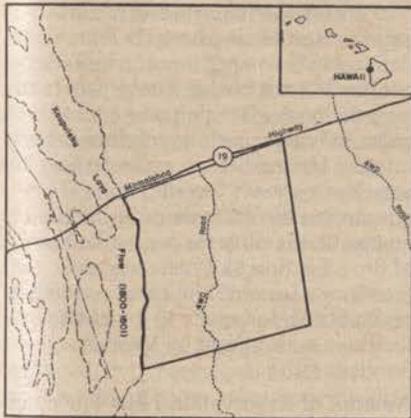
1. Ka'upulehu Ahupua'a area, bounded as follows: from a point of origin at Universal Transverse Mercator (UTM) coordinate 925880 near or on the west boundary of the Ka'upulehu 1800-1801 lava flow (approximately at intersection of said west boundary and 2600 ft elevation contour); thence west southwesterly approximately 864 ft to UTM coordinate 914875 (also near 2600 ft elevation contour); thence north northwesterly approximately 1987 ft to UTM coordinate 909899 (near the 1400 ft elevation contour); thence east northeasterly approximately 378 ft to UTM coordinate 913900 (also near the 1400 ft elevation contour); then south southeasterly approximately 720 ft to UTM coordinate 916891; thence east northeasterly approximately 320 ft to UTM coordinate 920892 (near the said west boundary of the 1800-1801 lava flow); thence south southeasterly approximately 1140 ft to the point of origin. Included in this area is Ka'upulehu Forest Reserve, Section B.



2. Ka'upulehu Ahupua'a and Pu'uwa'awa'wa Ahupua'a boundary area, identified as follows: An unnamed kipuka (discontinuity) in 1800-1801 lava that straddles the boundary between Ka'upulehu and Pu'uwa'awa'wa Ahupua'a and also crosses Mamalahoa Highway between 2400 and 1000 feet of elevation. Excluded is a small tongue of the said kipuka that extends south of UTM coordinate 941885 at approximately 2400 ft of elevation and above. UTM coordinate 931924 marks the low elevation end of the said kipuka.



3. Pu'uwa'awa'a Ahupua'a area, identified as follows: Halepi'ula 3, Waimea Paddock of Pu'uwa'awa'a Ranch, which lies south of (upslope) and abuts Mamalahoa Highway just east of the boundary between Ka'upulehu and Pu'uwa'awa'a Ahupua'a. East boundary of the 1800-1801 Ka'upulehu lava flow is the west boundary of the paddock. The paddock corners are near UTM coordinates 948901 (NW), 965909 (NE) 973886 (SE), and 971879 (SW).



Primary constituent elements of critical habitat are appropriate soil type, climate, protection from grazing damage, protection from aggressive exotic weeds, and presence of suitable pollinators.

\* \* \* \* \*

Dated: November 6, 1984.

**G. Ray Arnett,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 84-31575 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-55-M

# Proposed Rules

Federal Register

Vol. 49, No. 234

Tuesday, December 4, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 52

#### United States Standards for Grades of Extracted Honey

##### Correction

In FR Doc. 84-28845, beginning on page 43970, in the issue of Thursday, November 1, 1984, make the following corrections.

1. On page 43970, in column three, second complete paragraph, line six, the first word should read "quality".

##### § 52.1394 [Corrected]

2. On page 43971, in column two, in § 52.1394(d)(3), line five "materially" should read "seriously".

##### § 52.1399 [Corrected]

3. On page 43972, in column one, in § 52.1399, Table II, in the fourth table head "3" should read "13".

##### § 52.1403 [Corrected]

4. On page 43973, in § 52.1403, Tables IV and V, remove the words "[Analytical quality]" from under the table headings.

5. Columns one of both Tables IV and V are corrected as set forth below:

\* \* \* \* \*

TABLE IV.—FILTERED STYLE

Factors
Percent soluble solids (minimum) [Analytical]
Absence of defects [Quality]
Score points
Flavor and aroma [Quality]
Score points
Clarity [Quality]
Score points

\* \* \* \* \*

TABLE V.—STRAINED STYLE

Factors
Percent Soluble Solids (minimum) [Analytical]
Absence of defects [Quality]

TABLE V.—STRAINED STYLE—Continued

Factors
Score points
Flavor and aroma [Quality]
Score Points

\* \* \* \* \*

BILLING CODE 1505-01-M

### Animal and Plant Health Inspection Service

#### 9 CFR Part 92

[Docket No. 83-131]

#### Reservation of Space for Quarantine of Animals and Birds

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the regulations for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS) (1) by providing a mechanism for raising the amount of the reservation fees for certain animals and birds, (2) by revising the provisions for forfeitures of reservation fees, (3) by specifying the place and time for acceptance of reservation cancellation notices, and (4) by providing for cancellation fees under certain circumstances. This action appears to be necessary to more fully utilize the space quarantine facilities maintained by VS and to reduce losses incurred as a result of the failure to utilize space which has been reserved.

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

**ADDRESS:** Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. M.P. Dulin, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

#### SUPPLEMENTARY INFORMATION: Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of certain animals and birds (the term animals is defined in the regulations to include poultry but not birds). These provisions include the requirements in § 92.4 that in order to import certain animals or birds into the United States, an importer or an importer's agent ("agent") must quarantine the animals or birds in a quarantine facility for a specified period of time. Section 92.4 also contains provisions for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS).

#### Amount of Reservation Fee—Forfeiture of Reservation Fee

It is provided in § 92.4(a)(4) that, in order to reserve space at a quarantine facility maintained by VS, the importer or agent must, at the time a request to reserve space is made, pay (a) \$80.00 for each lot of poultry or birds; (b) \$130.00 for each horse; and (c) \$240.00 for each lot of any other animals.

Further, § 92.4(a)(4) provides that the reservation fee for animals or birds shall be forfeited if the importer or agent fails to present such animals or birds for entry into the quarantine facility unless the reservation is cancelled in advance. Under the current regulations cancellation must be made by notifying the veterinarian in charge of the quarantine facility at least 72 hours prior to the beginning of the time for importation as prescribed in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required.

It is proposed to amend § 92.4 to require that an importer or agent pay a reservation fee for each lot of animals or birds to be quarantined in a quarantine facility maintained by a Veterinary Services, in an amount estimated by the veterinarian in charge to be 25 percent of the cost of providing care, feed, and handling during quarantine; except that the reservation fee would be no less than \$80.00 for each lot of birds or poultry, no less than \$130.00 for each horse, and no less than \$240.00 for each lot of any other animals.

It is also proposed to amend § 92.4 to provide for forfeiture of the reservation

fee if the animals or birds are not presented for quarantine within 24 hours after the designated time of arrival unless: (1) Written notice of cancellation from the importer or agent is received by the office of the veterinarian in charge of the quarantine facility (the address of the quarantine facilities may be found in telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782) during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals and birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or (ii) services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

As indicated in a Federal Register document of July 27, 1982, at 47 FR 32432, the reservation fees and forfeiture provisions are designed to

\* \* \* discourage importers or their agents from making frivolous reservations, encouraging importers and their agents to present animals for entry into the quarantine facility on time, defray some of the costs incurred by Veterinary Services when personnel and materials are allocated to a quarantine facility because space has been reserved and the reserved space is not used, and recover some of the revenue lost when space at a quarantine facility is reserved and the reserved space is not used and other potential users of the facility are denied the opportunity to use the space.

Based on experience, it appears that the current reservation fee and forfeiture provisions do not adequately accomplish these purposes. Specifically, they are not adequate to discourage frivolous reservations.

The current provisions set amounts for reservation fees that are the same for lots of poultry, birds, and other animals (excluding horses), regardless of how many poultry, birds, or other animals (excluding horses) are scheduled to be in the lot. These provisions also set amounts for reservation fees for horses, and for lots of birds, poultry, and other

animals regardless of the length of the scheduled quarantine period. Under the proposal, reservation fees would be proportionately larger the more birds, poultry, and other animals in a lot and would become proportionately larger for longer quarantine periods. Further, by requiring that the reservation fee be 25 percent of the estimated costs of providing care, feed, and handling during quarantine, but in no instance less than the present reservation fee, it appears that a forfeiture of the reservation fee would significantly reduce the number of reservations made without a real intent to use the reserved space. Additionally, a forfeiture of such an increased reservation fee would more fully defray some of the costs incurred by Veterinary Services when personnel and materials are allocated to a quarantine facility because space has been reserved and the reserved space is not used.

The proposal to allow animals and birds to arrive within a 24 hour grace period without forfeiture of the reservation fee appears to be warranted. As noted above, it is the policy of the Department to establish procedures designed to encourage importers and agents to present animals or birds for entry into the quarantine facility on time. However, frequently there are practical problems that arise during transportation or at Customs which can cause limited delays in the arrival time of the animals or birds, and the Department plans its activities to accommodate such delays.

The proposal to increase time periods for cancellations without forfeiture of the reservation fee, appears to be warranted. In addition to discouraging importers or agents from making frivolous reservations, it is necessary that the time periods allow a sufficient amount of time for the Department to make reasonable efforts to allow other importers an opportunity to use the cancelled space. It appears that this can be accomplished by changing the regulations to require 5 days advance notice of cancellation for horses and 15 days advance notice of cancellation for birds and animals other than horses. The difference in the time periods for advance notice of cancellation reflect differences in the ability of importers to respond to last minute opportunities to fill cancelled space. It appears that it is much more likely for horses to be readily available for filling cancelled space on short notice than for birds or for animals other than horses.

#### Notice of Cancellation

In addition, as noted above, it is proposed to amend § 92.4 to provide that

notices of cancellation must be in writing and will be accepted by the office of the veterinarian in charge of the quarantine facility from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The addresses of the quarantine facilities may be found in the telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, Hyattsville, MD 20782. It appears that notices of cancellation should be required to be made in writing in order to help avoid misunderstandings concerning cancellations. Also, specifying the place and time for acceptance of such notices appears to be necessary to help the importer or agent understand where and when the cancellations will be accepted.

#### Cancellation Fee

It is proposed to amend § 92.4 to provide that in situations in which a reservation fee is to be returned (other than certain situations explained below), a \$40.00 cancellation fee shall be deducted from the reservation fee. A cancellation fee of \$40.00 appears to be necessary in order to allow the Government to recover administrative costs incurred in refunding a reservation fee.

#### Cancellation Without Forfeiture or Payment of Cancellation Fee

The proposal also contains provisions for cancellation without forfeiture of the reservation fee or without deduction of a cancellation fee if the Deputy Administrator determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine). It appears that it would be unfair to penalize an importer or agent by not refunding a reservation fee or by charging a cancellation fee under such circumstances since the importation of birds or animals would not be possible because of these types of events which are beyond the control of the importer or agent. Further, it appears that cancellations for such reasons would be infrequent and that the Government can absorb costs associated with such limited delays without adversely affecting the operations of a quarantine facility.

It does not appear that consideration should be given for cancellation without forfeiture of the reservation fee or without repayment of a cancellation fee because of problems with carriers. It would be difficult to implement fair criteria for determining when a cancellation fee should be paid. Some carriers are regularly unreliable and this policy will encourage importers and agents to take action to help ensure timely shipments.

#### Executive Order 12291 and Regulatory Flexibility Act

This proposed rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action would not result in a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action would, in some cases, increase the fee required to be paid by an importer or agent in order to reserve quarantine space for animals and birds in a quarantine facility maintained by Veterinary Services. The fee paid for such space would be applied against the expenses incurred for services received by the importer or agent in connection with the quarantine for which the fee to reserve space was paid. Also, any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid, would be returned to the individual who paid the reservation fee. Therefore, the only cost which importers or agents who actually use the reserved space would incur as a result of the adoption of this proposal would be an increase in the opportunity cost of the prepayment of the reservation fee. In this case, the importer or agent could have invested the amount of the increase in the fee. However, in most instances, this opportunity cost is negligible.

An importer or agent would only incur more than an opportunity cost (1) when a reservation fee would be forfeited because of a failure to present for entry the animals or birds for which the fee to reserve space was paid, or (2) when a

\$40.00 cancellation fee would be deducted from the payment of a reservation fee to cover administrative costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service, has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

#### PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, would be amended as follows:

1. In Part 92, footnotes 6 through 16 and the references thereto would be renumbered 7 through 17, respectively.
2. In § 92.4 paragraph (a)(4) would be revised to read as follows:

**§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes; and reservation fees for space at quarantine facilities maintained by Veterinary Services.**

(a) \* \* \*

(4)(i) For each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, the importer or the importer's agent shall pay a reservation fee estimated by the veterinarian in charge of the quarantine facility to be 25 percent of the cost of providing care, feed, and handling during quarantine: *Except* that the reservation fee shall be no less than \$80.00 for each lot of birds or poultry, no less than \$130.00 for each horse, and no less than \$240.00 for each lot of any other animals. The reservation fee shall be paid at the time the importer or the importer's agent requests a reservation of quarantine space.

(ii) Any importer or importer's agent shall pay the reservation fee by check or U.S. money order; except that anyone who issues a check to the Department for a reservation fee which is returned because of insufficient funds shall be denied any further request for reservation of a quarantine space until the outstanding amount is paid.

(iii) Any reservation fee shall be applied against the expenses incurred

for services received by the importer or importer's agent in connection with the quarantine for which the reservation fee was paid. Any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid, shall be returned to the individual who paid the reservation fee.

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry within 24 hours following the designated time of arrival of the horse, the lot of birds, a lot of poultry, or the lot of other animals for which the reservation fee was paid: *Except* that the reservation fee shall be returned to the individual who paid the reservation fee if:

(A) Written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility<sup>6</sup> during regular business hours (8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals or birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or

(B) The Deputy Administrator, Veterinary Services, determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services, (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

(v) A \$40.00 cancellation fee shall be deducted from any reservation fee returned to the importer or the importer's agent, except that such fee shall not be deducted if the reservation fee is returned because of the provisions in paragraph (a)(4)(iv)(B) of this section.

\* \* \* \* \*

Authority: Sec. 7, 26 Stat. 416, sec. 2, 32 Stat. 792, as amended; secs. 4, 11, 76 Stat. 130, 132; 21 U.S.C. 102, 111, 134c, 134f; 7 CFR 2.17, 2.51, 371.2(d).

<sup>6</sup>The addresses of USDA quarantine facilities may be found in the telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

Done at Washington, D.C., this 29th day of November, 1984.

William E. Ketter,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-31634 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-34-M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 205

[Reg. E; EFT-2]

#### Electronic Fund Transfers; Proposed Update to Official Staff Commentary

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed official staff interpretation.

**SUMMARY:** The Board is publishing for comment proposed changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

**DATE:** Comments must be received on or before January 31, 1985.

**ADDRESS:** Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and C Streets, NW., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include reference to EFT-2. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Gerald P. Hurst or John C. Wood, Senior Attorneys, or Richard S. Garabedian, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667 or (202) 452-2412.

**SUPPLEMENTARY INFORMATION:** (1) *General.* The Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). Effective September 24, 1981, an official staff commentary (EFT-2 Supp. II to 12 CFR Part 205) was published to interpret the regulation. The commentary is designed to provide guidance to financial institutions in

applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. There have been two updates so far, the first on April 6, 1983 (48 FR 14880), and the second on October 18, 1984 (49 FR 40794). This notice contains the proposed third update. It is expected that it will be adopted in final form in March 1985.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows, while language to be deleted is set off with brackets.

(2) *Proposed revisions.* The material that has been added or revised is largely self-explanatory. Questions 7-18.5 and 11-11.5 relate to amendments to Regulation E adopted by the Board on October 11, 1984 (49 FR 40794), which cover all debit card transactions whether or not an electronic terminal is involved. The amendments also extend the time periods for resolution of errors involving point-of-sale (POS) debit card transactions; the longer periods parallel those applicable to foreign-initiated transfers.

The proposed revision of question 7-18.5 reverses the present interpretation; currently, disclosure of the longer error resolution time periods in the case of foreign-initiated transfers is not required. Transfers resulting from POS debit card transactions (unlike foreign-initiated transfers) are quite common, however, and to assure accurate disclosures and avoid confusion on the part of consumers, proposed question 7-18.5 requires financial institutions to disclose the longer error resolution periods. Since most institutions would be required to revise their error resolution disclosures for POS debit card transactions, it seems likely that making the further revision for foreign-initiated transfers would result in little or no additional expense. Consequently, revised question 7-18.5 would require that the error resolution disclosures for accounts subject to foreign-initiated or POS debit card transactions state the extended time periods.

The other proposal relating to the October amendments (new question 11-11.5) discusses the meaning of POS debit card transaction for purposes of the longer error resolution periods.

Other proposed changes to the commentary respond to inquiries received by the staff. New question 2-28 addresses unauthorized transfers. New question 5-4.5 states that an institution may not issue, without request from the consumer, a validated personal identification number (PIN) to permit a debit card previously issued for POS transactions to be used at ATMs. This

interpretation differs from a proposed interpretation under Regulation Z that permits such PIN issuance. The different treatment is based on the definition of an access device in Regulation E. Under Regulation E a PIN is an access device in all cases, even when it cannot be used alone to initiate an EFT; in contrast, a PIN issued to existing cardholders that cannot be used by itself to obtain credit is not a credit card under Regulation Z. (See the proposed update to the official staff commentary to Regulation Z, Truth in Lending, published elsewhere in this Federal Register issue.) The rule regarding access devices is more restrictive in part because of the consumer's potentially greater risk; for example, the consumer may be liable for as much as \$500 (or even an unlimited amount) rather than only \$50 as under Regulation Z. Moreover, unauthorized use of an access device entails the loss of use, and perhaps even permanent loss, of the consumer's own funds in an access account; in the case of unauthorized credit card use, only extensions of credit are involved. In addition, when the debit card was originally issued without a PIN, the consumer may not have contemplated that the card could later be used at ATMs to obtain cash.

(3) *Transition issues relating to amendments.* The staff has received other inquiries dealing with the interim period between the adoption of the POS debit card amendments in October 1984 (discussed above) and the April 16, 1985, effective date. Since guidance on these matters is needed now and will cease to be relevant after the transition period, the staff believes it is appropriate to address them separately for the proposed commentary.

Industry representatives have asked whether revised disclosures must be provided to existing customers who have already been given Regulation E disclosures for certain debit card transactions, or to customers who contract for EFT services before April 16, 1985. Revised disclosures may but need not be provided prior to April 16, 1985; however, beginning on that date, any disclosure given (e.g., initial disclosures to a new customer, or the long-form or short-form error resolution notice to an existing customer) must accurately reflect the terms and conditions of the EFT services (including debit card transactions) offered by the institution. For example, initial disclosures to new customers will have to reflect that all transfers resulting for debit card transactions are electronic fund transfers, and that the error resolution periods for POS debit card

transactions are 20 business days and 90 calendar days (if the institution wishes to take advantage of the longer periods).

After April 16, error resolution notices, whether given annually or on periodic statements, also must reflect the longer periods. Similarly, initial disclosures and error resolution notices must reflect the exception from provisional recrediting in cases where accounts are subject to the Board's Regulation T (Credit by Brokers and Dealers). Institutions may comply by modifying appropriately the error notice forms that appear in §§ 205.7(a)(10) and 205.8(b).

An institution that wishes to use existing forms until its supplies are exhausted may reflect the changed terms and conditions by any appropriate means such as by use of an insert, attachment, or computer-generated notice on periodic statements (in the case of a short-form notice on the statement). Institutions are not required to make a special mailing of revised error resolution notices or of other disclosures.

#### List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

#### PART 205—[AMENDED]

*Text of revisions.* The proposed revisions to the Official Staff Commentary on Regulations E (EFT-2, Supp. II to 12 CFR Part 205) read as follows:

##### Section 205.2—Definitions and Rules of Construction

► Q 2-28: *Unauthorized transfers—forced initiation.* A consumer is forced by a robber, at gunpoint, to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A: Yes. The transfer is unauthorized for purposes of Regulation E. Under those circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(l) and 205.6) ◀

##### Section 205.5—Issuance of Access Devices

► Q 5-4.5: *Unsolicited issuance—PINs.* May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines?

A: No. Issuance of a validated PIN for an existing debit card does not meet the regulation's requirement that an unsolicited access device be unvalidated when issued. (The issuance of PINs for existing credit cards is, however, permissible under the

Truth in Lending Act and Regulation Z; see Comment 12(a)(1)-8 of the Official Staff Commentary to Regulation Z.) (§§ 205.5(a) and 205.2(a)) ◀

##### Section 205.7—Initial Disclosure of Terms and Conditions

Q 7-18.5: *Error resolution disclosure—[foreign-initiated transfers]* ►extended time periods—◀ The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States ► or transfers resulting from POS debit card transactions ◀, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which [transfers may be initiated outside the United States] ► these types of transfers can be made ◀?

A: A financial institution [may but need not refer to the longer time periods in the error-resolution disclosure.] ► must give error-resolution disclosures that reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfer must, therefore, state them in its error-resolution disclosures. Similarly, and institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures appropriately. ◀ (§§ 205.7(a)(10), 205.8(b), and 205.11) ► (c)(3) and ◀ (c)(4))

##### Section 205.11—Procedures for Resolving Errors

► Q 11-11.5: *POS debit card transactions.* The deadlines for investigating errors are extended for all transfers resulting from POS debit card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit card transactions?

A: POS debit card transactions generally take place at merchant locations, but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location. (§ 205.11(c)(4)) ◀

(15 U.S.C. 1693b)

Board of Governor or the Federal Reserve System, November 28, 1984.

William W. Wiles,  
Secretary of the Board.

[FR Doc. 84-31578 Filed 12-3-84; 8:45 am]

BILLING CODE 6210-01-M

#### 12 CFR Part 226

[Reg. Z; TIL-1]

#### Truth in Lending; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

**ACTION:** Proposed official staff interpretation.

**SUMMARY:** The Board is publishing for comment proposed changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

**DATE:** Comments must be received on or before January 31, 1985.

**ADDRESS:** Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and C Streets, NW., Washington, D.C. between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to TIL-1. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Contact the following attorneys in the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3867:

Subpart A—Lynn Goldfaden, Gerald Hurst

Subpart B—Richard Garabedian, Adrienne Hurt

Subpart C—Rugenia Silver, Susan Werthan

#### SUPPLEMENTARY INFORMATION:

##### I. General

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, and official staff commentary (TIL-1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. There have been three general updates so far—the first in September 1982 (47 FR 41338), the second in April 1983 (48 FR 14882), and the third in April 1984 (49 FR 13482). There was also a limited update concerning fees for the use of automated teller machines, which was adopted in October 1984 (49 FR 40560). This notice contains the proposed fourth general update. It is expected that it will be

adopted in final form in March 1985 with optional compliance until the uniform effective date of October 1 for mandatory compliance.

Certain conventions have been used to highlight the proposed revision. New language is shown inside bold-faced arrows, while language that would be deleted is set off with brackets.

## II. Proposed Revisions

Following is a brief description of the proposed revisions to the commentary:

### Subpart A—General

#### Section 226.2—Definition and Rules of Construction

##### 2(a) Definitions

###### 2(a)(15) "Credit Card"

Comment 2(a)(15)-2 would be revised to make clear that certain types of access devices that are used at wholesale petroleum distribution terminals—whether or not credit is involved—are not considered credit cards under Regulation Z.

###### 2(a)(17) "Creditor"

###### Paragraph 2(a)(17)(i)

Comment 2(a)(17)(i)-8 would be added to explain how the numerical tests for determining who is a "creditor" should be applied to loans made by employee savings plans. It provides that the numerical test should be applied to the plan as a whole rather than to the individual account.

###### 2(a)(20) "Open-End Credit"

Comment 2(a)(20)-5 would be revised to correct a potential contradiction caused by the language "specific approval for each extension." Because "verification" of credit information—which is permissible under the open-end credit definition—necessitates involves "approval" if a credit extension is not denied after verifying the credit information, the "specific approval" language may be confusing. The proposal would, therefore, delete that language. The comment would continue to mean, however, that while creditors may verify credit information on an open-end credit plan before authorizing additional credit extensions, they may not undertake activities such as requiring a new application for each additional credit extension, without jeopardizing a program's status as an open-end credit plan.

#### Section 226.4—Finance Charge

##### 4(a) Definition

The first sentence of comment 4(a)-3 would be revised to clarify which charges by third parties are excluded

from the finance charge. The revision makes clear that, in order to be excluded, the charge must be imposed on the consumer rather than the creditor and the creditor must not retain the charge.

### Subpart B—Open-End Credit

#### Section 226.7—Periodic Statement

##### 7(h) Other Charges

Comment 7(h)-4 would be added to make clear that, in disclosing "other charges" on the periodic statement, creditors have the flexibility to disclose them individually or as a total, as long as the charges are still itemized and identified by tape.

#### Section 226.9—Subsequent Disclosure Requirements

##### 9(d) Finance Charge Imposed at Time of Transaction

Comment 9(d)-1 would be totally rewritten since the ban on credit card surcharges expired on February 27, 1984. Revised comment 9(d)-1 would make clear that a finance charge, such as a credit card surcharge, imposed by a person other than the card issuer for using a credit card, must be disclosed to consumers prior to their being committed to purchasing property or services, in order to satisfy the § 226.9(d)(1) requirement that the amount of that finance charge be disclosed prior to its imposition. For example, the charge must be disclosed to the consumer prior to the consumer's having dinner at a restaurant, or staying overnight at a hotel.

#### Section 226.12—Special Credit Card Provisions

##### 12(a) Issuance of Credit Cards

###### Paragraph 12(a)(1)

Comment 12(a)(1)-8 would be added to make clear that card issuers may issue, without a specific request from the consumer, a personal identification number (PIN) to existing cardholders, provided that PIN cannot be used by itself to obtain credit. This interpretation differs from a proposed interpretation under Regulation E that prohibits such PIN issuance. The different treatment is based on the definition of an access device in Regulation E. Under Regulation E a PIN is an access device in all cases, even when it cannot be used alone to initiate an EFT; in contrast, a PIN issued to existing cardholders that cannot be used by itself to obtain credit is not a credit card under Regulation Z. The rule regarding access devices is more restrictive in part because of the consumer's potentially

greater risk. See Question 5-4.5 in the proposed update to the official staff commentary to Regulation E (published elsewhere in this Federal Register issue).

#### Section 226.15—Right of Rescission

##### 15(a) Consumer's Right to Rescind

###### Paragraph 15(a)(1)

Comment 15(a)(1)-2 would be revised to reflect the amendment to the Truth in Lending Act in Pub. L. 98-479 which permanently exempts from the right of rescission individual transactions made on an open-end line of credit in accordance with a previously established credit limit.

### References

Reference to § 205 of Pub. L. 98-479 would be added to the References section to reflect the permanent exemption from the right of rescission for individual credit extensions made on an open-end credit line.

### Subpart C—Closed-End Credit

#### Section 226.17—General Disclosure Requirements

##### 17(a) Form of Disclosures

###### Paragraph 17(a)(1)

The last example in comment 17(a)(1)-5 regarding due-on-sale clauses would be deleted consistent with the proposed change in position in comment 18(q)-1.

#### Section 226.18—Content of Disclosures

##### 18(f) Variable Rate

Comment 18(f)-5 would be revised to add recent federal adjustable rate mortgage regulations to the list of variable rate regulations for which footnote 43 to § 226.18(f) may be used. Under the proposal, creditors making disclosures in accord with the rules issued by the Department of Housing and Urban Development (49 FR 23580) need not make the variable rate disclosures required by § 226.18(f).

Comment 18(f)-5 would also be revised to reflect a new citation to the variable rate regulation of the Federal Home Loan Bank Board. The revision is technical and reflects no substantive change in the comment.

Comment 18(f)-8 would be revised to clarify the application of the discounted variable rate rules to two types of variable rate transactions. First, a paragraph would be added to explain that transactions in which the only difference between the initial rate and the index rate at consummation results from a change in the index are not discounted transactions. Second, material would be added to address

plans that have a built-in delay between index changes and implementation of those changes. In calculating a composite annual percentage rate for these plans, creditors may use an index value prior to consummation as long as it incorporates the same delay used for later rate adjustments.

18(k) Prepayment

Comment 18(k)-2 would be revised to delete the example regarding student loans with loan fees, in order to make the comment more consistent with comment 18(k)-3. Comment 18(k)-2 illustrates transactions that may require disclosures under both § 226.18(k)(1), regarding penalties for prepayment of simple interest transactions, and § 226.18(k)(2), regarding rebates for prepayment of precomputed transactions. Comment 18(k)-3 clarifies that prepaid finance charges do not require rebate disclosures. Since loan fees in student loans are normally prepaid finance charges, the continued use of that type of transaction as an example of a loan requiring a rebate disclosure is inappropriate and may cause confusion. The deletion of the example is a technical revision and does not affect the substance of either comment.

18(q) Assumption Policy

The substance of comment 18(q)-1 would be deleted and replaced by a new provision which reverses the rule on assumption policy disclosure. When uncertainty exists as to the assumability of the obligation, a negative rather than affirmative disclosure would be required. It is believed that under such circumstances, a negative disclosure would be less misleading to consumers. Since this change would reverse the current position on assumption disclosures, it would be applied prospectively.

Section 226.23—Right of Rescission

23(f) Exempt Transactions

Comment 23(f)-8 would be added to clarify the application of the right of rescission to closed-end credit transactions arising from the conversion of an open-end credit account. Where consummation of both the closed-end and open-end credit occurs at the time the consumer enters into the open-end agreement, the closed-end disclosures may be delayed until conversion, as provided by comment 17(b)-2. Proposed comment 23(f)-8 would make clear that, if the creditor has previously complied with the rescission requirements on the open-end account, no new right of recession applies on the conversion of

an account secured by the consumer's principal dwelling.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

Text of revisions. The proposed revisions to the commentary (TIL-1, Supplement 1 to 12 CFR Part 226) read as follows:

Supplement I—Official Staff Commentary—TIL-1

SUBPART A—GENERAL

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(15) "Credit Card"

2. Examples. Examples of credit cards include:

- A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit
- A card that accesses both a credit and an asset account (that is, debit-credit card)
- An identification card that permits the consumer to defer payment on a purchase
- An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

In contrast, credit card does not include, for example [ a ]▶:

- A ◀ check guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft [ . ]
- ▶• Any card key that must be used in order to gain access to a wholesale distribution facility to obtain petroleum products for business purposes, and the use of which is required without regard to payment terms. ◀

2(a)(17) "Creditor"

Paragraph 2(a)(17)(i)

▶8. Loans from employee savings plans. Some employee savings plans permit participants to borrow money up to a certain percentage of their account balances. In such cases, the numerical tests should be applied to the plan as a whole rather than to the individual accounts, even if the loan amount is determined by reference to the balance in an individual account and the repayments are credited to the individual account. ◀

2(a)(20) "Open-End Credit"

5. Reusable line. The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit [without specific approval for each extension (beyond verification, for example, of) ▶]. The creditor may verify ◀ credit information such as the consumer's continued income and employment status or [of] information for security purposes [ ]]. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. \* \* \*

Section 226.4—Finance Charge

4(a) Definition.

3. Charges by third parties. Charges imposed by someone other than the creditor for services that are not required by the creditor are not finance charges▶, provided the charges are imposed on the consumer rather than on the creditor by the third party, and the creditor does not retain the charge◀. For example:

- A fee charged by a loan broker to a consumer, provided the creditor does not require the use of a broker (even if the creditor knows of the loan broker's involvement or compensates the broker)
- A tax imposed by a state or other governmental body on the credit transaction that is payable by the consumer (even if the tax is collected by the creditor)

Subpart B—Open-End Credit

Section 226.7—Periodic Statement

7(h) Other Charges.

▶4. Itemization—types of "other charges". Each type of "other charge" (such as late payment charges, over-the-credit-limit charges, ATM fees that are not finance charges, and membership fees) imposed during the cycle must be separately itemized; for example, disclosure of only a total of "other charges" attributable to both an over-the-credit-limit charge and a late payment charge would not be permissible. "Other charges" of the same type may be disclosed, however, individually or as a total. For example, three ATM fees of \$1 may be listed separately or as \$3. ◀

Section 226.9—Subsequent Disclosure Requirements

9(d) Finance Charge Imposed at Time of Transaction.

1. **[Ban on credit card surcharges.** 15 U.S.C. 1666f provides that until February 27, 1984, no seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card instead of paying by cash, check, or similar means.]

► **Disclosure prior to imposition.** The requirement that the amount of a finance charge imposed at the time of the honoring a consumer's credit card be disclosed prior to its imposition requires a person imposing such a credit card surcharge to disclose its existence prior to the consumer's becoming obligated to purchase property or services. ◀

#### Section 226.12—Special Credit Card Provisions

##### 12(a) Issuance of Credit Cards.

###### Paragraph 12(a)(1).

► **8. Unsolicited issuance of PINs.** A card issuer may issue to existing credit cardholders, without a specific request, personal identification numbers (PINs), thus allowing consumers to use their existing credit cards at automated teller machines, provided the PINs cannot be used alone to obtain credit. ◀

#### Section 226.15—Right of Rescission

##### 15(a) Consumer's Right to Rescind.

###### Paragraph 15(a)(1).

2. **Exceptions.** Although the consumer generally has the right to rescind with each transaction on the account, section 125(e) of the act provides an exception: [until September 30, 1985,] the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the act. [The consumer will have the right to rescind each extension made after September 30, 1985 under such a secured open-end credit plan, whether that plan was established before or after that date.]

#### References

Statute: §§ 113, 125, [and] ►, ◀ 130 ►, and the Housing and Community Development Technical Amendments Act of 1984. (Sec. 205, Pub. L. 98-479) ◀

1981 Changes: Section 226.15 reflects the statutory amendments of 1980, providing for a limited right of rescission [for a three-year trial period] when individual credit extensions are made in accordance with a previously established credit limit for an open-end credit plan. ► The 1980 amendments provided that this limited

rescission right be available for a three-year trial period. However, Pub. L. 98-479 now permanently exempts such individual credit extensions from the right of rescission. ◀

#### Subpart C—Closed-End Credit

##### Section 226.17—General Disclosure Requirements.

###### 17(a) Form of Disclosure.

###### Paragraph 17(a)(1).

5. **Directly related.** The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. Directly related information includes, for example, the following: \*

◀ \* A statement that a due-on-sale clause is contained in the loan document. For example, the disclosure given your § 226.18(q) may state, "Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms." ]

##### Section 226.18—Content of Disclosures

###### 18(f) Variable Rate.

5. **Other variable-rate regulations.** Transactions in which the creditor is required to comply with and has complied with variable-rate regulations of other federal agencies are exempt from the requirements of § 226.18(f), by virtue of footnote 43. Those variable-rate regulations include the adjustable mortgage loan instrument regulation issued by the Federal Home Loan Bank Board ► (12 CFR 545.33), ◀ [(12 CFR 545.8-2(a)) and] the adjustable-rate mortgage regulation issued by the Comptroller of the Currency (12 CFR Part 29) ► and the adjustable-rate mortgage regulations issued by the Department of Housing and Urban Development (24 CFR Part 203 and 24 CFR Part 234) ◀. The exception in footnote 43 is also available to creditors that are required by state law to comply with the federal variable-rate regulations noted above and to creditors that are authorized by title VIII of the Depository Institutions Act of 1982 (Pub. L. 97-320) to make loans in accordance with those regulations. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures. \*

8. **Discounted variable-rate transactions.** In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill

rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forego the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

\* When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is applied and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. ► The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that payment changes are based on the index value in effect 45 days before the change date, creditors may use the index value 45 days before consummation in calculating a composite annual percentage rate. ◀

\* The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.

\* If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.

\* Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with § 226.22(a)(3) of the regulation.

\* Examples of discounted variable-rate transactions include:

—A 30-year loan for \$100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of \$804.62 and 348 payments of \$1,025.31. The finance charge should be \$226,463.32 and the total of payments \$366,463.32.

—Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosures should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of \$804.62, 12 payments of \$950.09, and 336 payments of \$1,024.34. The finance charge should be \$265,234.76, and the total of payments \$365,234.76.

► This paragraph does not apply to variable-rate loans in which the initial rate is set according to the index or formula used for later adjustments, but is not set at the value of the index or formula at consummation. For example, if a creditor commits to an initial

rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor may base its disclosures on the initial rate. ◀

#### 18(k) Prepayment.

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, [simple-interest student loans with loan fees and] mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and penalties are required. Sample form H-15 in appendix H illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

#### 18(q) Assumption Policy.

1. *Policy statement.* [Because a creditor's assumption policy may be based on a variety of circumstances not determinable at the time the disclosure is made, the creditor may use phrases such as "subject to conditions" or "under certain circumstances" in complying with § 226.18(q). The provision requires only that the consumer be told whether or not a subsequent purchaser might be allowed to assume the obligation on its original terms and does not contemplate any explanation of the criteria or conditions for assumability. However, the creditor may state that a due-on-sale clause is contained in the loan document. (See comment 17(a)(1)-5 regarding directly related information.) ▶ In making the disclosure required by this section, if uncertainty exists as to whether a subsequent purchaser will be allowed to assume the obligation on its original terms, the creditor should state that the obligation cannot be assumed on its original terms. For example, if the obligation is subject to a due-on-sale clause, it is viewed as being nonassumable for purposes of complying with this section. However, if the only uncertainty pertains to a determination of the creditworthiness of the subsequent purchaser, the obligation is viewed as being assumable and an affirmative disclosure is appropriate. ◀

#### Section 226.23—Right of Rescission

#### 23(f) Exempt Transactions

▶ 8. *Converting open-end to closed-end credit.* Under certain state laws, consummation of a closed-end credit transaction may occur at the time a consumer enters into the initial open-end credit agreement. As provided in the commentary to § 226.17(b), closed-end credit disclosures may be delayed under these circumstances until the conversion of the open-end account to a closed-end transaction. In accounts secured by the consumer's principal dwelling, no new right of rescission arises at the time of conversion, assuming that the right of rescission arises at the time of conversion,

assuming that the right of rescission was previously provided on the open-end account pursuant to § 226.15. ◀

(15 U.S.C. 1604)

Board of Governors of the Federal Reserve System, November 28, 1984.

William W. Wiles,

Secretary of the Board.

[FR Doc. 84-31577 Filed 12-3-84; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Parts 500 and 563b

[No. 84-654]

#### Conversion Proxy Solicitations

Dated: November 16, 1984.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Home Loan Bank Board is proposing alternative procedures for obtaining the approval of the members of mutual insured institutions for plans to convert from the mutual to stock form or organization. The alternative procedure would authorize use of certain existing proxies to approve such plans when the members have been provided previously with adequate disclosure regarding the plan. The alternative procedure is intended to balance the interests of members with the practical needs of converting insured institutions. In addition, the Board proposes to clarify other provisions of the Conversion Regulations relating to voting.

**DATE:** Comments must be received by January 31, 1985.

**ADDRESS:** Send comments to Director, Public Information Services Branch, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** James C. Stewart, Senior Attorney, Corporate and Securities Division (202) 377-6457; J. Larry Fleck, Deputy Director, Corporate and Securities Division (202) 377-6413; or Julie L. Williams, Associate General Counsel, Director, Corporate and Securities Division (202) 377-6459, Office of General Counsel, at the above address.

**SUPPLEMENTARY INFORMATION:** Conversions to the stock form ("conversions") of mutual savings and loan associations whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured

institutions") are governed by Part 563b of the Regulations for the Federal Savings and Loan Insurance Corporation ("Corporation") ("Conversion Regulations"), 12 CFR Part 563b (1984). Among the regulatory requirements for such a conversion are the approval of the plan of conversion by at least a majority of the total outstanding votes of the association's members, unless the institution is state-chartered and state law requires a higher percentage. 12 CFR 563b.6(e) (1984). Voting may be either in person or by proxy. *Id.* To obtain the required approval vote, it is necessary to send out a proxy statement conforming to the Form PS. 12 CFR 563b.5 (c) and (e)(1); 563b.6(c) (1984). Although converting associations may use a summary proxy statement, they must make available to requesting members a supplemental information statement which, when combined with the summary statement, contains all the information required by the Form PS. 12 CFR 563b.3(d)(14). Proxies solicited for the special meeting at which a plan of conversion will be voted upon cannot confer authority to vote at any other meeting. 12 CFR 563b.5(d)(2) (1984).

The proxy solicitation requirements were intended to ensure that members have all the information they need to vote intelligently on the plan of conversion. See *Conversions of Insured Institutions From Mutual Into Stock Associations*, Resolution No. 73-26, 38 FR 1334, 1335 (Jan. 11, 1973). Since the conversion will extinguish the voting rights of members, 12 CFR 563b.3(c)(15) (1984), such consent is critical to the validity of the plan. The member proxy solicitation, however, adds significantly to the cost of conversion to stock form. There is not only the cost of preparing, printing, and mailing the proxy statement, but, in the event members do not respond to the initial solicitation, converting institutions must incur the additional expense of supplemental mailings, advertisements, telephone solicitations and even personal visits to members.

The Federal Home Loan Bank Board ("Board"), as operating head of the Corporation, believes that the member approval process can be streamlined and yet still provide the necessary informed consent of members. The Board proposes to allow the limited use of existing proxies to approve plans of conversion when members have previously been furnished the disclosure mandated by the Form PS. As a rule, mutual insured institutions obtain general proxies from the account holders and borrowers who are the voting

members of the association upon the opening of their savings or loan accounts. See, e.g., W. Prather, Savings Accounts 129-32 (6th ed. 1981). Although such proxies must be revocable at will, 12 CFR 569.2(a) (1984), the Board's regulations and the laws of many states allow these proxies to run indefinitely. The directors of mutual insured institutions use these general proxies to obtain member consent to routine matters of business such as elections of directors.

The Board believes that the use of running general proxies or other existing proxies in conversion votes is not inconsistent with its objective of fully-informed consent if voting members are furnished the disclosures mandated by the Form PS and are specifically informed that their previously-executed proxies may be used if they do not respond to the solicitation. Accordingly, the Board proposes to amend § 563b.5(d) of the Conversion Regulations to allow the use proxies other than those specifically solicited for the meeting to approve a conversion if all voting members as of the voting record date have been provided with a proxy statement meeting the requirements of the Form PS and with a proxy meeting the requirements of § 563b.5, and containing provision for an affirmative or negative instruction as to casting of the member's vote. Item 1 of the Form PS itself would be amended to require a bold-face legend on the cover of the proxy statement indicating that, if a proxy is not returned by the meeting date, management may use its general or other existing proxies to vote on the plan of conversion. Item 4 regarding voting rights would also be amended to require additional disclosure on the use of other proxies.

Although there is case law support for the use of general proxies to approve extraordinary corporate transactions, the Board also recognizes that the authority conferred by a given general proxy will depend on its wording. Moreover, for state-chartered associations, state law may impede the use of general proxies. Accordingly, the Board expects institutions and their counsel to consider such issues in the opinion on the validity of the special conversion meeting which must be submitted pursuant to § 563b.8(c)(2).

In line with its goal of procuring the fully informed consent of members, the Board is additionally proposing clarifications of the regulations designed to ensure the widest possible participation in the conversion vote. The Board notes that in recent years there has been a significant growth in the

percentage of deposits in insured institutions that are represented by accounts held in a fiduciary capacity, such as accounts for the benefit of Individual Retirement Account (IRA) participants. Questions have arisen regarding the extent of the voting rights of the beneficial holders of such accounts. In the Board's view, where the names of beneficiaries of accounts held in a fiduciary capacity with a federal association appear on the association's account records, those beneficial account holders should be allowed to cast the votes represented by the account in connection with the vote on conversion. Further, the Board believes that where beneficiaries have voting rights, as in the case of federal associations described above, or as may be available in the case of state-chartered institutions, such beneficial account holders should receive copies of the proxy soliciting materials used in the conversion. Therefore, the Board proposes to amend Conversion Regulation § 563b.6(c) to state this requirement. In the Board's view, a plan of conversion may authorize the fiduciary of accounts beneficially owned by others to vote or grant proxies for such accounts, provided the grant is consistent with applicable law and the governing instrument and the beneficiary is fully informed prior to the grant. An amendment to Item 4 of the Form PS is proposed to reflect this determination.

Finally, the Board proposes to update the sectional references in § 563b.3(d)(14), authorizing the use of summary proxy statements, and to relocate this provision in § 563b.6 with the other provisions relating to the furnishing of proxy statements.

#### Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

##### 1. Reasons, objectives, and legal bases underlying the proposed rules.

These elements have been discussed elsewhere in the supplementary information regarding the proposal.

##### 2. Small entities to which the proposed rules would apply.

The rule would apply to all insured institutions.

##### 3. Impact of the proposed rules on small institutions.

To the extent that rules would affect small institutions, this has been discussed elsewhere in the proposal.

##### 4. Overlapping or conflicting federal rules.

There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. Description of reporting and recordkeeping requirements. Discussed elsewhere.

#### List of Subjects in 12 CFR Part 563b

Securities, Savings and Loan Associations.

Accordingly, the Board hereby proposes to amend Part 563b of Subchapter D, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

#### SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

#### PART 563b—CONVERSION FROM MUTUAL TO STOCK FORM

#### SUBPART A—STANDARD CONVERSIONS

##### § 563b.3 [Amended]

1. Amend § 563b.3 by removing paragraph (d)(14) thereof.
2. Amend § 563b.5 by adding a new paragraph (d)(4) thereto, as follows:

##### § 563b.5 Solicitation of proxies; proxy statement.

\* \* \* \* \*

(d) Requirements as to proxy.

\* \* \* \* \*

(4) Notwithstanding the foregoing, the proxy may be in a form previously obtained from voting members and conferring general authority to vote on any and all matters at any meeting of the members or other authority to vote on matters to be presented at the special meetings, provided that such voting member has been furnished a proxy statement conforming with paragraph (c) of this section and the voting member does not grant a later-dated proxy to vote at the meeting called to consider the plan of conversion or attend such meeting and vote in person.

\* \* \* \* \*

3. Revise paragraph (c) of § 563b.6 as follows:

##### § 563b.6 Vote by members.

\* \* \* \* \*

(c)(1) Notice to members. Notice of the meeting to consider a plan of conversion shall be given by means of the proxy statement authorized for use by the Corporation. The notice shall be given not more than 45 nor fewer than 20 days prior to the date of the meeting to each association member, unless state law requires a different notice period. Such notice shall also be sent to each beneficial holder of an account held in a fiduciary capacity (i) in the case of a Federal association, where the name of the beneficial holder is disclosed on the institution's records,

and (ii) in the case of a state-chartered association where the beneficial holder possesses voting rights.

(2) *Summary proxy statement.* The proxy statement required by paragraph (c)(1) of this section may be in summary form, *Provided:*

(i) A statement is made in bold-face type on the notice to members required under paragraph (c)(1) that a more detailed description of the proposed transaction may be obtained by returning an attached postage-paid postcard or other written communication requesting a supplemental information statement which, together with the summary proxy statement, complies with the requirements of Form PS.

(ii) The last date on which the summary proxy statement is mailed to members will be deemed the date on which notice is given for purposes of paragraph (c)(1). Without prior approval by the Board, the special meeting of members shall not be held fewer than 20 days after the last date on which the supplemental information statement is mailed to requesting members;

(iii) The supplemental information statement required to be furnished to members pursuant to paragraph (c)(2)(i) of this section may be combined with Form OC, if the subscription offering is commenced concurrently with or during the proxy solicitation period pursuant to § 563b.3(d)(1) of this Subpart.

(A) The summary proxy statement shall be prepared in accordance with the following requirements:

(1) All of the requirements of Form PS shall be met, with the exception of the following:

- (i) Item 6. *Management Remuneration.*
- (ii) Item 7. *Business of the Applicant.* Paragraphs (c) through (m), and (o).
- (iii) Item 14. *Financial Statements.*
- (iv) Item 15. *Consents of Experts and Reports,* Paragraph (b).

(2) The disclosure requirements of Items 8(j), 9 and 13 of Form PS may be prepared in summary form.

(3) The disclosure requirements of Item 5 may be met through disclosure of the names, ages, and present occupations of all directors and executive officers.

(4) The plan of conversion shall not be required to be attached to the summary proxy statement under Item 16.

(5) Include the statement contained in § 563b.8(u) of this Part

\* \* \* \* \*

#### 4 Amend Item 2 of the Form PS

referenced in § 500.31(a)(1) by adding the following sentence at the end:

#### Form PS

[Facing Sheet]

Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation, 1700 G Street, N.W., Washington, D.C. 20552.

#### Proxy Statement

\* \* \* \* \*

#### Form PS

#### Information Required in Conversion Proxy Statement

\* \* \* \* \*

#### Item 2—Notice of Meeting.

If the applicant intends to use previously obtained proxies at the meeting in accordance with § 563b.5(d)(4), the notice of the meeting shall include the following bold-face legend:

The association may use your previously-executed proxies to vote for the plan of conversion in the event you do not execute another proxy for this meeting, attend and vote in person, or otherwise revoke your previously-executed proxies

\* \* \* \* \*

5. Amend Item 4 of the Form PS referenced in § 500.31(a)(1) by adding the following sentence to paragraph (a): "Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA and Keogh accounts, and indicate whether the trustees may vote or grant proxies for such accounts."; and adding a new paragraph (d), as follows:

\* \* \* \* \*

#### Item 4—Voting Rights and Vote Required for Approval.

\* \* \* \* \*

(d) If the Applicant intends to use previously-executed proxies to vote on the plan of conversion in accordance with § 563(d)(4), discuss how such proxies were obtained, the circumstances in which such proxies may be used, and how such proxies will be voted.

\* \* \* \* \*

(Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726, and 1730; Sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895 and 901, as amended, 15 U.S.C. 78c, l, m, n, and w; and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1071 (1943-48 Comp.))

By The Federal Home Loan Bank Board.

John F. Ghizzoni,  
Assistant Secretary.

[FR Doc. 84-31499 Filed 12-3-84; 8:45 am]

BILLING CODE 6720-01-M

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

#### Small Business Size Standards; Dredging Size Standard

**AGENCY:** Small Business Administration.  
**ACTION:** Proposed rule.

**SUMMARY:** SBA is proposing to amend its size standards regulation in dredging from the present \$9.5 million to \$13.5 million. A special study has resulted from intense public interest in the dredging industry size standard. SBA has obtained additional information from a questionnaire mailed to virtually every firm in the dredging industry. As a result of this additional information, SBA has been able to construct a profile of the dredging industry and, thus, propose a size standard which better reflects the industry's structure.

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

**ADDRESS:** Address all comments to: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, N.W., Room 500, Washington, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, (202) 653-6373.

**SUPPLEMENTARY INFORMATION:** On February 9, 1984, the Small Business Administration published a Final Rule in the *Federal Register* (49 FR 5023) in which its size standards were comprehensively revised. One industry in which the size standard was maintained, however, was dredging. For this latter industry, SBA chose to maintain a size standard of \$9.5 million until it could solve the problem of a lack of data. Toward this objective, SBA organized a task force to structure a questionnaire which was then sent to every known firm in the dredging industry. Approximately 20 percent of the industry responded to that questionnaire and the responses along with other information, provided by the Corps of Engineers, have proved useful in formulating a picture of the industry which can be used to set a size standard.

Of all industries affected by size standards, dredging is one of the most sensitive. SBA, for example, estimates that it has received written responses from 28 percent of the industry in contrast to a response rate for all other industries of 0.1 percent. Of these commentors, a clear majority would prefer a lower size standard, with both very large and very small firms preferring a low size standard, while firms in the mid-range of size preferring

a higher size standard. SBA, however, must evaluate the quality of the argument in setting size standards rather than simply polling respondents. Of critical interest is information on the industry, and SBA has finally been able to gather the necessary information to set a size standard based on industry structure. Some of this information is summarized below:

- Approximately three-fourths of all dredging activity is generated by the Federal Government. Thus, if firms are unable to win Federal contracts, there are only limited private alternatives to fall back on.

- About a third of a billion dollars is expended by the Federal Government each year in dredging. However, over the 1980-83 period, nominal spending did not increase while inflation increased 21 percent. Thus the real value of contract dollars declined 21 percent over the period, indicating that

firms specializing in Federal dredging activity are competing for a smaller pie.

- Dredging is an industry dependent on capital investments. These investments require a continual flow of revenues to justify and cover capital expenditures.

- Dredging has a high incidence of set-asides (20 percent vs. the normal 8 percent). In inland areas and the Southeast, set-aside dollars range between 50 and 60 percent of total dredging expenditures. These factors in total lead to great pressures on firms to expand their markets in any way possible. One approach is to convince the SBA to revise its size standard. For its own part, however, SBA must set its size standards based on industry structure and for dredging it has identified six factors which impact on the setting of a size standard. These are summarized as follows:

appropriate for the dredging industry. In particular, the two variables which were indeterminate would seem to caution against raising the size standard a full 81 percent in line with nonconstruction industries. More realistic would be an increase of 40 percent to \$13.5 million, which would put the dredging increase in line with the increase for the general construction industries. It would be less than the full increase, but would reflect the findings of this study that an increase in the size standard is merited based on industry structure.

#### Compliance With Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

SBA certifies that this regulation is a nonmajor rule as defined by Executive Order 12291. Since the total annual set-aside revenues of the dredging industry are between \$65 and \$70 million, this regulation is not likely to have an annual economic effect exceeding \$100 million. Similarly, this regulation is not likely to result in a major increase in costs or prices, or in significant adverse effects on the United States economy.

SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act.

This regulation is likely, however, to have a significant economic impact on a substantial number of small entities. Therefore, in compliance with the Regulatory Flexibility Act, SBA offers this initial regulatory flexibility analysis.

SBA has considered regulatory action in this instance in response to intense public comment on the size standard in this particular industry. The purpose of this proposed rule is to update the size standard for the dredging industry, which has not been revised recently to reflect inflation or changes in industry structure. This proposed change is authorized by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) which mandates that SBA define small business concerns on an industry-by-industry basis.

The dredging industry is comprised of approximately 250 companies of which 194 participated in the Federal procurement process in Fiscal Year 1983. Any of the 194 might be impacted by this proposed increased size standard if they were to bid on a dredging requirement that was set aside for small business. Potentially, all 194 companies could be affected by this proposed rule.

In deciding that a size standard of \$13.5 million more accurately reflects the current dredging industry, SBA also considered raising the size standard

Factor	Finding	Implication
Concentration ratio (Proportion of sales attributable to the four largest firms).	In general, the findings by region were indeterminate. Some regions (such as the Gulf Coast) had patterns of procurement suggesting that a higher size standard is preferable. However, other regions (such as the Great Lakes) had patterns of procurement in which a lower size standard would seem to be desirable.	Indeterminate results suggest that no change from the size standard of \$9.5 million is necessary based on regional concentration patterns.
Average firm size.....	The data suggest that dredging firms are approximately twice as large as other firms in general construction.	High average firm size suggests that a higher size standard is warranted. The fact that dredging has a size standard considerably lower than the size standard in general construction, but a higher average firm size argues for a higher size standard than \$9.5 million.
Cost increases.....	Costs per cubic yard for dredging work have, since 1975, increased at approximately the same pace as the GNP deflator.	Since the cost inflator in the construction industries was +40 percent, while in nonconstruction industries it was +81 percent, the retention of the dredging size standard of \$9.5 million would appear to be unfair. This factor in isolation argues for a higher size standard than \$9.5 million.
Proportion small.....	The proportion of firms actively in the dredging industry that are small under a size standard of \$9.5 million is much less than the proportion of general construction firms defined as small under its size standard of \$17 million.	This relationship argues for a higher dredging size standard than the present \$9.5 million.
Size of contract.....	Government contracts in the dredging industry are about twice the size of general construction contracts, although the dredging size standard is much smaller than the size standard for general construction.	This relationship argues for a higher dredging size standard than the present \$9.5 million.
Proportion of contract dollars received by small firms.	The dredging industry generally has a higher proportion of dollars won by small firms than other industries with the important exception of heavy construction.	These results are ambiguous, neither suggesting a higher nor a lower standard than the present \$9.5 million in dredging.

Of the six variables in question, four suggest that a higher size standard than the present \$9.5 million is warranted. Average firm size, cost increases since 1975, the proportion of firms defined as small, and the average size of dredging contract all suggest a higher size standard than \$9.5 million. The remaining variables—firm dominance

within regions and the proportion of contract dollars won by small firms—were indeterminate. Thus there is a strong, although not absolutely decisive, argument in favor of a higher size standard than \$9.5 million.

Given that most of the facts point to a higher size standard, the key question is how high a size standard would be most

above \$13.5 million, lowering it below \$9.5 million, or maintaining it at \$9.5 million. Although a more detailed analysis of the factors considered is presented above, the following summarizes SBA's reasons for selecting the \$13.5 million size standard for the dredging industry. Raising the standard above the \$13.5 million level was rejected because of concern about regional concentration patterns which are prevalent within the industry and because the industry currently has a relatively high incidence of small business set-asides.

The following factors, taken together, are the basis of SBA's rejection of the alternatives which would maintain the \$9.5 million size standard, or would advocate lowering it: relatively high average firm size, high contract value, inflationary trends in the industry, and the generally concentrated nature of the industry (i.e., four firms are responsible for one-third or more of the sales of the industry), as well as the desire to maintain comparable size standards in similarly structured industries.

In light of these factors, SBA decided to raise the dredging size standard from \$9.5 million to \$13.5 million.

#### List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Loan programs—business, Reporting and recordkeeping requirements, Small business.

#### PART 121—[AMENDED]

Accordingly, pursuant to 15 U.S.C. 634(b)(6) of the Small Business Act, SBA proposes to amend § 121.2(c)(2) of 13 CFR Part 121 by increasing the dredging size standard from \$9.5 million to \$13.5 million, as follows:

#### § 121.2 [Amended]

- (c) \* \* \*  
(2) \* \* \*

MAJOR GROUP 16—CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION—GENERAL CONTRACTORS

1629	Dredging and surface cleanup activities .....	\$13.5M
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Dated: November 26, 1984.

James C. Sanders,  
Administrator.

[FR Doc. 84-31590 Filed 12-3-84; 8:45 am]

BILLING CODE 8025-01-M

#### 13 CFR Part 121

#### Small Business Size Standards; Dredging Size Standard

**AGENCY:** Small Business Administration.  
**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** SBA has elsewhere published in this issue of the *Federal Register* a proposed rule in which the dredging size standard would be raised from \$9.5 million to \$13.5 million. However, it would also like to solicit public opinion on two other possible approaches to the dredging size standard. These approaches are designed to channel more Federal assistance to smaller dredging firms with receipts of \$5.0 million or less. The first approach would raise the size standard to \$13.5 million, but only for contracts estimated to be greater than \$500,000. The size standard would be \$5.0 million for contracts estimated to be less than \$500,000. These figures are illustrative only. The second approach would revise the SBA requirement that 40 percent of the dredging equipment used by a firm winning a set-aside contract be owned by the firm winning the contract or by another small dredging concern to a different percentage (while increasing the size standard to the \$13.5 million level). SBA feels that exploring these alternative approaches in the *Federal Register* at this time would generate new thinking within the industry, possibly leading to a dredging size standard which would be more acceptable to the industry as a whole.

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

**ADDRESS:** Address all comments to: Andrew A. Canellas, Director, Size Standard Staff, Small Business Administration, 1441 L Street, N.W., Room 500, Washington, D.C. 20416.

**FOR FURTHER INFORMATION CONTACT:** Robert N. Ray, (202) 653-8373.

**SUPPLEMENTARY INFORMATION:** Simultaneously with this advance notice SBA is proposing a revision in the dredging size standard from \$9.5 million to \$13.5 million. This revision is proposed based on the structure of the industry. However, SBA is somewhat uncomfortable with a decision process in which one figure, that of gross receipts, is the only variable used to allocate its assistance in an industry as sharply divided as the dredging industry. It is possible that various compromise approaches might be more acceptable to the industry than a revision focusing solely on the dollar figure of average receipts over a 3 year

period. The two approaches which the SBA is offering for public discussion at this time are reviewed below along with their possible outcomes:

#### Proposal

1. Raise the size standard to \$13.5 million for contracts estimated to be greater than \$500,000, but lower it to \$5.0 million for contracts estimated to be less than \$500,000. Thus, if a contract were greater than \$500,000, it could be either unrestricted or set-aside for any firm with \$13.5 million or less in gross receipts. If a contract were \$500,000 or less, it could be either unrestricted or set-aside for firms with \$5.0 million or less in gross receipts. These figures are illustrative only. SBA would welcome comments from firms on the appropriateness of these figures as well as the overall approach.

#### Possible Outcome

More contracts and contract dollars would be set-aside, since there would be a larger pool of firms to draw on for those contracts in excess of \$500,000. For contracts estimated to be less than \$500,000, fewer contracts would be set-aside since the pool of eligible firms would be reduced. In general, most firms presently defined as small would benefit by the greater number of contracts set-aside, and for firms in the \$5.0 to \$9.5 million range, the opportunity to expand to \$13.5 million. The very small firms would benefit on small contracts which were set-aside by not having to compete with those small firms with more than \$5.0 million in receipts. The Army Corps of Engineers could expand its set-aside targets, but has indicated its dislike for the complexity of the system. Protests might increase over the decision as to whether a contract is estimated to exceed \$500,000 or not.

#### Proposal

2. Revise the SBA requirement that 40 percent of the dredging equipment be owned by the firm winning the set-aside contract or equipment owned by another small dredging concern to a higher level, while increasing the size standard to the \$13.5 million level. SBA also would welcome discussion over moving to a lower level or to discontinuing the regulation entirely.

#### Possible Outcome

A higher requirement would most heavily impact on firms in the \$5.0 to \$9.5 million size range. These appear to be the firms now leasing equipment or subcontracting with large firms to perform the contract. Raising the size standard to \$13.5 million would increase

the number of eligible firms and the number of set-aside contracts. On the other hand, restricting further the amount of subcontracting or leasing permitted would result in fewer set-asides than if the 40 percent requirement were still in place. Thus, while more contracts would be set-aside with a \$13.5 million size standard, a higher proportional requirement for firm controlled dredging equipment would lessen somewhat the number of set-asides and mostly affect the firms presently in the \$5.0 to \$9.5 million size range. Over time, there would probably be a net increase in leasing from firms in the \$5.0 to \$13.5 million range to firms with \$5.0 million or less in gross receipts since they would be constrained from leasing with large firms.

SBA has put forward this notice in the form of an advance notice of proposed rulemaking to downplay its importance relative to our proposed rulemaking in which the size standard would be raised to \$13.5 million. An advance notice is designed to solicit information only and is not associated with imminent action to the same extent as a proposed rule. At this preliminary point, SBA is interested in reaction to the two proposals. SBA is also interested in views of the correctness of the possible outcomes and welcomes any additional suggestions on this issue.

Dated: November 26, 1984.

James C. Sanders,  
Administrator.

[FR Doc. 84-31592 Filed 12-3-84; 8:45 am]  
BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 83-AWP-6]

#### VOR Federal Airway V-460, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws Airspace Docket No. 83-AWP-6 published in the *Federal Register* on February 10, 1984 (49 FR 5136), proposing an alteration of VOR Federal Airway V-460 between San Diego, CA, and Julian, CA. The proposed alteration was designed to complement planned air traffic control procedures in that area. The circumstances prompting the proposal have changed and the FAA has determined that the proposal is no longer appropriate.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

#### Withdrawal of the Proposal

Pursuant to the authority delegated to me, Airspace Docket No. 83-AWP-6 published in the *Federal Register* on February 10, 1984 (49 FR 5136), is hereby withdrawn.

Issued in Washington, D.C., on November 26, 1984.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84-31571 Filed 12-3-84; 8:45 am]  
BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 941

[Docket No. 40564-4064]

#### Fagatele Bay National Marine Sanctuary Regulations

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

ACTION: Proposed rule.

SUMMARY: These proposed regulations define which activities are allowed and which are prohibited within the proposed Fagatele Bay National Marine Sanctuary; the procedures by which persons may obtain permits for conducting activities normally prohibited; and the penalties for committing prohibited acts without a permit. The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect and preserve an example of a pristine tropical marine habitat and coral reef terrace ecosystem of exceptional biological productivity; to expand public awareness and understanding of tropical marine environments; to expand scientific knowledge of marine ecosystems; to improve resource management techniques; and to regulate uses within the Sanctuary to ensure the health and well-being of the ecosystem and its associated flora and fauna.

EFFECTIVE DATE: Comments will be accepted until February 4, 1984.

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Kelvin Char, 202/634-4236.

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434, (the Act) authorizes the Secretary of Commerce, with Presidential approval, to designate ocean waters as far seaward as the outer edge of the continental shelf as marine sanctuaries to preserve or restore distinctive conservation, recreational, ecological, or aesthetic values. Section 302(f)(2) of the Act directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. The responsibility for administering the provisions of the Act and its authority has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management within the National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

In March 1982, a proposal nominating Fagatele Bay, American Samoa, as a candidate for marine sanctuary designation, was submitted to the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. The recommendation submitted by Governor Peter T. Coleman cited, among other benefits of marine sanctuary designation, the development and implementation of a comprehensive Management Plan that would serve to: (1) protect the bay's natural resources and pristine character; (2) create and enhance public awareness and understanding of the need to protect marine resources; (3) expand scientific examination of marine ecosystems associated with the high islands found in the Pacific, especially coral reefs that have been infested by the crown-of-thorns starfish, and apply scientific knowledge to the development of improved resource management techniques; and (4) allow uses of the sanctuary that are compatible with the sanctuary designation, giving highest priority to nondestructive traditional and public recreational uses.

In April 1982, NOAA placed the nominated area on the List of Recommended Areas (LRA) and, after preliminary public and agency

consultation, further declared the area an Active Candidate. After preparation and distribution of an Issue Paper by NOAA's Office of Coastal Zone Management in May 1982, a public workshop was held in American Samoa to solicit additional comments on the feasibility of further considering the site as a national marine sanctuary.

Based on the workshop results and in consultation with other Federal agencies and the American Samoa Government, a decision was made to proceed to the next step toward designation—development of a draft management plan and draft environmental impact statement (DEIS) for the proposed sanctuary. The draft management plan and DEIS, which contained an analysis of these draft regulations, was distributed on October 27, 1983. A public hearing was held in American Samoa on January 18, 1984 to receive testimony on the DEIS. Comments on the draft management plan/DEIS were accepted until January 20, 1984.

Comments received by NOAA on the DEIS were reviewed and, where appropriate, were incorporated into the final environmental impact statement and management plan (FEIS/MP). To meet the requirements of the Act, the proposed designation will be sent to the Congress and the Governor of American Samoa and will not go into effect until the expiration of 60 legislative days. The Governor of American Samoa will have 60 days to disapprove the designation or any of its terms. Thereafter, to the extent not disapproved by an act of Congress or the Governor of American Samoa, the Secretary may formally designate the area as a national marine sanctuary and final regulations will take effect.

#### Other Matters

##### (A) Classification Under Executive Order 12291

Executive Order 12291 (E.O. 12291) defines a "major rule" as "any regulation that is likely to result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets." The major activities supported by the area within the proposed sanctuary consist of small-scale recreational and subsistence activities.

Most of the activities in the proposed sanctuary are not affected by sanctuary regulations; the economic impacts on affected activities are minor and the regulations do not restrict recreational activities. Because the impact of the regulations on economic interests is minor or because the activities are not regulated at all, the Assistant Administrator has determined that this is not a "major rule" under E.O. 12291.

##### (B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of rulemaking. These regulations set forth which activities are allowed and which are prohibited in the proposed Fagatele Bay National Marine Sanctuary; the procedures by which persons may obtain permits for activities otherwise prohibited; and the penalties for committing prohibited acts without a permit. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small business. For the same reasons, the General Counsel has certified to the Small Business Administration that the proposed rules will not have a significant economic impact on a substantial number of small entities within the area of the proposed sanctuary under the Regulatory Flexibility Act.

##### (C) Paperwork Reduction Act of 1980 (Pub. L. 96-511)

These regulations will impose no information collection requirements of the type covered by Pub. L. 96-511 other than those already approved by the Office of Management and Budget (approval number 0648-0141). Comments on the information collection requirements in § 941.11 of these proposed regulations shall be directed to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer, Department of Commerce, NOAA.

##### List of Subjects in 15 CFR Part 941

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

(Federal Domestic Assistance Catalog Number 11.419, Coastal Zone Management Program Administration)

Dated: May 9, 1984.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, 15 CFR Part 941 is proposed to be added as follows:

## PART 941—FAGATELE BAY NATIONAL MARINE SANCTUARY PROPOSED REGULATIONS

Sec.	
941.1	Authority.
941.2	Purpose.
941.3	Scope of regulations.
941.4	Boundaries.
941.5	Definitions.
941.6	Management and enforcement.
941.7	Allowed activities.
941.8	Activities prohibited or controlled.
941.9	Other authorities.
941.10	Penalties for commission of prohibited acts.
941.11	Permit procedures and criteria.
941.12	Appeal of permit action.

Authority: Title III of Pub. L. 92-532, 86 Stat. 1061, 1062 (16 U.S.C. 1431-1434).

##### § 941.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 302(a) of the Marine Protection, Research and Sanctuaries Act of 1972 as amended (the Act). The following regulations are issued pursuant to Title III of the Act.

##### § 941.2 Purpose.

The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect a unique deepwater terrace formation and a coral reef ecosystem representative of the warm water tropical Pacific Islands in its natural state and to regulate uses within the Sanctuary to ensure the health and integrity of the ecosystem and its associated flora and fauna.

##### § 941.3 Scope of regulations.

The provisions of this Part apply only to the area defined by regulation as the Fagatele Bay National Marine Sanctuary (the Sanctuary). Neither these provisions nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this Part.

##### § 941.4 Boundaries.

The Sanctuary is a 163-acre (.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, American Samoa. The site is divided into two Subzones, A and B, and includes Fagatele Bay in its entirety up to mean high high water (MHHW). The seaward boundaries are defined by straight lines between the following points:

Point	Pt. No.	Sub-zone	Latitude	Longitude
Fagatote Point	1-1	A	14°22'15"S	170°46'5"W
Matautuloa Benchmark	1-2	A	14°22'18"S	170°45'35"W
Fagatote Point	2-1	B	14°22'15"S	170°46'5"W
Steps Point	2-2	B	14°22'44"S	170°45'5"W

#### § 941.5 Definitions.

(a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).

(b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, or his or her successor, or designee.

#### § 941.6 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Development Planning Office (DPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. The American Samoa Department of Parks and Recreation (DPR) shall conduct surveillance within the Sanctuary and shall enforce these regulations pursuant to 14 U.S.C. 89, 16 U.S.C. 1432(f)(4), 16 U.S.C. 7421(b), 16 U.S.C. 3375(a), or other appropriate legal authority.

#### § 941.7 Allowed activities.

All activities except those specifically prohibited by Section 941.8 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by other authorities.

#### § 941.8 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with Section 941.11, or as may be necessary for national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled in Subzones A and B of the Sanctuary. All prohibitions and controls will be applied consistently with international law. Refer to § 941.10 for penalties for commission of prohibited acts.

(i) *Taking and Damaging Natural Resources.* (i) No person shall gather, break, cut, or similarly damage or destroy any invertebrate, coral, bottom formation, or marine plant.

(ii) No person shall gather, cut, damage, or similarly destroy any crown-of-thorns starfish (*Acanthaster planci*).

(iii) No person shall possess or use poisons, electrical charges, explosives, or similar environmentally destructive methods.

(iv) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, and bang sticks.

(v) No person shall possess or use seines, trammel nets, or any fixed net.

(vi) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been used, collected, or removed from within the Sanctuary.

(2) *Operation of vessels.* (i) No vessel shall approach closer than 200 feet to a vessel displaying a dive flag except at a maximum speed of three knots.

(ii) All vessels from which diving operations are being conducted shall fly in a conspicuous manner the international code flag alpha "A."

(iii) All vessels shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(3) *Discharges.* No person shall litter, deposit, or discharge any materials or substances of any kind into the waters of the Sanctuary.

(4) *Disturbance of the Benthic Community.* Disturbance of the benthic community by dredging, filling, dynamiting, and bottom trawling shall be prohibited.

(5) *Removing or Damaging Cultural Resources.* No person shall remove, damage, or tamper with any historical or cultural resource within the boundaries of the Sanctuary.

(6) *Taking of sea turtles.* No person shall ensnare, entrap, or fish any sea turtle while it is listed as a threatened or endangered species as defined by the Endangered Species Act of 1973.

(7) *Use of dangerous weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are

not considered weapons for purposes of this subsection.

(8) *Other prohibitions.* No person shall mark, deface, or damage in any way, or displace or remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or controlled in accordance with § 941.8(a), the following activities are prohibited or controlled in Subzone A:

(1) *Taking and damaging natural resources.* (i) No person shall possess or use fishing poles, handlines, or trawls.

(ii) Commercial fishing shall be prohibited.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

#### § 941.9 Other authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 941.8 unless such activity meets the criteria stated in § 941.11(a), (c) and (d), and is specifically authorized by the Assistant Administrator.

#### § 941.10 Penalties for commission of prohibited acts.

Section 303 of the Act authorizes the assessment of a civil penalty of not more than \$50,000 for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply to all enforcement matters under the Act, the consolidated civil procedure regulations set forth at 15 CFR 904.110 through 904.243, and the seizure, forfeiture, and disposal procedure regulations set forth at 50 CFR Part 219.

#### § 941.11 Permit procedures and criteria.

Under special circumstances where an activity otherwise prohibited by § 941.8 of these regulations is required for research or educational purposes designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking, and the activity is judged not to cause long-term or irreparable harm to the resources, a

permit may be granted by NOAA in cooperation with DPO.

(a) Any person in possession of a valid permit issued by the Assistant Administrator after consultation with the Director in accordance with this Section may conduct the specified activity in the Sanctuary if such activity is: (1) Related to research involving Sanctuary resources; (2) to further the educational value of the Sanctuary; or (3) for salvage or recovery operations.

(b) Permit applications shall be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, ATTN: Sanctuary Programs Division, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235. An application shall include a description of all proposed activities, the equipment, methods, and personnel involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached. This information collection has been approved by the Office of Management and Budget (approval number 0648-0141).

(c) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as: (1) The general professional and financial responsibility of the applicant; (2) the appropriateness of the methods being proposed for the purpose(s) of the activity; (3) the extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and (4) the end value of the activity.

(d) Permits may be issued by the Assistant Administrator for activities otherwise prohibited under § 941.8. In addition to meeting the criteria in § 941.11(a) and (c), the applicant must also satisfactorily demonstrate to the Assistant Administrator that: (1) The activity shall be conducted with adequate safeguards for the environment; and (2) the environment shall be returned to the condition which existed before the activity occurred. A permit issued according to these provisions shall be appropriately conditioned and the activity monitored to ensure compliance.

(e) In considering an application submitted pursuant to this Section, the Assistant Administrator shall seek and consider the view of the Sanctuary Manager and Director. The Assistant Administrator may also seek and consider the views of any other person or entity, within or outside of the Territorial Government, and may hold a

public hearing, as he or she deems appropriate.

(f) The Assistant Administrator may, at his or her discretion, grant a permit which has been applied for pursuant to this Section, in whole or in part, and subject the permit to such condition(s) as the Assistant Administrator deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions: (1) The Assistant Administrator, Director, or their designated representatives may observe any activity permitted by this Section; (2) any information obtained in the research site shall be made available to the public; and (3) the submission of one or more reports of the status of progress of such activity may be required.

(g) A permit granted pursuant to this Section is non-transferrable.

(h) The Assistant Administrator may amend, suspend, or revoke a permit granted pursuant to this Section, in whole or in part, temporarily or indefinitely if, in his/her view, the permittee has acted in violation of the terms of the permit or regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder and shall set forth reason(s) for the action taken. The permittee in relation to whom such action has been taken may appeal the action as provided for in § 941.12.

#### § 941.12 Appeal of permit action.

(a) Except for permit actions which are imposed for enforcement reasons and covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, the permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning or suspension of any permit under § 941.11 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reasons(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this Section, the Administrator may request the Appellant to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 941.11(a), (c) and (d) and any information relative to the application on file, any information provided by the Appellant,

and such other consideration as is deemed appropriate. The Administrator shall notify the Appellant of the final decision and the reason(s) therefor, in writing normally within 30 days of the date of the receipt of adequate information required to make the decision.

(c) If a hearing is requested, or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer appointed for that purpose. The Appellant and other interested persons may appear personally or by counsel at the hearing and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his or her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's decision shall constitute final action for the Agency for the purposes of the Administrative Procedure Act.

(e) Any time limit prescribed in this Section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Appellant, permit applicant or Holder, stating the reason(s) therefor.

[FR Doc. 84-31576 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-08-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 166

[Docket No. 82P-0186]

#### Margarine; Proposal To Amend the Standard of Identity

##### Correction

In FR Doc. 84-28518 beginning on page 43560 in the issue of Tuesday, October 30, 1984, make the following correction:

On page 43561, third column, second complete paragraph (beginning with Therefore), tenth line, "\$ 166.10" should read "\$ 166.110".

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 920

## Maryland Permanent Regulatory Program; Review of State Program Amendment

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

**ACTION:** Reopening and extension of public comment period.

**SUMMARY:** OSM is reopening the period for review and comment on an amendment submitted by the State of Maryland to its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Specifically, OSM is reopening the comment period to allow the public sufficient time to consider and comment on modifications submitted by Maryland on August 7, 1984, October 10, 1984, and November 9, 1984, to its initial amendment of January 13, 1984. The amendment consists of regulations governing surface coal mining and reclamation operations on State owned land, statutory amendments concerning license suspension and permit conditions regarding areas designated unsuitable for mining and revisions to the State's inspection frequency standards.

**DATE:** Written comments not received on or before 4:00 p.m. on December 19, 1984, will not necessarily be considered.

**ADDRESSES:** Written comments should be mailed or hand delivered to:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, Attention: Maryland Administrative Record, 603 Morris Street, Charleston, West Virginia 25301

See "SUPPLEMENTARY INFORMATION" for addresses where copies of the Maryland program amendment and administrative record on the Maryland program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Charleston Field Office listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. William D. Ellis, Acting Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

**SUPPLEMENTARY INFORMATION:** Copies of the Maryland program amendment, the Maryland program and the administrative record on the Maryland program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20240, Telephone: (304) 343-7896  
Maryland Department of Natural Resources, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136

In addition, copies of the amendment are available for inspection and copying during regular business hours at the following location:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, Morgantown, West Virginia 26505, Telephone: (304) 291-4004

The Maryland program was conditionally approved by the Secretary of the Interior on December 1, 1980 (45 FR 79430-79451). On February 18, 1982, following submission of program amendments to satisfy the conditions of approval, the Maryland program was fully approved by the Secretary (47 FR 7214-7217).

On January 13, 1984, the State of Maryland submitted proposed statutory and regulatory revisions to its approved program (Administrative Record No. MD 229). The submission contained revisions concerning permitting requirements and performance standards for coal exploration activities and inspection and enforcement procedures involving right of entry, public participation, notices of violation and cease and desist orders.

On February 16, 1984, OSM published a notice in the *Federal Register* announcing receipt of the amendment, a public comment period and an opportunity for a public hearing on the amendment (49 FR 5971-5973). On March 1, 1984, OSM published a notice in the *Federal Register* which corrected the February 16, 1984, notice concerning the hearing date and the date by which persons interested in making oral or written presentations at the hearing must contact OSM (49 FR 7605-7606). The public hearing scheduled for March 12, 1984, was not held because no one

expressed an interest in participating in the hearing. The public comment period closed on March 19, 1984.

Following its review and opportunity for public comment, on April 5, 1984, OSM notified Maryland of certain deficiencies contained in the proposed amendment, and provided the State an opportunity to submit additional information to address the deficiencies (Administrative Record No. MD 241). On May 4, 1984, Maryland submitted additional information to clarify certain provisions of its initial amendment (Administrative Record No. MD 250). On May 9, 1984, as a follow-up to its May 4, 1984, letter, Maryland submitted revised bond release procedures (Administrative Record No. MD 249). Representatives of OSM and the State met on May 31, 1984, to discuss the additional information submitted by the State (Administrative Record No. MD 252). As a result of this meeting, Maryland withdrew its proposed amendment of May 9, 1984, and submitted additional modifications on June 8, 1984, concerning the form, amount and release procedures for performance bonds (Administrative Record No. MD 251).

On July 5, 1984, OSM reopened the comment period to provide the public sufficient time to consider the proposed revisions submitted by the State of Maryland on June 8, 1984, and to review the minutes of the meeting held on May 31, 1984, between OSM and the State (49 FR 27582-27583) (Administrative Record No. MD 266).

On August 7, 1984, the State of Maryland submitted a proposed amendment to its permanent program at COMAR 08.13.09 to regulate surface coal mining and reclamation activities on land owned by the State. In so doing, the State proposes to repeal similar provisions at COMAR 08.13.04.28 of its interim regulations (Administrative Record No. MD 282). On October 10, 1984, Maryland submitted additional modifications to its permanent program in response to OSM's letter of April 5, 1984. The modifications consist of amendments to the Maryland Strip Mining Law at § 7-504(c) and § 7-505.1(e) concerning license suspension procedures and conditioning of permits to protect areas under study or which have been designated unsuitable for mining (Administrative Record No. MD 283). On November 9, 1984, Maryland also submitted proposed amendment to its permanent program regulations at COMAR 08.13.09.40B regarding the inspection frequency of surface coal mining reclamation operations (Administrative Record No. MD 284).

The comment period being announced today is to provide the public sufficient time to comment on the modifications submitted by the State of Maryland on August 7, 1984, October 10, 1984, and November 9, 1984, to its permanent regulatory program. If approved, the initial amendment and the modifications thereto will become part of the Maryland permanent program in accordance with the provisions of 30 CFR 732.17.

Dated: November 28, 1984.

William B. Schmidt,

Assistant Director, Program Operations and Inspection.

[FR Doc. 84-31598 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[PP 3E2886/P341; PH-FRL 2697-6]

### Chlorpyrifos; Proposed Tolerance

#### Correction

In FR Dec. 84-27642, beginning on page 42753, in the issue of Wednesday, October 24, 1984, make the following correction: On the page 42753 in column two, under **SUPPLEMENTARY INFORMATION**, second complete paragraph, seventh line, "e, 5, 6-" should read "3, 5, 6-".

BILLING CODE 1505-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 80

### Proposed Rule Implementing Amendments to the Federal Aid in Sport Fish Restoration Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would implement amendments to the Federal Aid in Sport Fish Restoration Act that provide Federal funds to States for the restoration, conservation, management, and enhancement of sport fish, and the provision for public use and benefits from these resources. It seeks to clarify legal requirements and to establish integrated policies necessary for implementation of the legislative amendments.

**DATES:** Comments must be received by January 3, 1985.

**ADDRESSES:** Any comments on the proposed requirements should be submitted to the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Charles K. Phenicie, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235-1526.

**SUPPLEMENTARY INFORMATION:** The Deficit Reduction Act of 1984 (Pub. L. 98-369) amended the Federal Aid in Sport Fish Restoration Act, commonly known as the Dingell-Johnson or D-J Act, that was enacted on August 9, 1950, (64 Stat. 430; 16 U.S.C. 777-777k). The new law will require regulatory changes to accommodate several provisions including: (a) The States must allocate 10 percent of their D-J apportionment for motorboat access facilities; (b) the States may use up to 10 percent of their D-J apportionment for an aquatic resources education program; (c) the States must use their additional D-J funds to expand their fishery management programs; (d) the District of Columbia will be allowed to participate in the grant program; (e) Coastal States must equitably allocate new funds between fresh and saltwater activities; (f) the States will be permitted to enter multi-year financial agreements for large-scale activities.

This proposed rule serves almost entirely to interpret, clarify, and consolidate requirements imposed by Pub. L. 98-369. Further, it has been determined that this proposed rule is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). This proposed rule does not contain any new recordkeeping or information collection requirements as defined by Paperwork Reduction Act of 1980.

The Department has determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environment Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required.

During the drafting of this proposed rule, the FWS met with representatives of the various State fish and game agencies to discuss the amendments to the Act. Comments were received during those sessions. A record of those comments will be made a part of the administrative record of this rulemaking and will be available for public inspection. Those comments will be considered, along with all others

received during the comment period, in formulating the final rule.

The principal author of this rule is Dr. Robert J. Sousa, U.S. Fish and Wildlife Service, Division of Federal Aid, Washington, D.C. 20240, telephone 703/235-1526.

### List of Subjects in 50 CFR Part 80

Fish grant programs, Natural resources, Grant administration, and Wildlife.

### PART 80—[AMENDED]

Accordingly, it is proposed to amend 50 CFR Part 80 as follows:

1. The authority citation for Part 80 is revised to read as follows:

**Authority:** Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777i), as amended and Federal Aid in Wildlife Restoration Act (16 U.S.C. 669i), as amended.

2. In § 80.1, paragraph (b) is revised to read as follows:

#### § 80.1 Definitions.

(b) *State.* Any State of the United States; the territorial areas of Guam, the Virgin Islands, and American Samoa; the Commonwealth of Puerto Rico, the District of Columbia, and the Commonwealth of the Northern Mariana Islands.

3. In § 80.2, paragraph (a) is revised to read as follows:

#### § 80.2 Eligibility.

(a) Federal Aid in Sport Fish Restoration—Each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa.

4. In § 80.5, paragraph (c) is added to read as follows:

#### § 80.5 Eligible undertakings.

(c) Additional funds resulting from expansion of the D-J Program must be added to existing State fishery program funds available from traditional sources and not as a substitute therefor.

5. Section 80.15 is amended by adding paragraph (e) to read as follows:

#### § 80.15 Allowable costs.

(e) Not more than 10 percentum of the annual amount apportioned to each State under provisions of the Federal Aid in Sport Fish Restoration Act may

be obligated on projects for aquatic education.

6. A new § 80.23 is added to read as follows:

**§ 80.23 Allocation of funds between marine and freshwater fishery projects.**

(a) Each coastal State, to the extent practicable, shall equitably allocate those funds specified by the Secretary, in the apportionment of Federal Aid in Sport Fish Restoration funds, between projects having recreational benefits for marine fisheries and projects having recreational benefits for freshwater fisheries.

(1) Coastal States are: Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, Washington, Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

(2) The allocation and subsequent obligation of funds between projects that benefit marine and freshwater interests will be in the same proportion as the estimated number of resident marine anglers and resident freshwater anglers, respectively, bears to the estimated number of the total resident anglers in the State. The numbers of marine and freshwater anglers shall be based on a statistically reliable method for determining the relative distribution of resident anglers in the State between those that fish in saltwater and those that fish in freshwater.

(3) To the extent practicable means that the amounts allocated of each year's apportionment may not necessarily result in an equitable allocation for each year. However, the amounts allocated over a period, not to exceed 3 years, must result in an equitable allocation between marine and freshwater fisheries projects.

(4) Failure to provide for an equitable allocation may result in the State becoming ineligible to participate in the use of those funds specified, or such other sanction as the Director considers appropriate.

7. A new § 80.24 is added to read as follows:

**§ 80.24 Motorboat access facilities.**

The State shall allocate at least 10 percentum of the funds apportioned to it under the Federal Aid in Sport Fish Restoration Act for access facilities. All facilities constructed, acquired, developed, renovated, or maintained

must be for the purpose of providing additional, improved, or safer access of public waters for boating recreation as part of the State's effort for the restoration, management, and public use of sport fish. Though a broad range of access facilities and associated amenities can qualify for funding under the 10 percent provision, power boats with common horsepower ratings must be accommodated and in addition, the State must make reasonable efforts to accommodate boats with larger horsepower ratings if they would not conflict with aquatic resources management.

8. A new § 80.25 is added to read as follows:

**§ 80.25 Multi-year financing under the Federal Aid in Sport Fish Restoration Program.**

(a) States may finance the acquisition of lands or interests in lands and the construction of structures and facilities utilizing multi-year funding as authorized by the Federal Aid in Sport Fish Restoration Act in two ways:

(1) States may finance the entire cost of the acquisition or construction from a non-Federal funding source and claim federal aid reimbursement in succeeding apportionment years according to a scheduled reimbursement plan.

(2) States may negotiate an installment purchase or contract whereby periodic and specified amounts are paid to a seller or contractor and federal aid reimbursements are allowed for each payment from any apportionment year current at the time of payment.

(b) Multi-year financing is subject to the following conditions:

(1) Projects must provide for prospective use of funds and be approved by the Regional Director in advance of the State's obligation or commitment to purchase property or contract for structures or facilities.

(2) States must agree to complete the project even if Federal funds are not available. In the event the project is not completed those Federal funds expended but not resulting in sport fishery benefits must be recovered.

(3) Project proposals must include a complete schedule of payment to complete the project.

(4) No costs for interest or financing shall be claimed for reimbursement.

Dated: October 29, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-31574 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-55-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Ch. II**

[Docket No. 40670-4070]

**U.S. Standards for Grades of Crab Meat and Oysters**

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

**ACTION:** Notice of intent to develop standards.

**SUMMARY:** This notice announces this agency's decision based on comments received regarding the development of U.S. Standards for Grades of Crab Meat and Oysters. It is a followup to the notice previously published on June 19, 1984, 49 FR 25017.

**FOR FURTHER INFORMATION CONTACT:** Rita A. Creitz, National Standards Coordinator, National Seafood Inspection Program, Office of Utilization Research, National Marine Fisheries Service, Washington, D.C. 20235. Phone (202) 634-7458.

**SUPPLEMENTARY INFORMATION:** This agency, in response to two petitions received from the National Blue Crab Industry Association and The Shellfish Institute of North America, published on June 19, 1984, a Federal Register notice (49 FR 25017) inviting written comments until August 3, 1984, on the desirability and scope for two new voluntary U.S. Standards for Grades: crab meat and oysters. A total of 23 written comments were received. Most addressed both proposed standards. Following is a summary of those comments as they pertain to each proposed U.S. Standards for Grades.

Oysters: 19 comments were received, all in support of the development of the standard, from 10 processors, 6 trade associations, 2 State Governments, and one industrial food organization. One comment stated that the standard should "not apply to cooked and processed oysters."

Crab Meat: 11 comments were received from 7 processors, 3 industry trade associations, and one food service organization. Ten comments supported the development of a standard. In response to the question whether there was interest in developing a standard which would include species in addition to blue crab, one comment stated standards were not needed for Dungeness, Snow (*Chionoecetes bairdi*, *C. opilio*), or King Crabs.

Based on the supportive nature, the quantity, and the geographical

distribution of the comments, it is the decision of NMFS that there is national interest in, and that resources should be committed to, the development of the subject U.S. Standards for Grades. The U.S. Standards for Grades of Crab Meat will be limited to blue crab meat. Since insufficient information could be gathered from the comments to define specifically the scope of each standard, NMFS will obtain (as soon as possible) the information necessary, working with industry and users of the commodity, to identify the scope and begin the development process. Those interested in learning the progress of the respective standards are invited to write or call the identified contact.

Dated: November 28, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

[FR Doc. 84-31596 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-22-M

## 50 CFR Part 652

[Docket No. 41161-4161]

### Atlantic Surf Clam and Ocean Quahog Fisheries

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

**ACTION:** Notice of proposed 1985 fishing quotas and request for comments.

**SUMMARY:** NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1985 and requests public comment. These quotas have been selected from a range defined as the optimum yield for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1985.

**DATE:** Comments will be accepted until December 31, 1984.

**ADDRESS:** Comments on the proposed 1985 fishing quotas should be sent to the Management Division, Northeast Region, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930-3097. A copy of the report used to propose the quotas is available for public inspection at this address; copies may be requested in writing.

**FOR FURTHER INFORMATION CONTACT:** Salvatore A. Testaverde, Surf Clam

Management Coordinator, 617-281-3600, ext. 273.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

To implement this regulatory provision for establishing quotas, the Regional Director has considered the following information: Stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing.

Proposed quotas based on that information are published here for public review and comment; a copy of the report on the methodology used in establishing these quotas is available to the public.

Analyses of stock assessments, catch records, and all other relevant information indicate increases in productivity, especially surf clam recruitment of strong 1976 and 1977 year classes off northern New Jersey and Delmarva Peninsula. Overall, adequate resources currently exist in the Mid-Atlantic Area. The total landings for the Mid-Atlantic Area, as of October 26, 1984, was approximately 2,225,000 bushels. The total ocean quahog resource has been established at 27 million bushels, and the additional 400,000 bushels remain within the range of the optimum yield.

The New England Area, presently governed by emergency regulations (49 FR 37598, September 25, 1984), will continue its 200,000 bushel quota until December 27, 1984. The total landings for the New England Area, excluding the newly discovered Georges Bank beds, is approximately 60,000 bushels. The recent discovery of surf clams on Georges Bank necessitated the establishment of a scientific survey which aided scientists in determining the size and concentration of the surf clam beds on Georges Bank. Exploratory fishing landings by commercial vessels totalled approximately 400,000 bushels.

Because of this survey, the Mid-Atlantic and New England Fishery Management Councils (Councils) are considering partition of the New England Area into a new Nantucket Area (west of 69°), and a new Georges Bank Area (east of 69°) with quotas of 200,000 bushels for the Nantucket Area and 300,000 bushels for the Georges Bank Area. A partition of the New England areas and accompanying quotas would be implemented by amendment to the FMP.

In the meantime, under regulations which will be in effect on January 1, 1985, the quota will be 100,000 bushels for the entire New England Area.

The following quotas are proposed for the Mid-Atlantic and New England Areas for 1985:

Fishery	1985 Quota in bushels
Mid-Atlantic Surf Clam	2,650,000
New England Surf Clam	100,000
Ocean Quahog	4,400,000

<sup>1</sup> Approximately 45 million pounds of surf clam meat.

Comments on these proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas in the Federal Register.

#### Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries, under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 50 CFR Part 652

Administrative practice and procedure, Fish, Fisheries, Recordkeeping and reporting requirements.

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

Dated: November 29, 1984.

Carmen J. Blondin,

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

[FR Doc. 84-31650 Filed 11-29-84; 4:57 pm]

BILLING CODE 3510-22-M

## Notices

Federal Register

Vol. 49, No. 234

Tuesday, December 4, 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.

### ADVISORY COUNCIL ON HISTORIC PRESERVATION

#### Meeting

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given pursuant to 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on December 12, 1984, at 7:00 p.m., a public information meeting will be held at the Pinal Room (No. 215) of the Memorial Union on the Arizona State University Campus, Tempe, Arizona. The meeting is being called by the Executive Director of the Council in accordance with 800.6(b)(3) of the Council's regulations for the purpose of providing an opportunity for representatives of national, state, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed "Plan 6" as a feature of the Central Arizona Project, an undertaking assisted by the Bureau of Reclamation, Department of the Interior, that will adversely affect the Roosevelt Dam, a property included in the National Register of Historic Places. Consideration will be given to the undertaking, its effects on National Register or eligible properties, and alternate courses of action that could avoid, mitigate, or minimize any adverse effects on such properties.

The Following is a summary of the agenda of the meeting:

An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.

A description of the undertaking and an evaluation of its effects on the Roosevelt Dam and other cultural

properties by the Bureau of Reclamation.

A statement by the Arizona State Historic Preservation Officer.

Statements from local officials, private organizations, and the public on the effects of the undertaking on cultural properties.

A general question period.

Representatives of the Council, the Bureau of Reclamation, and the Arizona State Historic Preservation Officer will limit their statements to not more than 15 minutes. Other speakers should limit their statements to not more than 10 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting and for an additional 10 days. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 730 Simms Street, Room 450, Golden, Colorado 80401; telephone (303) 236-2682.

Dated: November 28, 1984.

**John M. Fowler,**

*Acting Executive Director.*

[FR Doc. 84-31614 Filed 12-3-84; 8:45 am]

**BILLING CODE 4310-10-M**

### DEPARTMENT OF AGRICULTURE

#### Farmers Home Administration

#### Natural Resource Management Guide; Meeting

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Farmers Home Administration (FmHA) State Office located in Topeka, Kansas, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

**DATES:** Meeting on December 7, 1984, 10:00 p.m. to 12:00 noon.

Comments must be received no later than January 6, 1985.

**ADDRESSES:** Meeting location at Room 201, Federal Building, 444 SE. Quincy Street, Topeka, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Written Comments and Further Information Will Be Addressed To: State Director, FmHA, 444 SE. Quincy Street, Topeka, Kansas 66683 (913-295-2879).

All written comments will be available for public inspection during regular work hours at the above address.

**SUPPLEMENTARY INFORMATION:** FmHA's Kansas State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in Kansas. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contact.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 28, 1984.

**David J. Howe,**

*Director, Program Support Staff.*

[FR Doc. 84-31636 Filed 12-3-84; 8:45 am]

**BILLING CODE 3410-07-M**

#### Natural Resource Management Guide; Meeting

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Farmers Home Administration (FmHA) State Office located in Albuquerque, New Mexico, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

**DATES:** Meeting on December 23, 1984, 1:00 p.m. to 3:00 p.m.

Comments must be received no later than January 22, 1985.

**ADDRESS:** Meeting location at Room 112, Federal Building, 421 Gold Avenue, SW., Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Written Comments and Further Information Will Be Addressed to: State

Director, FmHA, Room 3414, Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102 (505-766-2462).

All written comments will be available for public inspection during regular work hours at the above address.

**SUPPLEMENTARY INFORMATION:** FmHA's New Mexico State Office has prepared a draft Natural Resource Management Guide. The Guide is a brief document describing the major environmental standards and review requirements that have been promulgated at the Federal and State levels and that affect the financing of FmHA activities in New Mexico. The purpose of the meeting is to discuss the Guide as well as to consider comments and questions from interested parties. Copies of the Guide can be obtained by writing or telephoning the above contract.

Any person or organization desiring to present formal comments or remarks during the meeting should contact FmHA in advance, if possible. It will also be possible at the start of the meeting to make arrangements to speak. Time will be available during the meeting to informally present brief, general remarks or pose questions. Additionally, a 30-day period for the submission of written comments will follow the meeting.

Dated: November 28, 1984.

David J. Howe,

Director, Program Support Staff.

[FR Doc. 84-31635 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-07-M

## Human Nutrition Information Service

### Dietary Guidelines Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name: Dietary Guidelines Advisory Committee.

Date: December 19, 1984.

Place: Administration Building, Room 107-A, U.S. Department of Agriculture, Independence Avenue, SW., Washington, D.C. 20250.

Time: December 19, 1984, 9 a.m. to 5 p.m.

Purpose: To review comments received on "Nutrition and Your Health: Dietary Guidelines for Americans," Home and Garden Bulletin Number 232, and finalized any recommendations the Committee deems appropriate.

Agenda: The agenda will include the

following items: Review of draft recommendations for the 7 Dietary Guidelines, review of comments received on the Dietary Guidelines since the May 22, 1984 meeting, discussion of the Committee's report and any other items related to the Committee's plans.

The meeting is open to the public. There is a limited amount of space available for public attendance. Written statements should be submitted to Isabel D. Wolf, Administrator, Human Nutrition Information Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 360, Hyattsville, Maryland 20782, prior to the Committee's final meeting on December 19, 1984.

Done at Washington, D.C. this 29 day of November, 1984.

[FR Doc. 84-31599 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-KE-M

## Forest Service

### Tonto National Forest Grazing Advisory Board; Meeting

The Tonto National Forest Grazing Advisory Board will meet January 23, 1985, at 1:00 p.m. to the Tonto National Forest Supervisor's Office, 2324 E. McDowell Rd., Phoenix, Arizona. This meeting was originally scheduled for November 25, 1984, however, cancelled and rescheduled as indicated at the request of the Advisory Board Chairman. The purpose of this meeting is to cover the following agenda items:

1. Review the proposed allotment management plan and other management alternatives under consideration, for the Chrysothile Allotment.
2. Review proposed expenditure of Range Betterment Funds for the Chrysothile Allotment.
3. Receive advice and recommendations from the Board relative to the proposed plan of management for the Chrysothile Allotment. The meeting will be open to the public. Persons who wish to attend should notify James L. Kimball, Forest Supervisor, Tonto National Forest, 2324 E. McDowell Rd., Phoenix, Arizona 85006, telephone: (602) 261-3205. Written statements may be filed with the Board, before or after the meeting.

Dated: November 21, 1984.

James L. Kimball,  
Forest Supervisor.

[FR Doc. 84-31665 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-11-M

## Soil Conservation Service

### Loving Field Ball Park Complex Critical Area Treatment; RC&D Measure, Pulaski County, VA; Finding of No Significant Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Loving Field Ball Park Complex Critical Area Treatment RC&D Measure, Pulaski County, Virginia.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804-771-2455.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for grading, shaping and seeding eroding areas in Pulaski County, Virginia. The planned work will include the establishment of four (4) acres of permanent vegetative cover, installing a diversion, waterway, and heavy use area protection.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation

and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: November 21, 1984.

James B. Michael,

Acting State Conservationist.

[FR Doc. 84-31861 Filed 12-3-84; 8:45 am]

BILLING CODE 3410-16-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-201-001]

#### Leather Wearing Apparel From Mexico; Supplemental Final Results of Administrative Review of Countervailing Duty Order

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of supplemental final results of administrative review of countervailing duty order.

**SUMMARY:** On March 31, 1983, the Department of Commerce published in the *Federal Register* the final results of its administrative review of the countervailing duty order on leather wearing apparel from Mexico. In compliance with a remand from the Court of International Trade we have reviewed certain documents submitted by Confecciones Generales, S.A., and have determined the amount of net bounty or grant to be zero for that firm during the review period.

**EFFECTIVE DATE:** December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** Stephen Nyschot or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 21, 1983, the U.S. Court of International Trade issued a decision in *Hide-Away Creations, Ltd. v. United States and Confecciones Generales, S.A. v. United States* (Slip Op. 83-135) that the Department of Commerce ("the Department") had not sufficiently satisfied the statutory requirement of publication of notice in the *Federal Register* prior to commencement of the administrative review under section 751 of the Tariff Act of 1930 ("the Tariff Act") of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357, April 10, 1981). The court remanded the case to the Department, with instructions that within 30 days the

Department review zero deposit rate certifications pertaining to Confecciones Generales, S.A., and any related matters, and publish in the *Federal Register* supplemental final results of its administrative review (48 FR 13474, March 31, 1983).

#### Scope of the Review

Imports covered by the review are currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel. The review covers the period January 14, 1981, the date liquidation was suspended in the preliminary affirmative determination (46 FR 21357), through December 31, 1981, and three programs: CEDI, the countervailable program cited in the final determination, as well as FOMEX and CEPROFI, two programs found countervailable in the final determination on ceramic tile from Mexico (47 FR 20013, May 10, 1982).

#### Analysis of Certifications

The Mexico government's certification, dated April 20, 1983, stated that Confecciones had received no benefits under the CEDI, FOMEX or CEPROFI programs. An attached certification from Confecciones, dated February 4, 1983, stated that Confecciones had never received any benefits under the CEDI, FOMEX or CEPROFI programs and will not apply for or receive benefits under these programs in the future.

The Department finds that the certifications are in acceptable form and there is no evidence on record contradicting the information in the certifications.

#### Supplementary Final Results of the Review

Based on our analysis of the certifications, we determine that the total bounty or grant for the period was zero for the firm of Confecciones. Accordingly, the Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise which were entered, or withdrawn from warehouse, for consumption on or after January 14, 1981, and exported on or before December 31, 1981.

This supplementary final results of administrative review pertains only to Confecciones and will not affect any

other firms covered in the final results published on March 31, 1983.

The supplementary administrative review and notice are in accordance with the court order and section 516A(e) of the Tariff Act (19 U.S.C. 1516a(e)).

Dated: November 13, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-31830 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-225-401]

#### Termination of Countervailing Duty Investigation; Certain Textiles and Textile Products From Panama

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On October 3, 1984, the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union withdrew their countervailing duty petition, filed on July 23, 1984, on certain textiles and textile products from Panama. Their letter of withdrawal appears as an Appendix A to this notice. Based on the withdrawal, we are terminating the countervailing duty investigation.

**EFFECTIVE DATE:** December 4, 1984.

**FOR FURTHER INFORMATION CONTACT:** Jack Davies 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) 377-1784 or 377-1769.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On July 23, 1984, we received a petition from counsel for the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union filed on behalf of the U.S. industry producing textiles and textile products. In accordance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that producers, manufacturers, or exporters in Panama of certain textile and textile products receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation. We initiated the investigation on August 10, 1984 (49 FR 32895).

#### Scope of Investigation

The products covered by this investigation are textiles and textile products. The merchandise is currently classified under the item numbers of the *Tariff Schedules of the United States Annotated (TSUSA)*, as listed in Appendix B to this notice.

#### Withdrawal of Petition

On October 3, 1984, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 704(a) of the Act (19 U.S.C. 1671c(a)), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to the investigation of petitioners' withdrawal and our intention to terminate. Pursuant to § 355.30(a) of our regulations (19 CFR 355.30(a)), we have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of certain textiles and textile products from Panama.

November 27, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

October 3, 1984.

Wilmer, Cutler & Pickering, 1666 K Street, NW., Washington, D.C. 20006

[Case No. C 225-401]

Total Number of Pages: 1. This document does not contain privileged, confidential, or business proprietary information, or information subject to administrative protective order.

Secretary of Commerce,

Attention: Import Administration, Central Records Unit, Room B-099, Department of Commerce, Pennsylvania Avenue at 14th St., NW., Washington, D.C. 20230

Re: Countervailing Duty Investigation; Certain Textiles and Textile Products from Panama

Dear Mr. Secretary: On behalf of the petitioners in this case, we hereby withdraw the countervailing duty petition involving textiles and textile products from the Republic of Panama. We withdraw this petition without prejudice.

Sincerely,

John D. Greenwald.

#### Appendix B

The products covered by this investigation are certain textiles and textile products. The merchandise is

currently classified under the item numbers of the *Tariff Schedules of the*

*United States Annotated (TSUSA)* listed below.

Yarns					
310.1170					
Fabric					
338.5009					
Special Construction Fabrics					
355.4530					
Textile Furnishings					
365.7825	366.7925	366.7930			
Apparel					
370.3600	370.8620	373.2200	374.1000	374.1500	374.3530
374.3550	374.4000	374.6020	374.6040	376.2430	376.2830
376.2886	378.0576	379.0240	379.0250	379.0260	379.0620
379.0640	379.2340	379.2630	379.2640	379.3130	379.3140
379.3180	379.3190	379.3336	379.3530	379.3540	379.4020
379.4050	379.4060	379.5520	379.5530	379.5550	379.5555
379.6992	379.7620	379.7630	379.7640	379.8311	379.8360
379.8735	379.8911	379.9035	379.9510	379.9540	379.9555
379.9575	379.9585	383.0305	383.0805	383.1802	383.2205
383.2305	383.2325	383.2720	383.2731	383.4709	383.4730
383.4761	383.5072	383.5073	383.5395	383.6350	383.6360
383.6371	383.6372	383.7560	383.7878	383.8073	383.8160
383.8660	383.9015	383.9060	383.9070	383.9295	383.9245
Miscellaneous					
385.3000	385.5000	386.0430			

[FR Doc. 84-31633 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-DS-M

#### Full Council Meeting, President's Export Council; Partially Closed Meeting

A meeting of the President's Export Council (PEC) will be held December 17, 1984, 10:30 a.m.-3:30 p.m., the Dunbarton Room, Four Seasons Hotel, 2800 Pennsylvania Avenue, N.W., Washington, D.C. The Council's purpose is to advise the President on matters relating to United States export trade.

**General Session:** 10:30 a.m.-12 noon. Opening Remarks; discussion of outstanding issues, possible topics include: export promotion, countertrade, intellectual property rights, state export promotion activities and recent trade legislation; discussion of the Final Report and discussion of U.S.-Japan Trade.

**Executive Session:** 2:00 p.m.-3:30 p.m. Discussion of matters properly classified under Executive Order 12356, dealing with negotiations with the European Community, the State of the Union Address, export control issues and other classified issues.

A Notice of Determination to close meetings or portions of meetings of the Council to the public on the basis of 5 U.S.C. 552b (c)(1) has been approved in

accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information or copies of the minutes contact Amy Dale (202) 377-1125, 3213, U.S. Department of Commerce, Washington, D.C. 20230.

Dated: November 30, 1984.

Henry P. Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 84-31763 Filed 12-3-84; 8:45 am]

BILLING CODE 3510-DR-M

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

##### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Notice.

**SUMMARY:** Working Group D (Production) of the DoD Advisory Group

on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 1:00 p.m., Thursday, 13 December 1984.

**ADDRESS:** The meeting will be held at Varian Associates, 611 Hansen Way, Palo Alto, California 94303.

**FOR FURTHER INFORMATION CONTACT:** Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,  
OSD Federal Register Liaison Officer,  
Department of Defense.

November 27, 1984.

[FR Doc. 84-31628 Filed 12-3-84; 8:45 am]

BILLING CODE 3810-01-M

#### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**AGENCY:** Office of the Secretary, DOD.

**ACTION:** Notice.

**SUMMARY:** Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 8:30 a.m., Tuesday, December 4, 1984.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 1215 Jefferson Davis Highway, Suite 1203, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Michael Shapiro, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

November 27, 1984.

Patricia H. Means,  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 84-31629 Filed 12-3-84; 8:45 am]

BILLING CODE 3810-01-M

#### Secretary of Defense Media Advisory Council; Meeting

The Secretary of Defense Media Advisory Council will meet in a closed session on Monday, December 17, 1984 in the Washington, D.C. area. The Council's agenda will include discussions on the Sidle Panel recommendations concerning military-media relations and press coverage of future combat operations. The establishment of the Council was reported in the *Federal Register* on Tuesday, November 20, 1984.

Any additional information concerning the meeting may be obtained from: Colonel Robert J. O'Brien, Jr., USAF, Deputy Assistant Secretary of Defense (Public Affairs), The Pentagon, Washington, D.C. 20301, phone: 202-695-3381.

Dated: November 27, 1984.

Patricia H. Means,  
OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 84-31586 Filed 12-3-84; 8:45 am]

BILLING CODE 3810-01-M

#### DELAWARE RIVER BASIN COMMISSION

##### Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 12, 1984, beginning at 1:30 p.m. in the Benjamin West Room of the Holiday Inn Center City, 1800 Market Street, Philadelphia, Pennsylvania. The hearing will be a part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissions and staff will be open for public observation at about 11:00 a.m. at the same location.

The subjects of the hearing will be as follows:

##### Application for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Horsham Township Authority D-79-30 CP RENEWAL.* Renewal of an approved ground water withdrawal from Well No. 26 which supplies water to the applicant's distribution system in Horsham Township, Montgomery County, Pennsylvania. Commission approval was limited to five years and will expire unless renewed. The proposed 30-day withdrawal from Well No. 26 remains at 14.7 million gallons (mg). The well is located in the Southeastern Pennsylvania Ground Water Protected Area.

2. *New Jersey Water Company—Haddon District D-81-11 CP.* An amended application for a ground water withdrawal project to supply the applicant's Camden distribution system. New Well Nos. 53, 54 and 55 replace Well Nos. 46 through 49 which are no longer in use. Each of the three new wells is expected to yield 1.5 million gallons per day (mgd). However, the total withdrawal from existing and new wells will not be increased above the existing New Jersey Department of Environmental Protection limit of 193.75 mg/30 days. The new wells are located along Cleveland Avenue, between Reeves and 34th Streets, in the City of Camden, Camden County, New Jersey.

3. *Borough of Dublin (D-81-75 CP)*. A well water supply project to initially provide water service to a new housing development in the Borough of Dublin, Bucks County, Pennsylvania. Designated as Well Nos. 1 and 2, the combined facilities will supply a maximum of 27,000 gallons per day (gpd). The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Borough of Quakertown (D-82-4 CP)*. A well water supply project to augment public water supplies in the Borough of Quakertown and portions of Richland Township, Bucks County, Pennsylvania. Designated as Well No. 15, the new facility will be used at an average rate of 400,000 gpd. The project is located in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Pennwalt Corporation D-84-6*. A new industrial waste treatment facility to treat wastes from manufacture of a new product line at the applicant's reactivated Thorofare plant in West Deptford Township, Gloucester County, New Jersey. The facility will be designed for neutralization of hydrochloric and hydrofluoric acids, and removal of fluorides and suspended solids from an average waste flow of 0.394 mgd. Treated effluent will discharge to the Delaware River at River Mile 90.5.

6. *Rollins Environmental Services, Inc. D-84-38*. Addition of a scrubber solids treatment system at the applicant's Bridgeport industrial waste treatment facility in Logan Township, Gloucester County, New Jersey. The system is expected to remove 90 percent TSS from an average incinerator scrubber waste flow of 1.1 mgd. Ultimate discharge is to Raccoon Creek in Logan Township.

7. *Hereford Estates Mobile Home Park D-84-39*. A sewage treatment project to serve the applicant's mobile-home park in Hereford Township, Berks County, Pennsylvania. The existing 0.020 mgd plant will be expanded to provide secondary treatment for an average waste flow of 0.070 mgd. Effluent concentration for BOD<sub>5</sub> and TSS will average 30 milligrams per liter. Treated effluent will continue to discharge to the Perkiomen Creek in Hereford Township.

8. *American Electric & Power Ltd. D-84-49*. A floating hydroelectric power generator in the Delaware River upstream of the City of Easton and between Forks Township, Northampton County, Pennsylvania and Lopatcong Township, Warren County, New Jersey. Up to 30 kilowatts of power will be produced by two parallel paddle wheels mounted on a 39 foot wide by 28 foot

long pontoon boat. The vessel will be anchored to the river bottom using boat anchors but will be free to rise and fall with river stage except during low flow conditions, when it will rest on permanent support legs. It will be connected to the Pennsylvania shore only by a submarine cable connecting to the local electric transmission lines of Pennsylvania Power and Light Company.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,  
Secretary.

November 27, 1984.

[FR Doc. 84-31727 Filed 12-3-84; 8:45 am]

BILLING CODE 6360-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

#### Notice of Proposed Remedial Order; Tampimex Oil International, Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed remedial order to Tampimex Oil International, Ltd.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed remedial Order which was issued to Tampimex Oil International, Ltd., 11 Greenway Plaza, suite 1506, Houston, Texas 77046. This Proposed Remedial Order alleges violations in the pricing of motor gasoline of 10 CFR 210.92 and 212.93 for period March 1974 through July 1979. The principal amount of the alleged violations for this period is \$14,327,762.00.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from:

U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas on the 30th day of October, 1984.

Sandra K. Webb,

Director, Houston Office Economic Regulatory Administration.

[FR Doc. 84-31601 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Friday, November 2, 1984 (49 FR 44129).

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2308 Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed

to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these

comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., November 28, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

## DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form Title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-860	Annual Electric Generator Report.	New	Annually	Mandatory	State or local governments.	900	21,600	The data supports the Generating Unit Reference File (GURF) which is used to publish annually the <i>Inventory of Power Plants in the United States</i> . Every electric utility that operates or plans to operate a power plant in the United States or Puerto Rico submits a form.
EIA-861	Annual Electric Utility Report.	New	Annually	Mandatory	Electric utilities	3,200	28,800	This form is filed annually by every electric utility in the United States and Puerto Rico. The data will maintain and update the Electric Utility Frame database which supports queries from the Executive Branch, Congress, and other agencies, and the general public. Form EIA-861 is designed to collect information on the status of electric utilities and the generation, transmission, and distribution of electric energy in the U.S. and Puerto Rico.
FERC-73	FERC Form No. 73, Service Life Data.	Extension	On occasion	Mandatory	Oil pipeline companies.	24	5,280	FERC-73 implements regulations found in Title 18 CFR, Subchapter Q; Part 352. Data are collected on property installations, transactions, gross salvage, cost of removal, and net salvage value. FERC uses the data to perform service life analysis and to determine book depreciation rates for oil pipeline properties.

[FR Doc. 84-31832 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

#### United Gas Pipe Line Co.; Petition To Amend

[Docket No. CP84-379-003]

November 29, 1984.

Take notice that on November 21, 1984, United Gas Pipe Line Company (Petitioner), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84-379-003 a petition pursuant to Section 7 of the Natural Gas Act to amend the order issued May 31, 1984, in Docket No. CP84-379-000, as amended July 25, 1984, so as to authorize Petitioner to extend its discount rate schedule (DRS) for one year, so as to allow for monthly charges in the DRS rate subject to a ceiling and a floor, so as to change the date on which Rate Schedule PL-N customers must designate discount volumes, so as to allow a waiver of the incremental pricing surcharge for certain discount volumes, and to clarify what volumes would receive the discount rate where Petitioner has contracted to supply a stipulated percentage of specified

requirements of customers under its Rate Schedules G and DG, 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 on May 31, 1984, the Commission approved its application in Docket No. CP84-379 for a limited-term certificate of public convenience and necessity to implement the DRS, and on July 25, 1984, the Commission approved Petitioner's application to amend that schedule by increasing the discount. It is stated that with an effective date of June 1, 1984, the DRS expires on December 31, 1984.

It is stated that in summary fashion, the DRS as approved by the Commission provides all of Petitioner's present jurisdictional customers a discount rate for gas purchased from Petitioner above a certain volume (the threshold volume). Petitioner states that for present customers under Rate Schedules DG and G, the threshold volume equals the volume purchased during the corresponding month of 1983. It is stated that for those volumes in excess of the threshold volume and for certain other volumes that each customer may

designate (discount volumes), the rate is \$3.09 per Mcf. Petitioner states that for customers under the PL-N rate schedule, the threshold volume equals each customer's current minimum bill volume computed in accordance with the minimum bill provision of Rate Schedule PL-N in effect as of March 1, 1984. It is stated that although the minimum volume is an annual volume, pipeline customers which either have purchased, or expect to purchase, the minimum bill volume, may designate as purchases under this rate schedule each month a portion of the gas to be purchased in that month. It is further stated that only the volumes so designated would be sold under this rate schedule, and there are no restrictions on the use to which the purchased gas may be put.

Petitioner states that the DRS has witnessed success, but the factors that prompted its implementation remain. It is stated, for example, during the months of June through September, Petitioner sold 5,331,000 Mcf of discount volumes. It is further stated that Entex, Inc. which is Petitioner's largest city-gate customer, increased its purchases from Petitioner over the same months in 1983 an

average of slightly more than 12 percent in the months of July through September. Petitioner asserts that New Orleans Public Service, Inc., another large city-gate customer, increased its purchases from Petitioner over the corresponding months of 1983 by 133 percent in June, 6 percent in July, 12 percent in August, and 2 percent in September (total discount volumes in these months were 824,000 Mcf). It is stated that the DRS has resulted in lower gas costs for 72 percent of Petitioner's city-gate customers; 77 out of 107 distribution companies served by Petitioner have purchased some discount volume.

No pipeline has yet nominated discount volumes, but, Petitioner states, it is confident that its pipeline, and its city-gate, customers would avail themselves of the DRS when the heating season occurs. It is at that time, Petitioner states, it anticipates that two of its four pipeline customers would have reached their minimum bill volumes and would begin to utilize the DRS.

It is asserted that the problems that prompted Petitioner to file the DRS continue to plague its system.

Petitioner states that it projects sales of 555,000,000 Mcf of gas in 1984. It is further stated that this compares with sales of 586,000,000 Mcf in 1983, 865,000,000 Mcf in 1982, and 1,062 Bcf in 1981—a decline of nearly 48 percent in three years. Petitioner states as the volume of sales decreases, its exposure under take-or-pay provisions of producer contracts increases. Petitioner asserts that its estimate of potential take-or-pay exposure for contract years through 1984, after giving effect to settlements with a number of suppliers, could be in excess of \$900 million under certain contract interpretations advanced by suppliers.

It is stated that the loss of markets that Petitioner has experienced is only partially reflected in its currently effective rates determined by a settlement approved by the Commission in Docket No. RP82-57. It is stated that for the first settlement rate period (October 1, 1982, through September 30, 1983), rates were calculated on an imputed sales volume of 700,000,000 Mcf, whereas actual sales were 640,000,000 Mcf. As a result, Petitioner states, it failed to recover approximately \$17 million of the stipulated return for the period. It is stated that the same imputed sales level underlies rates for the second rate period (an open-ended period that commenced October 1, 1983). Petitioner states that its actual sales during the first year of the second rate period fell far short of the imputed sales level. It is further stated that the cost

and revenue study required under the settlement showed that during the first year United failed to recover \$53.4 million of the settlement cost of service.

Considering the interests of both Petitioner and its customers, Petitioner asserts, the DRS should be continued during 1985. Petitioner, however, is proposing several modifications to the DRS.

While the current discount rate of \$3.09 has permitted substantial sales by Petitioner, it is stated, the market in which Petitioner must compete is extremely fluid. Petitioner asserts that uncertainties about the impact of the January 1, 1985, deregulation in competitors' pricing makes it essential that Petitioner build additional flexibility into the DRS. Petitioner proposes to change the DRS to permit Petitioner to modify the DRS rate each month as required to meet changing market conditions. At least five days before the beginning of each month, Petitioner would notify each of its jurisdictional customers what the discount rate would be for the following month. The quoted rate would neither exceed \$3.09 Mcf per nor be less than the sum of (i) the actual weighted average cost of gas for the month in which the gas is delivered plus the GRI surcharge, if applicable. It is stated that to date, sales under the DRS have been reflected in purchased gas adjustment computations on the same basis as other sales to customers. Under the new procedures, Petitioner would exclude from the total gas costs used to compute Account No. 191 an amount computed by multiplying the actual weighted average cost of gas for the month by the volume of DRS sales, thus assuring that such sales would not generate amounts to be charged or returned to customers through surcharges in future periods. For record keeping purposes, changes in the rate would be implemented through an abbreviated Natural Gas Act Section 7 filing which would set out the applicable rate for the coming month. Petitioner requests waiver of the notice requirements and other regulations to permit the rate changes filed not less than five days before the end of a month to become effective as of the first day of the following month not subject to refund as long as the stated price is within the permissible range. In addition, Petitioner states, since the filings would be purely ministerial, Petitioner requests waiver of the normal filing fee for Section 4 rate changes. Petitioner asserts that it reserves the right to change both the maximum and minimum rate and the procedures used to determine the discount rates through a filing made under Section 4 of the

Natural Gas Act. It is stated that this method of setting the rates provides flexibility for Petitioner in adapting to the imperatives of the market.

Petitioner also proposes to change the date on which Rate Schedule PL-N customers designate discount volumes. It is stated that under the proposed amendment, these customers would designate the amount of DRS gas for any month before the first working day of that month. Currently, it is stated, these customers designate DRS gas for any month within seven days after the close of the month. It is stated that the proposed change is designed to assure that the pipeline's nominations of DRS volumes for a month are in response to the quoted price for that month. It is stated that if the PL-N customers were not required to make their designations until after the end of the month, they could wait to designate volumes until they knew both the prior month and current month prices and to designate DRS volumes in whichever of the two months had a lower DRS rate. Petitioner states that it is not proposing to change the method of determining DRS volumes for PL-N customers or the consequences which result if a pipeline nominates DRS volumes but does not purchase its minimum bill volume for the year.

Petitioner requests that it be granted an exemption from the incremental pricing rules under Title II of the Natural Gas Policy Act of 1978 with regard to the sales in which a Rate Schedule G or DG customer submits an affidavit to the effect that the volumes could not have been sold if purchased from Petitioner absent the discount rate. Absent the discount rate, it is stated, the sales of the discount gas by Petitioner's customers by definition either would not be made or would be made using gas purchased from someone other than Petitioner. Petitioner states it would, therefore, not be able to make these if the incremental pricing surcharge is added to the discount rate.

Petitioner asserts that the only other proposed change to the DRS is a change required to apply the threshold volume concept in the unique circumstances of Petitioner's service agreement with a few customers. It is further stated that the problem which this change is designed to correct has arisen only with respect to Petitioner's sales to Arkansas-Louisiana Gas Company (Arkla) at Shreveport, Louisiana. Under its service agreement with Arkla, Petitioner states, it has contracted to supply 50 percent of certain of Arkla's Shreveport requirements. It is stated that in 1983 (the base year for determining the threshold volume) Arkla did not

purchase from Petitioner the stipulated percentage of its requirements each month, taking less than 50 percent of its requirements in some months and more than 50 percent in months. It is claimed that in these circumstances, Arkla can utilize the low threshold months to "load-up" on the discount volumes, while in the high threshold months, Arkla could purchase very little from Petitioner and turn to another supplier. It is stated that in this manner Arkla can use the DRS to replace gas priced at Petitioner's regular rates with gas at the discount rate, instead of increasing overall takes from Petitioner. It is asserted that this would defeat the purpose of the DRS.

Petitioner, therefore, proposes that if it has a contract to supply a certain percentage (other than full requirements) of specified requirements of a customer then the threshold volume for each month would be the total volume of the customer's actual specified requirements for that month multiplied by the percentage to be supplied by Petitioner. It is stated that the customer's purchases would then be deemed made under the DRS to the extent that the customer's actual specified requirements for the month multiplied by the percentage to be supplied by Petitioner exceeds the customer's threshold volume for the month.

Petitioner also requests that the Commission expedite its consideration of this petition. It is asserted that the general and particular concepts

involved in the DRS have already been approved by the Commission. It is further asserted that this amendment extends a program that has been successful and is still needed and places in effect a rate formula that provides the potential for an increase in the amount of the discount, provides an incentive for Petitioner to reduce gas costs and assures that the rate charged for such sales would never be less than Petitioner's actual weighted cost of gas for the month in which the sale is made. Otherwise, it is stated, there are only three other minor changes to the DRS. Petitioner requests that the amendment be made effective January 1, 1985, as it is important to Petitioner and its customers in Planning for 1985 to know as soon as possible whether the DRS program would continue in effect.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 10, 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.

**Kenneth F. Plumb,**  
Secretary.

[FR Doc. 84-31573 Filed 12-3-84; 8:45 am]

BILLING CODE 6717-01-M

### Office of Hearings and Appeals

#### Notice of Cases Filed Week of November 2 Through November 9, 1984

During the Week of November 2 through November 9, 1984, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any persons who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 21, 1984.

**George B. Breznay,**  
Director, Office of Hearings and Appeals.

#### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 2 through Nov. 9, 1984]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 9, 1984	Economic Regulatory Administration, Washington, DC	HRZ-0226	Interlocutory Order. If granted: Economic Regulatory Administration would be permitted to withdraw its allegation that Gulf Oil Corporation misallocated its gasoline non-product costs (Case No. HRO-0159).
Oct. 26, 1984	Department of Interior, Washington, DC	HEZ-0225	Interlocutory Order. If granted: The Office of Hearings and Appeals would issue a final Decision and Order without first issuing a Proposed Decision and Order in Case No. HEE-0092.
Nov. 5, 1984	Murphy Oil Corp., Washington, DC	HRD-0248	Motion for Discovery. If granted: Discovery would be granted to Murphy Oil Corporation in connection with the Statement of Objections submitted in response to the April 16, 1984 Proposed Remedial Order (Case No. HRO-0248) issued to the firm.
Nov. 5, 1984	Natural Resources Defense Council, Inc., Washington, DC	HFA-0262	Appeal of an Information Request Denial. If granted: The October 29, 1984, Freedom of Information Request Denial issued by the Office of Classification would be rescinded, and the Natural Resources Defense Council, Inc. would receive access to documents which discuss the amounts of K-85 generated by nuclear reactors.
Nov. 6, 1984	Zoubek Oil Co., Inc., Norfolk, NE	HEE-0106	Exception to the Reporting Requirements. If granted: Zoubek Oil Co., Inc. would not be required to file form EIA-728B "Reseller/Retailer's Monthly Petroleum Products Sales Report."
Nov. 8, 1984	Economic Regulatory Administration/Kaiser Aluminum International, Washington, DC	HRJ-0051	Protective Order. If granted: Economic Regulatory Administration would enter into a Protective Order with Kaiser Aluminum International regarding the release of proprietary information in connection with the Proposed Remedial Order issued to the firm (Case No. HRO-0180).
Nov. 2, 1984	Marathon Oil Co., Findlay, OH	HRD-0240	Motion for Discovery. If granted: Discovery would be granted to Marathon Oil Company in connection with the statement of objections submitted in response to a Proposed Remedial Order issued to the firm (Case No. HRO-0242).

## REFUND APPLICATIONS RECEIVED

[Week of Nov. 2, to Nov. 9, 1984]

Date	Name of refund proceeding/name of refund applicant	Case No.
Nov. 5, 1984	Willis/Country Fair	RF41-14.
Nov. 5, 1984	Gulf-Harvey's Gulf Service	RF40-0211.
Nov. 5, 1984	Gulf/Central Gulf Service	RF40-0212.
Nov. 5, 1984	Gulf/Commonwheel Corp.	RF40-0213.
Nov. 5, 1984	Gulf/Todd & Risdal Gulf Service	RF40-0214.
Nov. 5, 1984	Gulf/Reynolds Gulf Service Inc.	RF40-0215.
Nov. 5, 1984	Vickers/Sikeston General Oil Co.	RF1-374.
Nov. 5, 1984	Willis/Seaway Aluminum Manufacturing	RF41-15.
Nov. 5, 1984	Gulf/Reynold Gulf Service, Inc.	RF40-216.
Nov. 6, 1984	Gulf/Ernie's Gulf Service	RF40-217.
Nov. 6, 1984	Gulf/Lake Ave. Gulf Service	RF40-218.
Nov. 6, 1984	Gulf/J. J. Taylor, Inc.	RF40-219.
Nov. 7, 1984	Gulf/Byron Elevator, Inc.	RF40-220.
Nov. 7, 1984	Gulf-Danny's Gulf Service	RF40-221.
Nov. 7, 1984	Gulf/Butler Trucking Co.	RF40-222.
Nov. 8, 1984	Gulf/Rusty's Gulf	RF40-223.
Nov. 8, 1984	Gulf/Newton's Westchester Gulf	RF40-224.
Nov. 9, 1984	Gulf/Yellow Freight System, Inc.	RF40-225.
Nov. 9, 1984	Gulf/Murphy Motor Freight Lines, Inc.	RF40-226.
Nov. 9, 1984	Gulf/Sun City Gulf	RF40-227.

[FR Doc. 84-31604 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

### Notice of Issuance of Proposed Decision and Order Week of October 29 through November 2, 1984

During the week of October 29 through November 2, 1984, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of

Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W. Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: November 21, 1984.

**George B. Breznay,**  
Director, Office of Hearings and Appeals.  
J&M Distributing, East Greenwich, RI, HEE-0101

J&M Distributing filed an Application for Exception from the provisions of the EIA reporting requirements. The exception request, if granted, would relieve J&M Distributing of the requirement to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On October 31, 1984, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 84-31602 Filed 12-3-84; 8:45 am]

BILLING CODE 6450-01-M

### Implementation of Special Refund Procedures; The Hertz Corp., Rent-A-Car Division

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$694,919 obtained as the result of a Consent Order which the DOE entered into with The Hertz Corporation, Rent-A-Car Division whose headquarters are located in White Plains, New York.

**DATE AND ADDRESS:** Applications for refund of a portion of the Hertz consent order funds must be received within 90 days of publication of this notice in the Federal Register. All applications should refer to Case Number HEF-0090 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Washington, D.C. 20585, (202) 252-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent Order entered into by The Hertz Corporation, Rent-A-Car Division, which settled alleged pricing violations during the period August 1, 1979 through June 30, 1980. The alleged violations occurred when the firm charged its motor vehicle rental customers a refueling charge for motor gasoline. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Hertz consent order funds was issued on July 27, 1984. 49 FR 31490 (August 7, 1984).

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who incurred refueling charges from Hertz during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the Federal

Register. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: November 14, 1984.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 14, 1984.

## Decision and Order of the Department of Energy

### Special Refund Procedures

Name of Firm: The Hertz Corporation.

Date of Filing: October 13, 1983.

Case Number: HEF-0090.

Pursuant to the provisions of 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) in connection with a consent order entered into with The Hertz Corporation, Rent-A-Car Division (Hertz) on February 2, 1981. The Petition requests that the OHA formulate and implement procedures for the distribution of the funds received pursuant to the Hertz consent order.

#### I. Background

Hertz is engaged in the business of renting motor vehicles. In the course of rental transactions, Hertz levies a refueling charge when a customer returns a vehicle with less motor gasoline than when the vehicle was rented. According to the ERA, the firm was therefore a "retailer" of motor gasoline as that term was defined in 10 C.F.R. § 212.31 and was subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Hertz' operations in its Mid Atlantic Zone during the period August 1, 1979 through June 30, 1980 (the audit period) revealed possible pricing violations of the regulations set forth in 10 C.F.R. Part 212, Subpart F. In order to settle all claims and disputes between Hertz and the DOE regarding the firm's resale of motor gasoline from its nation-wide operations during the audit period, the firm entered into a consent order with the DOE. The consent order refers to the ERA's characterization of Hertz as a retailer and allegations of overcharges, and Hertz' objections to the ERA's position on those issues, but notes that the issues were not adjudicated. In the consent order, Hertz agreed to refund \$849,918 through a price rollback. Hertz began implementing the price rollback; however, after the decontrol of petroleum prices on January 28, 1981, the price rollback was no longer a valid method of implementing refunds. Therefore, in accordance with the consent order's provisions, Hertz

remitted the \$694,919 balance of its rollback obligation to the DOE.

On July 27, 1984, the OHA issued a Proposed Decision and Order (Proposed Decision) tentatively setting forth procedures to distribute refunds to parties who were injured by Hertz' alleged violations in sales of motor gasoline during the consent order period, August 1, 1979 through June 30, 1980. *The Hertz Corp.*, 6 Fed. Energy Guidelines, ¶90,059, 49 Fed. Reg. 31490 (August 7, 1984) (Proposed Decision). In the Proposed Decision, we described a two-stage process for distribution of the funds made available pursuant to the Hertz consent order. Specifically, we proposed to disburse funds in the first stage to eligible claimants who were injured by Hertz' alleged overcharges. We stated that the money available after payment of refunds to eligible claimants in the first stage would be distributed during a second-stage process, and we pointed out that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the Hertz refund proceeding. This Decision sets forth the information that a purchaser of Hertz motor gasoline should submit in order to establish eligibility for a portion of the consent order funds. In establishing these requirements, we will address comments filed in response to the first-stage proposal in the Proposed Decision. We will not, however, determine procedures for the second stage of the refund process in this Decision. Our determination concerning the final disposition of remaining funds will necessarily depend on the size of the fund. *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). It would therefore be premature for us to address the issues raised by commenters concerning the disposition of funds remaining after all the meritorious first stage claims have been paid.(1)

#### II. Jurisdiction and Authority to Fashion Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain readily the

amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as a part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

#### III. First-Stage Refund Procedures

Before we discuss the specific procedures to be adopted in this proceeding, it is necessary to address the comments submitted by Hertz. Although Hertz essentially agrees with the methodology outlined in the Proposed Decision, the firm filed comments in which it challenges certain statements made in that Decision. Specifically, Hertz objects to the implication that the firm was a "retailer" under the DOE regulations as defined in 10 C.F.R. § 212.31. Hertz' appraisal of the Proposed Decision is incorrect. No finding was made that Hertz was a retailer under the DOE price regulations. It merely indicated that the ERA considered Hertz a retailer in its audit.(2) We also indicated that this audit was settled by a consent order. It is appropriate at this juncture to reiterate that a consent order does not constitute a finding or admission of violation, but rather is a document of compromise which settles issues and avoids litigation. Hertz' status under the DOE price regulations was not decided in the consent order and is not at issue in this proceeding.

As we indicated in the Proposed Decision, all claimants in this proceeding will be consumers (end-users) of the motor gasoline which Hertz supplied. In previous special refund proceedings, we have presumed that end-users did not pass through increased costs resulting from alleged overcharges and found that they therefore incurred injury as a result of purchases made from a firm which had entered into a consent order to settle DOE enforcement claims. See *Marion; Thornton Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058, 49 Fed. Reg. 28095 (July 10, 1984) (Proposed Decision). Consistent with these precedents, we have determined that Hertz' vehicle rental customers were injured by any overcharge which occurred and need not demonstrate that they absorbed increased costs resulting from Hertz' alleged overcharges. They must only document the specific quantities of motor gasoline for which they paid a "refueling charge" to Hertz during the consent order period.

In the Proposed Decision, we noted that Hertz' customer receipts do not

indicate the number of gallons purchased from Hertz, but merely state the dollar amount of the refueling fee. However, we stated that by using an assumed price per gallon, applicants would be able to perform a simple division and thereby estimate fairly accurately the gallonage which they purchased from Hertz. Based upon Mid Atlantic Zone price data that Hertz has made available to the DOE, we calculated that during the period August 1979 through January 1980, Hertz' average refueling charge was \$1.06 per gallon. No one has objected to this proposed figure. Accordingly, a potential claimant may calculate the gallons of motor gasoline it purchased by dividing its total refueling fees by \$1.06, and use that gallonage figure in its refund application.

In the Proposed Decision, we suggested that refunds be calculated according to a volumetric method. Under this method, refunds would be computed by multiplying an applicant's total purchase volumes by a per gallon volumetric amount computed by dividing the Hertz settlement amount by the total volume of motor gasoline sold by Hertz during the consent order period. In this case, the volumetric amount is \$0.01586 (\$694,919 remitted to the DOE divided by 43,807,500 gallons of motor gasoline sold by Hertz during the consent order period). We received no objections to the proposed volumetric method, and it will be adopted in this proceeding.<sup>(3)</sup> An eligible applicant will also receive a proportionate share of the interest accrued on the consent order fund.

We recognize that it is likely that many of the affected customers were individual motorists who purchased very small amounts of gasoline in isolated transactions. As a result, the amount of refunds to which most individual customers will be entitled will be very small. As in prior special refund cases, we will not grant refunds for less than \$15.00 (the approximate cost to the government of issuing refund checks) because the cost to the public of issuing such small refunds exceeds the restitutionary benefits which may be achieved. See e.g., *Urban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).<sup>(4)</sup>

#### V. Application for Refund Procedures

We have determined that the procedures described above are the most equitable and efficacious for purposes of distributing the Hertz consent order funds. Accordingly, we shall now accept applications for refunds from customers who rented

Hertz motor vehicles and incurred refueling charges during the consent order period.

Each applicant should include in its application a statement of its motor gasoline purchases from Hertz during the consent order period. The applicant should indicate whether it possesses receipts or other documentation to support its statement. If the purchase figure is based on estimates, the application should include the detailed description of how the estimated figure was calculated. All applications must be received within 90 days after publication of the Decision and Order in the Federal Register. A copy of each application will be available for public inspection in the Public Docket Room of the OHA. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential. Each applicant must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." See 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should refer to Case Number HEF-0090, and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by The Hertz Corporation, Rent-A-Car Division pursuant to the consent order executed on February 2, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: November 14, 1984.

George B. Breznay,  
Director, Office of Hearings and Appeals.

#### Footnotes

(1) Comments on the second-stage refund procedures were filed by the states of New Mexico, Arkansas, Delaware, Kansas, Iowa, Louisiana, North Dakota, Rhode Island, West Virginia, and Texas. These states argued that any funds remaining in the consent order fund after refunds are distributed to meritorious claimants should be distributed

to the states for use in energy-related projects. In addition Texas raises comments which are inapplicable to this proceeding, namely, the use of a small claims threshold and standards to determine refund eligibility for applicants who were not end-users.

(2) While the refund methodology set forth in the Proposed Decision is similar to that utilized in cases in which the consent order firm has retail operations, see, e.g., *Thornton Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058, 49 Fed. Reg. 28095 (July 10, 1984) (Proposed Decision), this has no bearing on whether Hertz was a retailer under the DOE price regulations. Cf. *Standard Oil Co. (Indiana)/Hertz Corp.*, 11 DOE ¶ 85,202 (1983) (treatment of vehicle rental firm refund claimant under Subpart V regulations not determinative of its status under the price regulations).

(3) The recovery of a specified amount for each gallon of motor gasoline purchased is, like the other presumptions we are employing in this proceeding, subject to challenge by refund claimants who seek to establish that the presumption should not be applied in their cases and are able to demonstrate that the alleged overcharges resolved by the consent order were disproportionately borne by them, resulting in a level of probable injury in excess of the volumetric presumption. See *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

(4) Using the volumetric factor of \$0.01586 per gallon, we calculate this an applicant must have purchased from Hertz at least 946 gallons of motor gasoline in order to qualify for the minimum \$15.00 refund. Assuming that ten gallons was the average refueling amount, an applicant would have to have rented approximately 95 vehicles from Hertz during the 11-month consent order period to meet the minimum threshold.

[FR Doc. 84-31803 Filed 12-3-84; 8:45 am]

BILLING CODE 8450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[SAB-FRL-2729-6]

### Science Advisory Board Environmental Health Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a one-day meeting of the Chlorinated Organics Subcommittee of the Environmental Health Committee (EHC) of the Science Advisory Board will be held on December 20, 1984, in the Fremont Conference Room, Hyatt Regency at Crown Center, 2345 McGee Street, Kansas City, Missouri 64108. The meeting will start at 9:00 a.m. and adjourn not later than 4:00 p.m.

The principal purpose of the meeting will be to review and comment on the scientific adequacy of a draft Health Assessment Document (HAD) for Chloroform prepared by the Office of

Health and Environmental Assessment in the Office of Research and Development (ORD). The document is dated March 1984 (EPA-600/8-84-004A).

For information on how to obtain copies of the draft HAD please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 54268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Daniel Byrd, Executive Secretary to the EHC, or Mrs. Patti Howard, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 before c.o.b. December 14, 1984.

Dated: November 27, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-31909 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-2729-7]

### Water Engineering Research Laboratory; Seminar

AGENCY: Water Engineering Research Laboratory.

ACTION: Notice of seminar.

**SUMMARY:** This notice sets forth the schedule of the upcoming seminar entitled Reliability Concepts in the Design of POTWs. Topics to be covered include: statistical characterization of POTW effluent variability and available design procedures; linking effluent variability with water quality; characterization, prediction, and control of POTW upsets; and mechanical reliability and plant performance.

DATE: December 4, 1984, 8:30 a.m. to 5:00 p.m.

ADDRESS: U.S. EPA Andrew W. Briedenbach Environmental Research Center, 26 West St. Clair Street, Cincinnati, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sheri Marshall, Conference Coordinator, Dynamac Corporation, The Dynamac Building, 11140 Rockville Pike, Rockville, MD 20852 (301/468-2500).

Nancy G. Juillerat,

Acting Deputy Director, Water Engineering Research Laboratory.

[FR Doc. 84-31810 Filed 12-3-84; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants; D M Ocean Freight Forwarders Division

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

*D M Resources, Inc. d.b.a. D M Ocean Freight Forwarders Division*, 2730 Carl Road, Irving, TX 75062; Officers: Rawles Fulgham, Irvin L. Levy, Lester A. Levy, Milton P. Levy, Jr., Ray J. Pulley.

*Carrie D. Struyk d.b.a. TXM Shipping Company*, 119 Circle Drive, Beaufort, NC 28516.

*Ernest A. Fransz d.b.a. I.N.A. Freight Forwarding Services*, 17338 S. Denker Avenue, Gardena, CA 90247.

By the Federal Maritime Commission.

Dated: November 29, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-31820 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License; Reissuance of License; K-C International Freight Forwarders

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 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 reissued
1709	Ki Tai Chang d.b.a. K-C International Freight Forwarders, 3410 Geary Blvd., #101, San Francisco, CA 94118.	Nov. 23, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-31818 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License; Revocations; JIF America, Inc.

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
2471	JIF America, Inc., 1717-19 Elm-hurst Road, Elk Grove Village, IL 60007.	Nov. 22, 1984.
2653	Empire Freight Forwarding, Inc., 17 Drenzo Court, Staten Island, NY 10309.	Nov. 23, 1984.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 84-31819 Filed 12-3-84; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 846-0320]

### Heinz U.S.A.; Filing of Petition for Affirmation of GRAS Status

#### Correction

In FR Doc. 84-27615 beginning on page 41110 in the issue of Friday, October 19, 1984, make the following corrections:

1. On page 41110, third column, in the "DATE" paragraph, "January 17, 1985" should have read "December 18, 1984".
2. In the same column, in the last paragraph, in the second line, "January 17, 1985" should have read "December 18, 1984".

BILLING CODE 1505-01-M

[Docket No. 77N-0240; DESI 1786]

### Certain Single-Entity Coronary Vasodilators; Drug Efficacy Study Implementation; Revocation of Exemption and Notice of Opportunity for Hearing

#### Correction

In FR Doc. 84-27103 beginning on page 40213 in the issue of Monday, October 15, 1984, make the following corrections:

1. On page 40219, first column, first complete paragraph, fourth line from the bottom, "89 mg" should have read "80 mg".
2. On page 40222, third column, fifth paragraph, third line, "157:206-211" should have read "153:207-211".
3. On page 40224, second column, first complete paragraph, twelfth line,

"frequently" should have read "frequency".

BILLING CODE 1505-01-M

### Health Resources and Services Administration

#### Grants to State Health Planning and Development Agencies

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice regarding grants to State Health Planning and Development Agencies—determination of population of the States.

**SUMMARY:** This notice provides the population figures the Department will use when it determines the amount of grants to State Health Planning and Development Agencies (States Agencies).

**SUPPLEMENTARY INFORMATION:** Section 1525 of the Public Health Service Act authorizes the Secretary of Health and Human Services to make grants to State Agencies to assist them to meet their operating costs. The amount of the grant is determined in accordance with a formula and is based in part on a determination by the Secretary of the population of the States. The formula is provided in the regulations governing grants to State Agencies (42 CFR Part 123, Subpart C). Section 123.204(b)(1) of these regulations provides that the Secretary will determine the population of each State based upon the latest available estimate from the Department of Commerce. These estimates are based on the Bureau of Census, Publication P-25, Number 951, "Estimates of the Population of States," provisional estimates for July 1, 1983. The population figures for Puerto Rico and the outlying areas are based on the Bureau of Census, Publication P-25, Number 943, "Estimates of the Population of Puerto Rico and the Outlying Areas," estimates for July 1, 1982.

Accordingly, the Secretary has made the following determination of populations of the States.

Date: November 28, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

#### POPULATION OF THE STATES FOR PURPOSES OF DETERMINING STATE HEALTH PLANNING AND DEVELOPMENT AGENCY GRANTS, FISCAL YEAR 1985

Alabama.....	3,959,000
Alaska.....	479,000
American Samoa.....	34,000
Arizona.....	2,963,000
Arkansas.....	2,328,000

#### POPULATION OF THE STATES FOR PURPOSES OF DETERMINING STATE HEALTH PLANNING AND DEVELOPMENT AGENCY GRANTS, FISCAL YEAR 1985—Continued

California.....	25,174,000
Colorado.....	3,139,000
Connecticut.....	3,138,000
Delaware.....	606,000
District of Columbia.....	623,000
Florida.....	10,680,000
Georgia.....	5,732,000
Guam.....	111,000
Hawaii.....	1,023,000
Idaho.....	989,000
Illinois.....	11,486,000
Indiana.....	5,479,000
Iowa.....	2,905,000
Kansas.....	2,425,000
Kentucky.....	3,714,000
Louisiana.....	4,438,000
Maine.....	1,146,000
Maryland.....	4,304,000
Massachusetts.....	5,767,000
Michigan.....	9,069,000
Minnesota.....	4,144,000
Mississippi.....	2,587,000
Missouri.....	4,970,000
Montana.....	817,000
Nebraska.....	1,597,000
Nevada.....	891,000
New Hampshire.....	959,000
New Jersey.....	7,468,000
New Mexico.....	1,399,000
New York.....	17,667,000
North Carolina.....	6,082,000
North Dakota.....	680,000
Northern Mariana Island.....	18,000
Ohio.....	10,746,000
Oklahoma.....	3,298,000
Oregon.....	2,662,000
Pennsylvania.....	11,895,000
Puerto Rico.....	3,261,000
Rhode Island.....	955,000
South Carolina.....	3,264,000
South Dakota.....	700,000
Tennessee.....	4,685,000
Texas.....	15,724,000
Trust Territory.....	120,000
Utah.....	1,619,000
Vermont.....	525,000
Virgin Islands.....	101,000
Virginia.....	5,550,000
Washington.....	4,300,000
West Virginia.....	1,965,000
Wisconsin.....	4,751,000
Wyoming.....	514,000
Total.....	237,630,000

[FR Doc. 84-31617 Filed 12-3-84; 8:45 am]

BILLING CODE 4160-16-M

#### Public Health Service

##### National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-643), notice is hereby given that the National Committee on Vital and Health Statistics, pursuant to functions established by section 306(k)(2) of the Public Health Service Act, as amended (42 U.S.C. 242k), will convene on Thursday, December 13 and Friday, December 14 from 9:00 a.m. to 5:00 p.m. both days in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

The Committee will hear reports from the Subcommittee on Uniform Minimum Health Data Sets, the Subcommittee on Disease Classification and Automated

Coding of Medical Diagnosis, the Work Group on Indigent Health Data Needs, and the Work Group on Statistical Aspects of Physician Payment Systems.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting William F. Steward, National Committee on Vital and Health Statistics, Room 2-28 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Dated: November 23, 1984.

Manning Feinleib, M.D., Dr. P.H.

Director, National Center for Health Statistics.

[FR Doc. 84-31600 Filed 12-3-84; 8:45 am]

BILLING CODE 4160-17-M

#### DEPARTMENT OF THE INTERIOR

##### Office of the Secretary

[INT FES 84-44]

##### Jackson Lake Safety of Dams Project Wyoming-Idaho; Availability of Final Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental impact statement on the proposed Jackson Lake Safety of Dams Project. The proposed project would include actions to assure the safety of Jackson Lake Dam, located in Grand Teton National Park, and maintain benefits of the dam and Jackson Lake while maintaining national park values.

Copies are available for inspection at the following locations:

- Office of Environmental Affairs, Bureau of Reclamation, Washington, D.C. 20240, Telephone: (202) 343-4991
- Division of Environmental Compliance, National Park Service, Washington, D.C. 20240, Telephone: (202) 343-2163
- Regional Office of Environmental, Bureau of Reclamation, Federal Building, Box 043-550 West Fort Street, Boise, Idaho 83724, Telephone: (208) 334-1207
- Regional Environmental Compliance Office, National Park Service, P.O. Box 25287, Denver, Colorado 80225, Telephone: (303) 234-4942
- Minidoka Project Office, Bureau of Reclamation, 1359 Hansen Avenue, Burley, Idaho 83318, Telephone: (208) 678-0461

Park Superintendent, Grand Teton National Park, Moose, Wyoming 83012, Telephone: (307) 733-2880

Single copies of the statement may be obtained on request to the Bureau of Reclamation or the National Park Service at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: November 29, 1984.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 84-31616 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-09-M

## Bureau of Land Management

[4-22451-ILM]

### Intent To Prepare a Planning Analysis for the State of Kentucky

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Planning start for the State of Kentucky.

**SUMMARY:** Notice is hereby given that the Jackson District of the Eastern States Office is starting the preparation of a Planning Analysis for the Federal Mineral Ownership (FMO) under BLM jurisdiction in Kentucky. A planning analysis, hereafter referred to as the Plan, consists of an environmental assessment or an environmental impact statement, if necessary, plus any other data and analysis necessary to make an informed decision. The product is a document developed upon the analysis, display, and documentation requirements of the CEQ regulations. It is used to assess the impacts of the proposal and to provide a basis for a decision on the proposal. It will be prepared in accordance with Bureau of Land Management Planning Regulations (43 CFR Part 1600).

**Geographic Area of the Plan:** The Plan will consider FMO in the State of Kentucky. It encompasses as much as 1.4 million acres of FMO under Federal, state and private surface.

**Anticipated Issues:** The Plan will address several issues on which public comment would be beneficial.

Issues that will be addressed in the Plan include but are not limited to the following: (1) The need to protect various wildlife and plant species (including endangered species); (2) the need to protect Floodplains and Wetlands; (3) the need to protect valuable cultural resources; and (4) the extent of and possible development of mineral deposits.

**Interdisciplinary Team:** The Plan will be developed by a Bureau of Land

Management Interdisciplinary Team (IDT) located in Jackson, Mississippi. The team includes a geologist, hydrologist, realty specialist, geographer, environmental coordinator, soil scientist, natural resource specialist, archaeologist, and administrative personnel.

**Planning Process:** The preparation of a Plan and the evaluation of its impacts includes the following steps:

(1) Identification of issues and action that gives Federal agencies and state and local governments an opportunity at the outset of the planning process to suggest concerns, needs and resource use, development and protection opportunities for consideration in the Plan.

(2) Development of planning criteria to guide the development of the Plan to ensure that it is tailored to the issues previously identified and to ensure that unnecessary data collection is avoided; to guide the analysis of the management situation; to assist in the design and formulation of alternatives; and to estimate the effects of alternatives.

(3) Inventory data and information collection (including resources, environmental, social, economic and institutional data).

(4) Analysis of the management situation to determine the capability of public land resources to respond to: Needs, concerns and opportunities identified through public participation and coordination with other publics; issues defined earlier in the planning process; and national and State Director guidance.

(5) Formulation of management alternatives for the resources in the planning area.

(6) Estimation of the effects of the alternatives.

(7) Selection of a preferred alternative, which is incorporated into the draft plan and draft environmental document (ED).

(8) Selection of a Plan which becomes the proposed Plan and is accompanied by a final ED.

(9) Monitoring and evaluation of the Plan.

**Public Participation:** The planning process is flexible and designed to accommodate the unique situations caused by the widely scattered nature of BLM's ownership pattern and the variety of affected publics. The plan generally follows a "grass roots" approach to public involvement, using localized, one-to-one contacts and extensive direct mailings, as well as continual coordination with local, state and other Federal agencies. In addition, news releases will accompany the publication of the draft plan and

environmental document (30-day review and comment period) in May 1985; the publication of the proposed plan and final environmental document (which will trigger a 30-day opportunity for protest) in July 1985; and the final notice and comment (as necessary) on any changes made as a result of action on a protest. This schedule is tentative, and may be changed as the planning process unfolds. Complete records of all public participation will be available for public review at all times throughout the development of the Plan.

**DATE:** Comments should be submitted by January 3, 1985. Comments received or postmarked after that date may not be considered in the decision-making process.

**FOR FURTHER INFORMATION CONTACT:**

Address comments and requests to: District Manager, Jackson District Office, Bureau of Land Management, P.O. Box 11348, Jackson, Mississippi 39213.

Additional Information: For information about BLM Planning in Kentucky—to review planning maps and narratives or other information or to offer data or assistance—Contact: Ed Roberson, Jackson District Office, (601) 960-4405.

Robert L. Todd,

Acting District Manager.

[FR Doc. 84-31651 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-GJ-M

[4-22451-ILM]

### Intent To Prepare a Planning Analysis for the State of Louisiana

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Planning start for the State of Louisiana.

**SUMMARY:** In compliance with 43 CFR Part 1600, the Jackson District Office announces that the Louisiana Planning Analysis has been initiated and will be available for public review in February 1986. This plan represents those public lands and Federal Mineral Ownership (FMO) under BLM jurisdiction in Louisiana. The BLM administers approximately 1.2 million acres of Federal minerals under surface lands managed by other Federal agencies. This Louisiana plan will discuss the mineral potential underlying these lands and outline the policies and programs of the Bureau as they relate to the plan, prescribing resource allocations identified by these agencies to date.

Land ownership conflicts/records maintenance—In the past, the Eastern

States Office of the BLM has not had an active management posture with regard to Public Domain lands in Louisiana. This situation has led to a greater potential for ownership conflicts and incidence of trespass. To help alleviate these potential problems, a concerted effort towards accurate and well-maintained lands records has been initiated with the assistance of State and local governments and the general public.

Mineral ownership records—Mineral ownership in Louisiana is located on tracts administered by the Bureau of Land Management as well as other Federal agencies, the State, or private parties. In order to facilitate minerals actions, every effort will be made to coordinate with these entities and maintain accurate minerals records.

This plan will be completed as a Category 1 Planning Analysis, which means that an Environmental Assessment (EA) will be prepared as an integral part of the process.

Public lands under BLM jurisdiction in Louisiana consist of 58 separate parcels, ranging in size from .10 acres to 640 acres, scattered over 29 parishes and totaling approximately 2,100 acres.

This plan also considers approximately 57,391 acres of Federal Mineral Ownership under BLM-Administered or privately-owned surface and will address the retaining of minerals by the U.S. (unless requirements of 43 U.S.C. 1719 are met) for leasing by application or through competitive sale. In addition, the plan will make several recommendations regarding the gathering of more detailed data.

Some of the issues to be addressed in the plan include, but are not limited to the following: (1) The potential for ownership conflicts and trespass; (2) the need to protect various wildlife and plant species (including endangered species); (3) the possible development of mineral deposits; (4) the need to protect valuable cultural resources; and (5) the need to protect floodplains and wetlands.

The Plan is being developed by a Bureau of Land Management Interdisciplinary Team (IDT) located in Jackson, Mississippi. The team includes a geologist, hydrologist, realty specialist, geographer, environmental specialist, soil scientist, natural resource specialist, archaeologist, and administrative personnel. Persons wishing to comment and to be kept informed on this effort should immediately contact the team leader at the address or telephone number listed below. Please request to be placed on the mailing list for the Louisiana Plan.

**DATE:** Comments should be submitted by January 3, 1985. Comments received or postmarked after that date may not be considered in the decision-making process.

**ADDRESSES:** Comments and requests to: District Manager, Jackson District Office, Bureau of Land Management, P.O. Box 11348, Jackson, Mississippi 39213, (601) 960-4405.

**FOR FURTHER INFORMATION CONTACT:** Tom Dyer, Jackson District Office, (601) 960-4405.

Robert L. Todd,  
*Acting District Manager.*

[FR Doc. 84-31652 Filed 12-3-84; 8:45 am]  
**BILLING CODE 4310-GJ-M**

[Colorado 30885; 5-00258-GP5-011]

### Oil and gas lease; Proposed Reinstatement; Huerfano County; CO

Notice is hereby given that a petition for reinstatement of oil and gas lease C-30885 for lands in Huerfano County, Colorado was timely filed and was accompanied by all the required rentals and royalties accruing from July 1, 1984, the date of termination.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5.00 and 16% percent, respectively.

The lessee has paid the required \$500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the estimated cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920, as amended, (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective July 1, 1984, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Barbara Benz of the Colorado State Office at (303) 294-7600.

Cecilia L. Reynolds,  
*Acting Chief, Mineral Leasing Section.*

[FR Doc. 84-31662 Filed 12-3-84; 8:45 am]  
**BILLING CODE 4310-JB-M**

### Bureau of Reclamation

**Municipal and Industrial Water Service; Ratesetting Policy; Central Valley Project (CVP), CA; Amendment to Notice of Availability of Policy Options Document and Intent To Hold Public Workshops and Hearings**

The Department of the Interior, through the Bureau of Reclamation, has

developed a municipal and industrial (M&I) water ratesetting options paper for the CVP. The paper was prepared pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), Pub. L. 88-44 (Act of June 21, 1963, 77 Stat. 68), and the Reclamation Reform Act of 1982, title II, Pub. L. 97-293 (96 Stat. 1263).

The Bureau of Reclamation hereby amends its Notice of Availability of Policy Options Document and Intent to Hold Public Workshops and Hearings as published in 49 FR, page 41114, October 19, 1984. The public hearings dates have been rescheduled to receive comments on the proposed policy options document from interested individuals and organizations. The public hearings will begin at 1:00 p.m. in the following locations:

Concord—Tuesday, December 4, 1984, at the Concord Inn (Walnut Room), 1401 Willow Pass Road

Sacramento—Thursday, December 6, 1984, at the Convention Center, Activities Bldg. (Yuba/Placer Room), 14th & K Streets

Fresno—Tuesday, December 11, 1984, at the Fresno Convention Center (Wine Room), 700 M Street

Requests to speak may be made at the hearings. Those individuals or organizations which desire to speak at a specified time should send a written request for such to the address listed below. Each hearing will continue until all persons desiring to comment have been heard.

Copies of the draft policy may be obtained without charge by writing to the Regional Director, Bureau of Reclamation, Water Rate Policy, (MP-440), 2800 Cottage Way, Sacramento, CA 95825. Questions by telephone should be directed to Donna Tegelman at (916) 484-4540.

Dated: November 29, 1984.

Robert A. Olson,  
*Acting Commissioner of Reclamation.*

[FR Doc. 84-31670 Filed 12-3-84; 8:45 am]  
**BILLING CODE 4310-09-M**

### Minerals Management Service

**Receipt of Development Operations Coordination Document; Main Pass Area; Offshore Louisiana**

**AGENCY:** Minerals Management Service.  
**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G

3339 and 4253, Blocks 303 and 304, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on November 26, 1984.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 26, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84-31585 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### 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 24, 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 19, 1984.

Carol D. Shull,

Chief of Registration, National Register.

## ARIZONA

### Cocconino County

Williams, *Williams Historic Business District*, Roughly bounded by Grant and Railroad Aves., and 1st and 4th Sts.

## DELAWARE

### New Castle County

Wilmington, *Bancroft and Sons Cotton Mills (Brandywine Cotton Mills)*, Rockford Rd. Wilmington, *Public School No. 19*, 801 S. Harrison St.

## MAINE

### Cumberland County

Portland *Portland Waterfront Historic District (Boundary Increase)*, 79-85 and 295-309 Commercial and 3 Center Sts.

## MARYLAND

### Queen Anne's County

Ruthsburg vicinity, *Hawkins Pharsalia*, MD 304

## MISSISSIPPI

### Hinds County

Jackson, *Greenwood Cemetery*, Bounded by West, Davis, Lamar and George Sts.

## NEBRASKA

### Cedar County

Menominere vicinity, *Zavadil, Franz, Farmstead*.

### Gage County

Beatrice, *Kilpatrick, Samuel D.*, House, 701 N. 7th St.

### Lancaster County

Lincoln, *Townsend Photography Studio*, 226 S. 11th St.

## NEW JERSEY

### Atlantic County

Atlantic City, *Madison Hotel*, 123 S. Illinois Ave. Linwood, *Linwood Borough School No. 1*, 16 W. Poplar Ave.

### Warren County

Oxford, *Shippen Manor*, Belvidere Rd.

## NEW YORK

### Orange County

Maybrook (Village), *Blake, John, House*, 924 Homestead Ave.

## NORTH CAROLINA

### Burke County

Morganton, *Riddle, Dr. Joseph Bennet, House*, 411 W. Union St.

### Carteret County

Beaufort, *Carteret County Home*, NC 101

### Edgecombe County

Tarboro vicinity, *Howell Homeplace*, SR 1517

## Forsyth County

Winston-Salem, *Lowe, Cicero Francis House*, 204 Cascade Ave.

## Hertford County

Ahoskie, *Newsome, James, House*, NC 11 at jct. NC 42

## Macon County

Franklin, *Bryson, Albert Swain, House*, Pine Lane

## Martin County

Hamilton vicinity, *Hickory Hill*, NC 903  
Hamilton vicinity, *Sherrod Farm*, W side of NC 125/903  
Jamesville, *Jamesville Primitive Baptist Church and Cemetery*, E side of NC 171

## Moore County

Pine Bluff vicinity, *McLeod Family Rural Complex*, .4 miles west of US 1

## Pitt County

Greenville, *Ficklen, E.B.*, House, 508 W. 5th St.

## Randolph County

Franklinville, *Franklinville Historic District*, Roughly bounded by Deep River, Sunrise Ave., Clark St., and Greensboro Rd.

## Richmond County

Little's Mills vicinity, *Little, John Phillips, House*, Off NC 73

## Rowan County

Kannapolis vicinity, *Stigerwalt, John, House*, E of Kannapolis off SR 1221 (Old Beatty Ford Rd.)  
Spencer, *Spencer Historic District*, Roughly bounded by N to S Salisbury Ave., 8th St., Whitehead Ave., and Jefferson St.

## Union County

Lancaster vicinity, *North Carolina-South Carolina Cornerstone*, Off US 521

## Wilson County

Wilson, *Old Wilson Historic District*, Roughly bounded by Nash, N. Cone, Gold and Railroad Sts. and Maplewood Cemetery  
Wilson, *West Nash Street Historic District*, West Nash St.  
Wilson, *Wilson Central Business-Tobacco Warehouse Historic District*, Roughly bounded by Pender, Green, Pine, S. Jackson, and Hines Sts.

## OHIO

### Coshocton County

Coshocton, *Meeh, J. F., Buildings*, 546 Chestnut St. and 213-215 N. Sixth St.

### Cuyahoga County

Cleveland, *Medical Centre Building*, 1001 Huron Rd.

### Franklin County

Columbus, *Plaza Hotel*, 736-740 E. Long St.

### Hamilton County

Cincinnati, *Courtland Flats*, 117-121 E. Court St.

## PENNSYLVANIA

## Bedford County

Bedford, *Bedford Springs Hotel Historic District*, US 220

## PUERTO RICO

## Aguadilla County

Aguadilla, *Cardona Residence*, Betances St. #55

Aguadilla, *District Courthouse*, Progreso Aguadilla, *El Parterre (Old De Agua)*.

Bounded by Munoz Rivera, Gonzalo Firpo, De Diego and Mango Sts.

Aguadilla, *Old Urban Cemetery*, Cuesta Vieja

Aguadilla, *Residence Lopez*, Progreso St. #67

## San Juan County

San Juan vicinity, *Church of San Agustin in Puerta de Tierra*, #265 Ponce de Leon Ave.

Santurce, *Church of San Mateo de Cangrejos of Santurce*, Corner of San Jorge St. and Eduardo Conde Ave.

## SOUTH CAROLINA

## Lancaster County

Lancaster vicinity, *North Carolina-South Carolina Cornerstone*, Off US 521

## TENNESSEE

## Davidson County

Nashville, *Capers C.M.E. Church (McKissack and McKissack Bldgs. TR)*, 319 15th Ave., North

Nashville, *Carnegie Library (McKissack and McKissack Bldgs. TR)*, Fisk University, 17th Ave., North

Nashville, *Hubbard House (McKissack and McKissack Bldgs. TR)*, 1109 1st Ave., South

Nashville, *Morris Memorial Building (McKissack and McKissack Bldgs. TR)*, 330 Charlotte Ave.

## Knox County

Knoxville, *Market Square Commercial Historic District*, Market Sq. Mall

## Rutherford County

Eagleville, *McCord, William Harrison House*, US 41A

## WISCONSIN

## Sheboygan County

Greenbush, *Robinson, Charles, House*, Center St., Old Wade House State Park Town Herman, *Mission House Historic District*, County Trunk M

[FR Doc. 84-31658 Filed 12-3-84; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL TRADE COMMISSION

## Agency Form Submitted for OMB Review

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal

for the collection of information to the Office of Management and Budget for review. The Commission is requesting an expedited review and approval of the Commission's questionnaire by the Office of Management and Budget on or before December 21, 1984.

## Purpose of Information Collection

The proposed information collection is for use by the Commission in connection with investigation No. 332-185, Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries, instituted under the authority of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)). Information called for in this questionnaire pertaining to military related export sales and resulting offset obligations is for use by the President as mandated by section 309 of the Defense Production Act Amendments of 1964 (Pub. L. 98-265), enacted on April 17, 1984.

## Summary of Proposals

- (1) Number of forms submitted: One.
- (2) Title of form: Assessment of the Effects of Barter and Countertrade Transactions on U.S. Industries—Questionnaire for companies that have negotiated countertrade agreements or that have offset obligations resulting from military related export sales.
- (3) Type of request: New.
- (4) Frequency of use: Nonrecurring.
- (5) Description of respondents: Firms manufacturing products in the United States that have negotiated barter or countertrade agreements with foreign organizations or that have offset obligations resulting from military related export sales.
- (6) Estimated number of respondents: 150.
- (7) Estimated total number of hours to complete the form: 5,250.
- (8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm. Information supplied in connection with this survey associated with military related export sales regarding offsets will be made available in aggregated form to appropriate Executive agencies as designated by the Office of Management and Budget.

## Additional Information or Comment

Copies of the proposed form and supporting documents may be obtained from Charles Ervin, the USITC clearance officer (tel. No. 202-523-4463). Comments about the proposals should

be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Ms. Francine Picoult, Desk Officer for the U.S. International Trade Commission on or before December 21, 1984. The expedited review is a result of a statutory requirement of Section 309 of the Defense Production Act Amendments of 1984. If you anticipate commenting on the form but find that time to prepare comments will prevent you from submitting them promptly you should advise OMB of your intent as soon as possible. Copies of any comments should be provided to Charles Ervin (United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436).

By order of the Commission.

Kenneth R. Mason,  
Secretary.

Issued: November 30, 1984.  
[FR Doc. 84-31709 Filed 12-3-84; 8:45 am]  
BILLING CODE 7020-02-M

## INTERSTATE COMMERCE COMMISSION

[Docket No. AB-12 (Sub-No. 75)]

## Rail Carriers; Southern Pacific Transportation Co., Abandonment in Fresno County, CA; Notice of Findings

The Commission has found that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 8.37-mile rail line between milepost 208.300, at or near Biola Junction, and milepost 199.934, at or near Biola, in Fresno County, CA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that (1) a financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,  
Secretary.

[FR Doc 84-31613 Filed 12-3-84; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Lodging of Proposed Consent Decree Pursuant to Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. Pine Valley Golf Club*, Civil Action No. 84-2105 (JFG) was lodged with the United States District Court for the District of New Jersey.

This is an action for civil penalties and injunctive relief concerning disposal of pesticides, fungicides, herbicides and other chemicals in violation of the Resource Conservation and Recovery Act ("RCRA") at the Pine Valley Golf Club, and for recovery of the government's costs of oversight of defendants' removal of the chemicals pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The decree enjoins future illegal acts and provides for the payment of a civil penalty of \$26,830.84 pursuant to section 3008 of RCRA and a payment of \$8,169.16 to reimburse plaintiff for its response and removal costs pursuant to section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Pine Valley Golf Club*, D.J. No. 90-7-1-258.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, Federal Building, 970 Broad Street, Room 502, Newark, New Jersey 07102; and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and 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.

James M. Spears,  
Acting Assistant Attorney General, Land and  
Natural Resources Division.

[FR Doc. 84-31664 Filed 12-3-84; 8:45 am]

BILLING CODE 4410-01-M

## Federal Bureau of Investigation

### National Crime Information Center Policy Board; Renewal

In accordance with the provisions of the Federal Advisory Committee Act [U.S.C. App. I (Supp. II, 1972)], the Office of Management and Budget (OMB) Circular A-63, the Director, FBI, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from state and local criminal justice representatives; six appointed by the Director, FBI, consist of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under the Act fifteen days from the date of the publication of this notice.

Interested persons are invited to submit comments regarding the renewal of the NCIC Advisory Policy Board to the the Committee Management Liaison Officer, Federal Bureau of Investigation, National Crime Information Center, Washington, D.C. 20533.

Dated: November 2, 1984.

William H. Webster,  
Director.

[FR Doc. 84-31663 Filed 12-3-84; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Privacy Act of 1974; Amendment of Systems of Records

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Amendment of Privacy System of records and changes in routine uses and in location for system, Occupational Safety and Health Administration.

**SUMMARY:** Pursuant to 5 U.S.C. 552a(e) (4) and (11), sections of the Privacy Act, the Department of Labor hereby publishes for comment the amendment of the system of records DOL/OSHA-1, "Discrimination Complaint File." Under Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2301 *et seq.*), the Secretary of Labor is responsible for handling employee discrimination complaints related to commercial motor vehicle safety and health matters. Pursuant to the Secretary's Order No. 9-83, 48 FR 35736, (August 5, 1983), the Secretary has delegated to OSHA responsibility for administration of the program because OSHA currently investigates similar discrimination complaints arising under Section 11(c) of the OSH Act. This notice amends DOL/OSHA-1 to include in the system records maintained pursuant to Section 405 of the Surface Transportation Assistance Act. This notice also amends DOL/OSHA-1 to reflect a change in the locations of the system and it also amends the system to reflect more accurately the routine uses of the records maintained in the system. Routine uses have been added and include the National Labor Relations Board and state occupational safety and health agencies which conduct investigations similar in scope and purpose to those conducted under OSHA and STAA.

**DATE:** Persons wishing to comment on this system of records may do so by January 3, 1985.

**EFFECTIVE DATE:** Unless otherwise noticed in the *Federal Register*, this notice shall become final on January 3, 1984.

**ADDRESS:** Seth P. Zinman, Associate Solicitor, Office of the Solicitor, Division of Legislative and Legal Counsel, U.S. Department of Labor, Room N-2426, 200 Constitution Avenue NW., Washington, D.C. 20210; Telephone (202) 523-8188.

**FOR FURTHER INFORMATION CONTACT:** Sofia P. Petters, Counsel for Administrative Legal Services, Office of the Solicitor, Department of Labor, 200 Constitution Avenue, NW., Room N-

2428, Washington, DC. 20210; Telephone (202) 523-8188.

#### Amendment of DOL/OSHA-1

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Labor hereby publishes an amendment to the systems of records maintained by the Occupational Safety and Health Administration, previously published at 47 FR 30409-30410 (July 13, 1982).

#### DOL/OSHA-1

##### SYSTEM NAME:

Discrimination Complaint File.

##### SYSTEM LOCATION:

Regional Offices, See 29 CFR 70.36 (a)(3) for addresses.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed complaints pursuant to section 11(c) of the Occupational Safety and Health Act or section 405 of the Surface Transportation Assistance Act.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Case files compiled in connection with investigations of discrimination complaints.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11(c) of the Occupational Safety and Health Act (Pub. L. 91-596) and Section 405 of the Surface Transportation Assistance Act (Pub. L. 97-424).

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is in the investigation of violations of section 11(c) of the OSH Act and/or section 405 of the Surface Transportation Assistance Act.

Disclosure may be made to the National Labor Relations Board, state occupational safety and health agencies and to other Federal and state agencies when they are conducting similar or related investigations.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Manual files.

##### RETRIEVABILITY:

By complainant's name or case identification number.

##### SAFEGUARDS:

Locked storage equipment, and personnel screening.

##### RETENTION AND DISPOSAL:

Destroy 5 years after case is closed.

##### SYSTEM MANAGER(S) NAME AND ADDRESS:

Regional Administrator at address where system is located.

##### NOTIFICATION PROCEDURES:

As above.

##### RECORD ACCESS PROCEDURES:

As above.

##### CONTESTING RECORD PROCEDURES:

As above.

##### RECORD SOURCE CATEGORIES:

Individual complaints filed alleging discrimination and information compiled in connection with investigations of alleged acts of discrimination.

##### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with paragraph (k)(2) of the Privacy Act, investigatory material compiled for law enforcement purposes which is maintained in the Discrimination Complaint File is exempt from paragraphs (c)(3); (d), (e)(1); (e)(4) (G), (H), and (I); and (f) of 5 U.S.C. 552a. Disclosure of information contained in this file could threaten investigators, witnesses, information and their families with adverse consequences and could hinder effective enforcement of the Occupational Safety and Health Act and the Surface Transportation Assistance Act. In order to conduct effective investigations it is necessary to guarantee the confidentiality of information being collected. Release of such information would constitute a breach of the guarantee of confidentiality, could lead to the intimidation, harassment or dismissal from employment of those involved, and could discourage those contacted in future investigations from cooperating with investigators.

Signed at Washington, D.C. 29th day of November 1984.

Ford B. Ford,  
Under Secretary of Labor.

[FR Doc. 84-31654 Filed 12-3-84; 8:45 am]  
BILLING CODE 4510-23-M

#### Employment and Training Administration

#### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance, Electra Co. 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 19, 1984–November 23, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or any 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-15,380; *Electra Co., Division of Masco Corp. of Indiana, Cumberland, IN*

TA-W-15,307; *Kern Foods, Inc., Ohio Division, Leipsic, OH*

TA-W-15,386; *Pera Fashions, Inc., Miami, FL*

TA-W-15,444; *Noyo Pride, Inc., Fort Bragg, CA*

TA-W-15,408; *AT&T Technologies, Inc., Kearny, NJ*

In the following case the investigation revealed that criterion (3) has not been met for the reason specified.

TA-W-15,401; *Cheney Brothers, Inc., Manchester, CT*

The investigation revealed that criterion (3) has not been met. Separations from the subject firm resulted from a transfer of production to another domestic facility.

#### Affirmative Determinations

TA-W-15,322; *Pierrette, North Bergen, NJ*

A certification was issued covering all workers separated on or after December 15, 1983.

TA-W-15,452; *U.S. Steel Corp., International Traffic Dept., New York, NY*

A certification was issued covering all workers separated on or after August 21, 1983 and before November 1, 1984.

TA-W-15,472; *The Hanover Shoe, Inc., Hanover, PA*

A certification was issued covering all workers separated on or after March 1, 1984.

TA-W-15,403; *The Hanover Shoe, Inc., White Sulphur Springs, WV*

A certification was issued covering all workers separated on or after July 17, 1983 and before September 30, 1984.

TA-W-15,372; *Complex Division Stretchwear Manufacturing Co., Inc., Coamo, PR*

A certification was issued covering all workers separated on or after September 1, 1983 and before April 1, 1984.

TA-W-15,448; *Lesnow Manufacturing Co., Inc., Easthampton, MA*

A certification was issued covering all workers separated on or after February 1, 1984.

TA-W-15,490; *Kurt Preiss Leather Creations, Inc., Hallandale, FL*

A certification was issued covering all workers separated on or after August 1, 1984 and before September 30, 1984.

I hereby certify that the aforementioned determinations were issued during the period November 19, 1984–November 23, 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 27, 1984.

Marvin M. Fooks,  
Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-31647 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-30-M

### Numerical Values for Performance Standards for Titles II-A and III of the Job Training Partnership Act (JTPA) in Program Year 1985

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Performance Standards.

SUMMARY: The Department of Labor (DOL) is announcing performance standards for Program Year (PY) 1985 for Titles II-A and III of the Job Training Partnership Act. The performance standards established in PY 1984 will be retained in PY 1985.

DATES: the performance standards announced in this document apply to Program Year (PY) 1985, which begins

on July 1, 1985, and ends on June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh Davies. Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Department of Labor (DOL) solicited public comments on an Options Paper regarding whether numerical values of the performance standards under Title II-A of the Job Training Partnership Act (JTPA) should be adjusted each program year (PY) or every two years. 49 FR 27840. This notice announces DOL's decision to retain for PY 1985 the same numerical values for the performance standards established for PY 1984.

DOL received forty-two comments in response to the July 6 notice regarding adjusting the numerical values for the Secretary's performance standards for JTPA Title II-A programs in PY 1985 and subsequent years. Twenty-eight respondents favored Option 2 that would change the measures and numerical values no more than every two years; eleven respondents favored Option 1 that would revise the numerical values for PY 1985 standards and during alternate years; and three respondents did not favor either option.

Given this response and based on its own examination of the issue, DOL has decided to maintain the PY 1984 standards for a second year. It also will continue the same approach for setting JTPA Title III standards.

### JTPA Titles II-A and III

#### Performance Standards for PY 1985

The performance standards for PY 1985 for JTPA Titles II-A and III shall be the same as those published in the Federal Register notice at 49 FR 4052 (February 1, 1984). Therefore, the Title II-A standards are: Adult entered employment rate, 55 percent; adult cost per entered employment rate, \$5,704; adult average wage at placement, \$4.91; adult welfare entered employment rate, 39 percent; youth entered employment rate, 41 percent; youth positive termination rate, 82 percent; youth cost per positive termination, \$4,900. Performance standards issuances which were in effect for PY 84 shall continue to be in effect for PY 85 (namely PSI-2-84, PSI-3-84, PSI-1-PY 84). For Title III, Governors again shall be required to set an entered employment rate standard for formula funded projects, and are encouraged to set goals for cost per entered employment.

Signed at Washington, D.C., this 28 day of November 1984.

Frank C. Casillas,  
Assistant Secretary for Employment and Training.

[FR Doc. 84-31648 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-30-M

### Mine Safety and Health Administration

[Docket No. M-84-223-C]

### Petition for Modification of Application of Mandatory Safety Standard; Colorado Westmoreland Inc.

Colorado Westmoreland Inc., P.O. Box E, Paonia, Colorado 81428, has filed a petition to modify the application of 30 CFR 75.1714-2(e)(3) (self-rescue devices; use and location requirements) to its Orchard Valley Mine located in Delta County, Colorado. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that self-contained self-rescuer (SCSR) devices not be placed more than 25 feet from miners on mantrips into and out of the mine.
2. As an alternative method, petitioner proposed to cache SCSRs at intervals not to exceed 2,000 feet along the mantrip routes. Cached SCSRs will be checked once every seven days. Any unit carried or worn will be checked every shift.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,  
Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31655 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-21-M]

**Petition for Modification of Application of Mandatory Safety Standard; Giant Portland & Masonry Cement Co.**

Giant Portland & Masonry Cement Company, P.O. Box 218, Harleyville, SC 29448 has filed a petition to modify the application of 30 CFR 56.16-14(b) (overhead cranes; requirements) to its Harleyville Quarry and Mill (I.D. No. 38-00007) located in Dorchester County, South Carolina. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that operator-carrying overhead cranes be provided with automatic switches to halt uptravel of the blocks before they strike the hoist.
2. Petitioner seeks a modification of the standard to permit operation of the Marl Crane without an automatic switch to halt uptravel of the blocks before they strike the hoist. Petitioner states that there is no travel of equipment or personnel under or in the vicinity of the suspended load of the crane and that the switch would serve no purpose of safety.
3. For this reason, petitioner requests a modification of the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31656 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-84-22-M]

**Petition for Modification of Application of Mandatory Safety Standard; Kaiser Sand & Gravel Co.**

Kaiser Sand & Gravel Company, P.O. Box 580, Pleasanton, California 94566 has filed a petition to modify the application of 30 CFR 56.16-2(c) (materials storage and handling) to its Radum Plant (I.D. No. 04-01827) located in Alameda County, California. The

petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladders, platforms, or staging be provided where persons are required to enter any facility for maintenance or inspection purposes, that no person enter the facility until the supply and discharge of materials have ceased and the supply and discharge equipment is locked out, that persons entering the facility wear a safety belt or harness equipped with a lifeline suitably fastened, and that a second person, similarly equipped, be stationed near where the lifeline is fastened to constantly adjust it or keep it tight as needed, with minimum slack.

2. As an alternate method, petitioner proposes to conduct repairs inside bunkers or silos as follows:

- a. All material (rock, sand or gravel) is drained or drawn down to empty the bunker/silo;

- b. By a positive means, a chain locks out the lower draw-down gate by each worker to prevent opening;

- c. The switch gear that activates the gate is tagged-out by the worker;

- d. A permanent ladder is provided and internal repair commences at the bottom of the bunker/silo, providing a safe working surface. No void can form below nor can the gate be opened, also eliminating the use of safety belts and life lines;

- e. There is always a person with radio communication to the control room that calls for and controls the flow of specific materials into a series of bunkers, including the bunker/silo where work may be conducted below.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

**Request for Comments**

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 3, 1985. Copies of the petition are available for inspection at that address.

Dated: November 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 84-31657 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-43-M

**Office of Pension and Welfare Benefit Programs**

[Application No. D-4683 et al.]

**Proposed Exemptions; the Royal Bank of Canada et al.**

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this *Federal Register* Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Program, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the

Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**The Royal Bank of Canada (Royal Bank)**  
Located in Montreal, Quebec, Canada

[Application No. D-4683]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, retroactive to June 15, 1981, to the execution by Royal Bank of a letter of credit agreement (the Agreement) providing for and the actual issuance, maintenance in effect and performance or honoring of a letter of credit (the Letter of Credit) in conjunction with a private financing arrangement where Royal Bank may have had or may in the future have a party in interest relationship with one or more of the several investor employee benefit plans (the Plans).

**Effective Date:** If this proposed exemption is granted, the effective date will be June 15, 1981.

*Summary of Facts and Representations*

1. The Letter of Credit is an integral part of the subject leveraged lease financing transaction involving the purchase of a McDonnell Douglas DC-10-15 aircraft (the Aircraft) for lease and

operation by Compania Mexicana de Aviacion, S.A. de C.V. (Mexicana), a major Mexican airline. The mechanism by which the Aircraft was acquired and leased to Mexicana was a complex but fairly typical leveraged lease financing arrangement containing the following elements: (1) Mexicana had previously contracted with McDonnell Douglas Corporation (the Manufacturer) to purchase the Aircraft. As part of the financing arrangement, Mexicana assigned its rights and obligations under the purchase agreement to the Bank of New York (Owner Trustee) as trustee, with the Manufacturer consenting and agreeing to the assignment; (2) The Owner Trustee, acting on behalf of McDonnell Douglas Financing Corporation (the Owner Participant), purchased the Aircraft from the Manufacturer for \$50,000,000; (3) The Owner Trustee obtained \$17,000,000 (1/3 of the purchase price) from the Owner Participant and the balance from the collective investment of eleven life insurance companies and one commercial bank (the Loan Participants).<sup>1</sup> Some of the Loan Participants have invested funds on behalf of the Plans through insurance company separate accounts and, in the case of the commercial bank, through a commingled pension trust; (4) The amounts loaned by the Loan Participants were evidenced by a series of non-recourse notes (the Loan Certificates) issued by the Owner Trustee pursuant to a trust indenture and mortgage (the Indenture) between itself and Bankers Trust Company (the Loan Trustee), as trustee for the holders of the Loan Certificates. The Loan Certificates mature twelve years after their issue and bear interest at the rate of 15 1/2 percent per annum with principal amortization payments commencing at the end of the second year. Among other things, the Indenture created a security interest in the Aircraft in favor of the holders of the Loan Certificates and the Royal Bank; (5) To provide further security for the holders of the Loan Certificates, the Owner Trustee entered into the Agreement with the Royal Bank. The Agreement provides for the issuance by the Royal

<sup>1</sup> The names of the original Loan Participants are Aetna Life Insurance Company, INA Life Insurance Company, Horace Mann Life Insurance Company, INA Life Insurance Company of New York, Standard Life Insurance Company of Indiana, John Hancock Mutual Life Insurance Company, Morgan Guaranty Trust Company of New York (as Trustee of a Commingled Pension Trust), Union Mutual Life Insurance Company, Unionmutual Stock Life Insurance Co. of America, Unionmutual Stock Life Insurance Company of New York, Canada Life Assurance Company and Crown Life Insurance Company.

Bank of the Letter of Credit in favor of the Loan Trustee, for the benefit of the holders of the Loan Certificates, in an amount sufficient to cover the full amount of the principal and interest owing on the Loan Certificates;<sup>2</sup> and (6) the Aircraft was then leased by the Owner Trustee to Mexicana for a basic term of fifteen years under a lease agreement (the Lease Agreement) providing for rentals sufficient to pay all of the obligations arising under the agreements referred to above. The various elements of the financing agreement were tied together by a participation agreement executed by all the parties to the above described transactions except the Manufacturer of June 15, 1981.

2. The Royal Bank is a Canadian chartered bank headquartered in Montreal, Province of Quebec. It is Canada's largest bank and the fourth largest in North America. On October 31, 1982, it had total assets of Can. \$88.5 billion (U.S. \$72.2 billion, based on the exchange rate on October 29, 1982 of Can. \$1.00=U.S. \$8157). Included among its holdings are two wholly-owned banking subsidiaries in the United States and its possessions: the Royal Bank and Trust Company (New York, New York) and Banco de San Juan (Hato Rey, Puerto Rico). Since both of these financial institutions possess authorization to engage in trust activities, it is possible that one of the Plans having a beneficial interest in the Loan Certificates may have a party in interest relationship with an affiliate of the Royal Bank.

3. The Letter of Credit is an unconditional and irrevocable promise to pay to the Loan Trustee (for the benefit of the holders of the Loan Certificates) the amount stated therein by a single payment upon presentation by the Loan Trustee of certain specified documents, one of which is a certificate of the Loan Trustee that either an event of default has occurred under the Indenture or a payment to the Loan Certificate holders is or may be an avoidable preference under the U.S. Bankruptcy Code (as a result of the bankruptcy of Mexicana). The Loan Certificates become immediately due and payable upon the giving of the notice of acceleration to the Owner Trustee, such notice may be given by

<sup>2</sup> The fact that the repayment of the Loan Certificates is fully covered by the Royal Bank's Letter of Credit means that the interest rate on the Loan Certificates is lower than the interest rate which would have been required if such repayment were dependent solely upon the lease rentals payable by Mexicana and the mortgage on the Aircraft.

either Royal Bank or the holders of twenty five (25) percent or more in outstanding principal amount of the Loan Certificates. Upon receipt of the notice of acceleration, the Loan Trustee is obligated to demand payment from the Royal Bank under the Letter of Credit in an amount equal to the outstanding principal and interest due on the Loan Certificates. When the Loan Trustee receives payment from the Royal Bank, it will in turn pay all of the holders of the Loan Certificates against delivery of the outstanding Loan Certificates duly endorsed and assigned to the Royal Bank. While Royal Bank may give the notice of acceleration which sets in motion the demand for payment under the Letter of Credit, section 4.15 of the Indenture provides that "no such action shall adversely affect the interests of the holders of the Loan Certificates."

The Letter of Credit Agreement provides for a fee payable to Royal Bank in an amount equal to one percent on the average daily maximum amount available under the Letter of Credit, subject to certain limitations. The fee is payable by the Owner Trustee; however the Lease Agreement between the Owner Trustee and Mexicana provides that the amount of the fee is included in the rent payable by Mexicana. Non-payment of this fee will not affect the validity of the Letter of Credit or the obligations of Royal Bank thereunder.

4. Royal Bank acknowledges that it has de minimus banking relationships with the Loan Trustee and certain of the Loan Participants and believes it is the principal Canadian banker for Crown Life Insurance Company. However, Royal Bank represents that it neither owns five percent or more of the outstanding voting shares nor has the power to influence the management decisions of any of the Loan Participants or the Loan Trustee.

5. The applicant understands that the Department has taken the position that where a loan transaction in which employee benefit plans are investors is guaranteed by a person having a party in interest relationship to such investing plans a prohibited extension of credit exists between the guarantor and the investing plans. The Loan Participants disclosed the identities of all Plans with more than a 5% interest in any separate account or in the commingled pension trust, and reasonable steps were taken to determine that no party in interest relationship existed between the Royal Bank and those Plans. However, the Loan Participants refused to disclose the identities of Plans owning less than 5% interests in the separate accounts and

commingled pension fund. Since the identity of certain of the Loan Certificate holders could not be established in advance, the Royal Bank is concerned that it may be a party in interest (e.g., by providing custodial or other services) to a Plan which either has or may hereafter acquire Loan Certificates. Therefore, should a full disclosure of the identity of Plans investing in the Loan Certificates establish such a relationship, it could be argued that the issuance and maintenance in effect of the Letter of Credit involves a loan or extension of credit in violation of section 406(a)(1)(B) of the Act.

The applicant acknowledges the possible application of two previously granted class exemptions involving investment by bank collective investment funds and insurance company pooled separate accounts.<sup>3</sup> However, the Loan Participants have not been willing to provide assurances that the pooled accounts which they operate meet the requirements of those exemptions. The Royal Bank also acknowledges the existence of the recently granted class exemption for qualified professional asset managers (QPAM);<sup>4</sup> however, Royal Bank has no assurances that transactions involving current holders of the Loan Certificates would qualify for the relief available under that exemption. Additionally, the Indenture acknowledges the potential for transferability of the Loan Certificates to, among others, employee benefit plans which are not invested through such pooled vehicles or managed by entities which satisfy the definition of a QPAM. To date no sales have occurred and the Loan Trustee stated that as of July 1, 1984, the original Loan Participants continue to be the beneficial owners of the Loan Certificates. The applicant also notes that the Department has taken the position that a loan or extension of credit which is permissible when entered into nevertheless becomes prohibited if a party in interest relationship develops thereafter. The honoring of the Letter of Credit by the Royal Bank also raises prohibited transaction problems should the Department determine the transfer of the Loan Certificates under the terms of the Indenture to be prohibited. Because of the above stated concerns Royal Bank has determined that it could be

<sup>3</sup> Prohibited Transaction Exemption 78-19, 43 FR 59915, December 22, 1978 and Prohibited Transaction Exemption 80-51, 45 FR 49709, July 25, 1980.

<sup>4</sup> Prohibited Transaction Exemption 84-14, 49 FR 9494, March 13, 1984.

exposed to the risk of a possible prohibited extension of credit for the life of the Letter of Credit. Accordingly, the applicant has determined it appropriate to seek exemptive relief for the transactions described herein.

6. In summary, the applicant has represented that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The proposed exemption applies to the issuance, maintenance in effect, performance and honoring of a single letter of credit, the terms of which are fixed based on arms length negotiations between unrelated parties; (b) the Letter of Credit is a secondary form of security adding an additional protection at no cost to the holders of the Loan Certificate and which is held by the independent Loan Trustee acting pursuant to the Indenture; and (c) repayment of the Loan Certificates is assured by Royal Bank's unconditional obligation and its substantial resources.

For Further Information Contact: Paul R. Antsen of the Department, telephone (202) 523-6915. (This is not a toll-free number.)

**Krohn Clinic, Ltd., Money Purchase Pension Plan (the Plan) Located in La Crosse, Wisconsin**

[Application No. D-5370]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) a lease, effective July 1, 1984, of certain improved real property (the Property) by the Plan to Krohn Clinic, Ltd., (the Employer), the sponsor of the Plan; and (2) the potential cash purchase of the Property from the Plan by the Employer pursuant to a provision in such lease; provided that the terms and conditions of such transactions are at least as favorable to the Plan as the Plan could expect in arm's-length transactions with unrelated parties.

Effective date: If granted, this exemption will be effective July 1, 1984.

*Summary of Facts and Representations*

1. The Plan is a defined contribution money purchase pension plan with 47

participants and total assets of \$2,430,600 as of September 14, 1984. The Employer is a Wisconsin professional corporation with a net worth of \$686,928 as of April 6, 1984, operating as the Krohn Medical Clinic for the general practice of medicine. The trustee of the Plan is the La Crosse Trust Company (the Trustee), which represents that it is independent of and unrelated to the Employer except as Trustee of the Plan. Among the assets of the Plan is the Property, a 160,000 square foot parcel of land improved with a one-story frame and masonry building and adjacent parking lot located at 610 West Adams Street in Black River Falls, Wisconsin and used by the Employer as its principal place of business. As of February 15, 1984 the property had a fair market value of \$610,000, according to Donald F. Johnson (Johnson), an independent professional real estate appraiser whose office is located in La Crosse, Wisconsin. Based upon Johnson's valuation, the Property constitutes 25 percent of the total assets of the Plan as of September 14, 1984. The Property has been leased by the Employer from the Plan continuously since 1970 under a lease (the Original Lease) which was renewed according to its terms on May 31, 1982. The Employer represents that the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act and is therefore exempt until June 30, 1984 from the prohibitions of section 406 and 407 of the Act.<sup>5</sup> An exemption is requested to permit the Employer's continued lease of the Property from the Plan past June 30, 1984 under a modification of the Original Lease (the New Lease), effective July 1, 1984, under the terms and conditions proposed herein.

2. The interests of the Plan for all purposes under the New Lease are and will remain represented by the Trustee. The New Lease is a triple net lease for an initial term of ten years, with provisions for unlimited five-year renewal terms at the Trustee's sole discretion. Under the New Lease the employer assumes responsibility for all taxes, all costs of maintenance and repair, and full fire and extended coverage insurance on the Property. The New Lease requires the Employer to indemnify the Plan and hold the Plan harmless against all claims, demands, and liabilities arising from the Employer's use of the Property. Annual rental under the New Lease, payable monthly, will be the greater of (1) the fair market rental value of the Property

as determined annually by an independent appraiser selected by the Trustee, or (2) ten percent of the fair market value of the Property as determined annually by independent appraiser selected by the Trustee. Rental during any renewal term shall be determined in the same manner. Johnson has determined that the amount of rental being charged under the Original Lease at the time of his appraisal, which was \$60,000, was equal to the Property's fair market rental value. After an investigation by the Trustee of existing market conditions relating to the Property's fair market rental value as of July 1, 1984, in which the Trustee found no significant changes since Johnson's appraisal of February 15, 1984, the annual rental under the New Lease for its first year has been set at \$61,000, representing the higher figure of ten percent of the Property's fair market value. Other than the amount of rental, all terms and conditions of the New Lease during any renewal terms shall remain the same as those of the New Lease during its initial term. Any renewal of the New Lease beyond its initial ten-year term shall be at the sole discretion of the Trustee.

3. The New Lease includes a provision (the Put Option) under which the Trustee may require the Employer to purchase the Property from the Plan for cash upon ninety days' written notice for a purchase price equal to the greater of: (1) The fair market value of the Property as determined by a qualified, independent real estate appraiser chosen by the Trustee, or (2) the original cost of the Property to the Plan. Such a purchase of the Property under the Put Option shall occur without any attendant sales costs to the Plan. The Put Option provides that the Trustee shall predicate any decision to exercise the Put Option on a good-faith evaluation of the following factors: (1) The yield of the Property in relation to alternative investment returns; (2) the Plan's liquidity needs; and (3) the ratio of real estate asset value to total Plan asset values. Further, the Trustee represents that any exercise of the Put Option shall be evaluated under the prudent man rule and diversification requirements of section 404 of the Act. An exemption is requested to permit the potential purchase of the Property by the Employer pursuant to the Trustee's potential exercise of the Put Option.

4. The Trustee will represent the Plan in the enforcement of all terms and conditions of the New Lease and will monitor the Employer's performance thereunder for the duration of the New Lease, including any renewal thereof.

The Plan's continued leasing of the Property to the Employer past June 30, 1984 under the New Lease has been reviewed and evaluated by William P. Grow (Grow), Assistant Vice President of the Trustee. Grow represents that the Plan's continued holding of the Property and its continued lease to the Employer under the New Lease are in the best interests and protective of the participants and beneficiaries of the Plan for the following reasons: (1) Historically, the Property has proven to be a good investment for the Plan, having appreciated substantially since its acquisition and having yielded the Plan a return of 12.8% over the past ten years; (2) the Plan's return on the Property under the New Lease, to be no less than ten percent, will compare quite favorably to returns available from alternative investments, especially marketable bonds; (3) in the event of unforeseen adverse developments with respect to the Property, the Plan's investment in the Property is protected by the Put Option; (4) the Property provides the Plan with non-interest-sensitive performance, lending stability of principal value to this Plan asset in a context of fluctuating financial markets; (5) Plan assets are appropriately diversified by industry, number of issues, and maturity; and (6) the Property represents the Plan's sole investment in real property, and its continued holding by the Plan does not adversely affect the Plan's liquidity needs. The Trustee represents that based upon the current and projected cash flow on Plan assets, the percentage of Plan assets represented by the Property is steadily diminishing.

5. In summary, the applicant represents that the subject transactions satisfy the criteria of section 408(a) of the Act because: (1) The New Lease is a triple net lease under which the Employer pays all expenses related to the Property and will protect the Plan's investment in the Property with full fire and extended coverage insurance; (2) the Plan's interests under the New Lease are represented by the Trustee, an independent fiduciary which is unrelated to the Employer; (3) the New Lease ensures the Plan a return from the Property of no less than the Property's fair market rental value, determined annually; (4) the Put Option protects the Plan from unforeseen adverse developments with respect to the Property by requiring the Employer to purchase the Property from the Plan for its full fair market value, without attendant sales costs to the Plan; and (5) after a review and analysis of the subject transactions, the Trustee has

<sup>5</sup> The Department expresses no opinion as to whether the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act.

determined that the New Lease, including the Put Option, is in the best interests and protective of the Plan's participants and beneficiaries.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

**ESI Profit Sharing Retirement Plan and Trust (the Plan) Located in Portland, Oregon**

[Application No. D-5395]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale, pursuant to the escrow arrangement described below, of certain employer real property (the Property) by the Plan to Electro Scientific Industries, Inc. (the Employer), a party in interest with respect to the Plan, provided the terms of such transaction are at least as favorable to the Plan as those of similar transactions between unrelated parties.

*Summary of Facts and Representations*

1. The Plan covered 609 participants as of December 31, 1982, and, as of May 31, 1983, had assets totalling \$8,404,347. The trustee of the Plan is the United States National Bank of Oregon (the Trustee). The Employer has a variety of commercial accounts with the Trustee, which is one of the two largest banking institutions in the State of Oregon and maintains a large commercial banking practice. It is represented that each individual account of the Employer with the Trustee represents less than 1% of the aggregate of similar accounts currently maintained by the Trustee. Section 10.05-2 of the Plan authorizes the Profit Sharing Committee (the Committee) for the Plan to elect to direct the investment of Plan assets. Each member of the Committee is an employee of the Employer and owns less than 1% of the Employer's stock.

2. To avoid any question arising out of the relationships between the Employer and the Committee members, the Committee has waived its authority under Plan section 10.05-2 as it relates to the Property and has left to the Trustee the exclusive authority and

control over, and responsibility for, the management and investment of the Property.

3. The Property consists of 5.27 acres of land improved by a one-story engineering building of 21,424 square feet. The Property is located at 13900 N.W. Science Park Drive, Beaverton, Oregon, in a highly desirable, campus-like development near Portland, known as Sunset Science Park. The Trustee currently manages the Property. The building contained on the Property is a multi-purpose industrial building currently used by the Employer for research and development, some light manufacture, and general drafting and engineering. The land was acquired by the Plan in 1963 for about \$31,000, and the building was constructed in 1963 by the Plan for about \$340,000 as an income investment.

4. The Property has been leased to the Employer since September 1, 1963, under a lease which, among other provisions, gave the Employer both a purchase option and also a right of first refusal in the event a sale of the Property was considered. Prohibited Transaction Exemption (PTE) 84-55 (49 FR 23955, June 8, 1984) exempts such leasing effective July 1, 1984, but does not exempt either the purchase option or the right of first refusal. The Trustee has been involved with the Property since the Plan acquired it. At the request of the Trustee, the Property is appraised annually by an independent appraiser. The history of the Property since the Plan acquired it is described in detail in the Notice of Proposed Exemption for PTE 84-55, published April 3, 1984 (Application No. D-4401, 49 FR 13214). The Plan has continued to lease the Property to the Employer under the terms described in detail in said Notice.

5. The Plan now proposes to sell the Property to the Employer pursuant to the following terms:

(a) An independent appraiser, chosen by the Trustee and at the Employer's expense, will determine the fair market value of the Property as of a date certain in the near future (the Escrow Date) without regard to any right of first refusal or purchase option of the Employer under the existing lease. Such value shall be the amount of the offer to purchase the Property. The independent appraiser chosen by the Trustee is the firm of Curtis Mackenzie and Slocum, which has not provided any prior services and has no relationship to the Employer, according to the applicant. The individuals who will participate in the new appraisal are Messrs. John E. Slocum, Patrick C. Jordan, and Gerald L. Curtis—all of whom are certified Members of the Appraisal Institute of

the American Institute of Real Estate Appraisers and have extensive real-estate appraisal experience.

(b) On the Escrow Date (see (a), above), a sale agreement between the Plan and the Employer (the Sale Agreement) will be executed by the Trustee, serving as an independent fiduciary to the Plan, only if it has determined that: (i) The sale of the Property is in the best interests of the Plan, its participants and beneficiaries, and (ii) the price of the offer is not less than the fair market value of the Property on the Escrow Date.

(c) The Sale Agreement (see (b), above) will provide that the sale price and any additional payment (see (f), below) will be payable in cash in full to the Escrow Agent (see (e), below) no later than the Delivery Date (defined in (e), below).

(d) The deed shall be in the form of a bargain and sale deed which will convey the interest in the Property, will estop the Plan and its successors from ever asserting that it had less than the full estate in the Property at the date of the deed, and will pass after acquired title. However, the deed will not operate to provide covenants of title in the Employer as grantee or its successors. Therefore, according to the applicant, the Plan is not required to defend the title to the Property against claims that the Plan did not legally possess the Property or did not have authority to transfer the Property or that the Property was encumbered. The applicant explains that under a bargain and sale deed, if the transferor does not have legal title to the property described in the deed on the date of transfer and the transferor later acquires such property, the property passes to the transferee; however, the transferor is not required to obtain such property or to cure any defects in its title to the property. It is represented that deeds in this form are the types normally used by the Trustee when acting in a fiduciary capacity.

(e) On the Escrow Date, the executed Sale Agreement, documents of conveyance of title, and such other documents as are necessary to consummate the transaction, each dated as of the Escrow Date, will be deposited with an independent third party (the Escrow Agent). An escrow agreement (the Escrow Agreement) between the Trustee, the Employer, and the Escrow Agent will be entered into which will provide that the documents conveying title, the sale price, and the additional payment described in (f), below, will not be delivered until and unless the proposed exemption is granted and the

terms and conditions of the Escrow Agreement are satisfied. In such event:

(i) Said date (the Delivery Date) shall occur no later than 15 days following the date the proposed exemption is granted; and (ii) on the Delivery Date, the documents conveying title will be delivered to the Employer, and the sale price and the additional payment described in (f), below, will be delivered to the Trustee for the Plan. The Escrow Agent is the real estate department of the Trustee. The Escrow Agreement does not affect the obligation of the Employer to make payments to the Plan when due under the lease on the Property during the period beginning on the Escrow Date and ending on the Delivery Date (the Escrow Period).

(f) If the exemption is granted, the parties desire to preserve the benefit of their respective bargains during the Escrow Period. Therefore, the Escrow Agreement is designed to place the Plan and the Employer in the same economic position which they would have been in had the sale closed on the Escrow Date, subject to satisfaction of the terms of the Escrow Agreement. Pursuant to the Escrow Agreement, if the proposed exemption is granted, the Plan will be entitled to an additional payment (the Additional Payment) on the Delivery Date equal to the excess, if any, of (A) over (B), below. For this purpose:

(A) Equals the sum of—

(i) The product obtained by multiplying the sale price of the Property by a rate for the entire Escrow Period equal to the interest rate on the Escrow Date borne by a security (the Alternative Security) selected by the Trustee, in which the Plan would have invested had it had the purchase price available for investment, plus

(ii) Interest on the product obtained under A(i), above, computed from the date interest on the Alternative Security would have been received if the Plan had actually invested in the Alternative Security on the Escrow Date, and computed until the Delivery Date at a daily rate equal to that earned by QualiVest Fund, the money market fund of the Trustee; and

(B) Equals the sum of—

(i) Any net payments under the lease of the Property during the Escrow Period, plus

(ii) Interest on the amount under B(i), above, computed from the date such amounts are received by the Plan to the Delivery Date at the daily rate described in A(ii), above.

(g) If the proposed exemption is not granted, the escrow documents shall be returned to the appropriate parties, and the sale shall not be consummated. In such event, except as specified in (h),

below, neither the Trustee nor the Employer shall have any further obligations with respect to the sale.

(h) Whether or not the transaction is finally consummated, all expenses of the sale, including escrow expenses and attorneys' fees, will be paid by the Employer.

(i) If the Department's notice granting or denying the proposed exemption is not received by April 1, 1985, the sale shall not be consummated, and the escrow documents shall be returned to the appropriate parties.

6. The applicant explains that the purpose of the Escrow Agreement (see 5, above) is to fix the Employer's obligation to purchase the Property for its fair market value on the Escrow Date, thereby protecting the Plan from any decrease in the Property's fair market value during the period required for the Department to take final action on the proposed exemption (see 7(c), below), while providing interest income to the Plan on the sale price during such period to the extent of the Additional Payment (described in 5(f), above).

7. The Trustee represents that the proposed sale of the Property would be in the best interest of the Plan and its participants for the following reasons:

(a) The sale of the Property to the Employer would reduce costs to the Plan, including bank fees, appraisal fees, and maintenance fees.

(b) The Trustee feels that the sale of the Property and subsequent investment of the proceeds in various areas of the market will provide more diversification and flexibility to the Plan. Some investments under consideration include guaranteed insurance contracts, collective stock and bond funds, and a dedicated bond portfolio, depending upon the timing of the availability of the sale proceeds and the market climate at that time.

(c) While the value of the Property has increased over 300% compared to the Plan's investment therein, the real estate market projections for this area indicate a "soft" market and as potential decline in property values.

(d) The Trustee feels that the escrow arrangement described in 5, above, is the most prudent means of handling the proposed transaction because the escrow arrangement will not only fix the sale price but will protect the value of the sale price in the interim.

8. The Trustee also represents that the proposed transaction (including the escrow arrangement) will be subject to the following conditions:

(a) The sale price of the Property, as determined by an independent appraisal, must be equal to the fair

market value of the Property on the date the sale document is executed and placed into escrow without regard to any right of first refusal or purchase option of the Employer.

(b) The sale price of the Property will be payable in cash in a lump sum at closing, which shall occur after (and if) the proposed exemption is granted.

(c) All costs incurred as a result of the proposed sale will be borne by the Employer.

9. The Trustee explains that it is not aware of a third party who might be interested in purchasing the Property and would not expect a third party purchaser either to agree to a lump-sum cash transaction or to pay all of the sales related expenses. Given the Employer's willingness to meet the conditions set forth above, the Trustee believes the Employer is the most appropriate purchaser.

10. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the entire sale price and any Additional Payment will be paid in cash to the Plan on the Delivery Date, which will occur no later than 15 days following the date the proposed exemption is granted; (b) the proposed sale price will equal the fair market value of the Property as of the Escrow Date determined without regard to the Employer's right of first refusal and purchase option under the lease on the Property; (c) the Escrow Agreement is designed to place the Plan and the Employer in the same economic position which they would have been in had the sale closed on the Escrow Date, subject to satisfaction of the terms of the Escrow Agreement; (d) whether or not the transaction is finally consummated, all expenses of the sale, including escrow expenses and attorneys' fees, will be paid by the Employer; (e) the sale will result in greater flexibility and greater potential diversification for the Plan; (f) the Trustee, an independent fiduciary to the Plan, represents that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries; (g) the Trustee will agree to the proposed transaction only if the conditions described in 8, above, are met; and (h) if the proposed exemption is not granted by April 1, 1985, the sale will not be consummated.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

**Star-Mark, Inc., Profit Sharing Plan and Trust (the Profit Sharing Plan); and Star-Mark, Inc., Defined Benefit Plan and Trust (the Defined Benefit Plan; Collectively, the Plans) Located in Sioux Falls, South Dakota**

[Application Nos. D-5398 and D-5399]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The purchase of certain leases of equipment (the Leases) by the Plans from Star-Mark, Inc. (the Employer), the sponsor of the Plans; (2) the repurchase by the Employer or its shareholders (the Shareholders) of any Leases in default; (3) the indemnification of the Plans by the Employer and its Shareholders against any loss relating to the Leases; and (4) the possible repurchase by the Employer of its Shareholders of the leased equipment at the end of the term of a Lease, provided that the following conditions are met:

A. Any sale of Leases to the Plans will be on terms at least as favorable to the Plans as an arm's length transaction with an unrelated third party.

B. The acquisition of a Lease from the Employer shall not cause either Plan to hold: (1) More than 25% of that Plan's assets in the Leases' (2) more than 3% of that Plan's assets in a single Lease; and (3) more than 10% of that Plan's assets in Leases of any one lessee.

C. Upon default by a lessee on any payment due under a Lease, the Employer and its Shareholders agree to indemnify the Plan holding that Lease against any loss resulting from such default and also agree to repurchase such Lease at full face value, without discount, and to repurchase the equipment underlying the Lease at the present value of that equipment based on its value at the end of the Lease. A Lease shall be deemed to be in default for purposes of this section if: (1) A payment due under the terms and conditions of the Lease is past due for a period of 45 days; (2) a lessee defaults in the performance of any other term of condition of the Lease for a period of 45 days; or (3) a lessee Leases doing business or becomes insolvent.

D. The Plans receive adequate security for the equipment underlying the Lease. For purposes of this exemption, the term adequate security means that the equipment is secured by a perfected security interest in the leased equipment, so that if there is a default on a Lease and the security is foreclosed upon or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan holding the Lease will experience no loss.

E. Insurance against loss or damage to the leased equipment from fire or other hazards will be procured and maintained by the lessee, and that the proceeds from such insurance will be assigned to the Plans.

**Temporary Nature of Exemption:** This exemption is temporary in nature and will expire five years after the date of grant with respect to the purchase by the Plans of Leases.

*Summary of Facts and Representations*

1. The Profit Sharing Plan has approximately 58 participants and assets of \$104,541.87 as of March 31, 1984. The Defined Benefit Plan has four participants and assets of \$97,926.57 as of June 30, 1983. The trustees of the Profit Sharing Plan are Paul W. Lawrence, Robert J. Swanson and Samuel Hertogs, officers and shareholders of the Employer. The trustees of the Defined Benefit Plan are Paul W. Lawrence, Robert J. Swanson, Samuel Hertogs, Donald W. Gustafson and David A. Lawrence, officers and shareholders of the Employer.

2. The Employer is in the business of manufacturing and distributing all types of cabinetry. Cabinets are distributed through third party dealers who display them on their premises. As an incentive to dealers to take on the Employer's lines, the Employer leases cabinet displays to the dealers. The Leases that the Plans propose to purchase from the Employer will involve Employer cabinets which are leased to these third party dealers. The Leases vary in length from 12 to 36 months, with the lessee determining the length of an individual Lease. The Leases will be sold to the Plans for cash. The Plans propose to invest, for a five year period, up to 25% of each Plan's assets in such Leases, with the conditions that no more than 10% of a Plan's assets be invested in the Leases of any one customer and no more than 3% of a Plan's assets be invested in a single Lease. The Leases are completely net to the Plan and similar Employer leases have been yielding a return of 15½% per annum.

3. The purchase price of a Lease will be based on the invoiced price of the

cabinets being leased less an appropriate discount as determined by the independent fiduciary of the Plans (see below). No commissions will be paid to the Employer as a result of sales of Leases to the Plans. The rental for the Leases purchased by the Plans will be calculated by the same method used to calculate the rental for the leases which are held by the Employer for its own account. Rentals will be comparable to what the Plans could obtain in a direct transaction with an unrelated third party.

4. Notwithstanding the fact that upon purchase of a Lease the Plans also acquire and hold title to the equipment underlying the Lease, as a further protection to the Plans such equipment will be secured by a perfected security interest which will name the purchasing Plan as the secured party. If the security would be foreclosed upon in the event of default, the value and the liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result. In addition, the lessee is required to maintain insurance on the cabinets against fire and other hazards, the proceeds of which shall be assigned to that Plan.

5. The Plans will assumed the position of the lessor under the terms of the Leases. However, if a default occurs, the Plans will have full recourse against the Employer and the shareholders of the Employer (the Shareholders). In addition, the Employer and the Shareholders have agreed to repurchase any Lease in default at its full face value, without any discount and to repurchase the cabinets underlying the Lease for the present value of the cabinet's residual value at the expiration of the Lease as determined by the independent fiduciary of the Plans (see below). The Employer and the Shareholders have also agreed to indemnify the Plans for any losses suffered as a result of a default. Leases shall be deemed to be in default if the lessee fails to make a rental payment within 45 days after it is due or if a lessee defaults in the performance of any other term or condition of the Lease for a period of 45 days or if a lessee ceases doing business or becomes insolvent. The Employer's net worth as of April 28, 1984 was \$443,692. The Shareholders represent that their net worth is in excess of \$16,000,000.

6. First Bank of South Dakota (the Bank) has agreed to act as an independent fiduciary for the Plans with respect to the proposed purchases of the Leases. The Bank represents that as of June 30, 1984, its sole relationship with

the Employer and its officers, directors and Shareholders is that the Employer and one Shareholder have deposits of \$105,000 in the aggregate, representing less than 1% of the Bank's total deposits and that the Employer and a partnership controlled by the directors of the Employer have, in the aggregate, \$875,000 in loans from the Bank, representing less than 1% of the Bank's total loans.

7. The Bank represents that the Bank alone will determine whether it will purchase any Leases in general and any individual Lease in particular. The Bank further represents that it will evaluate Leases it is considering, taking into consideration: (a) An appropriate rate of return to the Plans based on other comparable investments available to the Plans, considerations include safety of the investment, period required to amortize the investment and the returns being realized by the Bank on commercial installment loans; and (b) the rate of return that the Bank intends to realize will determine the amount of discount the Bank requires from the invoiced amount. The Bank represents that its decision making process will be ongoing in order that the Plans maintain actuarially sound liquidity and that there be diversification of non-cash investments. In the event the Bank acquires any Leases, the Bank represents that it will alternate the purchase of Leases between the Plans and that no more than 25% of either Plans' assets will ever be invested in Leases at any given time. The Bank represents that the Leases purchased will be of equal quality. In addition, the Bank represents that the purchase of Leases will be beneficial to the Plans for the following reasons: (a) The Leases are secured and guaranteed by the property, the lessee, the Employer and the Shareholders; (b) the Leases are of short duration—1, 2 or 3 years; (c) the Leases are amortized (except for minimal buyout) fully, there is no substantial balloon payment; (d) the Bank can determine any appropriate discount from the invoice to generate a substantial return to the Plans; and (e) the Lease amounts are relatively small—usually not over several thousand dollars each, and the lessees are located over a wide geographic area, adding to diversification. The Bank represents that it will monitor and enforce the Leases including all agreements of the Employer and the Shareholders.

8. At the end of the term of the Lease, the lessee has the option of purchasing the cabinets under a purchase option or returning them to the leasing Plan. If the lessee does not purchase the cabinets,

the Employer covenants that it will repurchase the cabinets at the higher of the buyout price set in the Lease or the fair market value of the cabinets at the date of the expiration of the Lease, as determined by the Bank.

9. In summary, the applicant represents that the proposed transactions meet the statutory requirements of section 408(a) of the Act because: (a) The Bank, acting as independent fiduciary on behalf of the Plans will have the sole authority to select, purchase and monitor the Leases and also to monitor the Employer's and Shareholders indemnification and repurchase agreement; (b) the sales of the Leases will be limited to a five year period and no more than 25% of the assets of either Plan will be invested in the Leases; (c) the Plans will have perfected security interests in each cabinet subject to a Lease; and (d) the Employer will indemnify the Plans for any loss suffered by the Plans as a result of a Lease default and repurchase both the Lease and the cabinets underlying the Lease.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

#### **Newspaper Agency Corporation Pension Trust (the Plan) Located in Salt Lake City, Utah**

[Application No. D-5540]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The continued leasing of certain improved real property (the Property) from the Plan to Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, (2) the guarantee by Kearns-Tribune Corporation and Deseret News Publishing Corporation (collectively, the Employer's Owners) of the Employer's obligations under such lease, and (3) the possible future sale of the Property by the Plan to the Employer pursuant to Articles 19 or 20 of such lease; provided the terms of each of these transactions are at least as favorable to the Plan as those the plan could obtain in similar transactions with unrelated parties, and

provided further that in the event of any such sale the sales price is not less than the fair market value of the Property on the date of the sale, disregarding any reduction in value attributable to the Employer's rights under Article 19 and 20 of such lease.

Effective Date: If the proposed exemption is granted, the exemption will be effective July 1, 1984.

#### *Summary of Facts and Representations*

1. The Plan is a defined benefit pension plan covering 765 participants as of June 15, 1984. The total fair market value of the Plan's assets as of August 16, 1984 was \$11,935,913.73. The Plan trustee is First Interstate Bank of Utah, N.A. (the Trustee), which is solely responsible for the investment of Plan assets. The Trustee has no common officers or directors with the Employer or the Employer's Owners. Although the Employer and one of the Employer's Owners are clients of the Trustee, their deposits represent only .00046% and .00057%, respectively, of the Trustee's total deposits as of August 3, 1984. On this same date, the Employer had no loans with the Trustee, and loans to one of the Employer's Owners represented .00515% of the Trustee's total outstanding loans. Various officers and directors of the Employer and one of the Employer's Owners have had deposit and loan relationships with the Trustee, neither of which exceeded 1/10 of 1% of the Trustee's total deposits and loans. The Trustee's Trust Department has many years experience managing assets and is currently responsible for managing assets of approximately \$450,000,000. The Trustee's employee benefit staff has had various experience regarding the Act. Mr. Anthony Vazulik, who oversees the administration of the Plan, has 23 years experience in managing various employee benefit programs and is very familiar with the Act, according to the Trustee, whose law firm (Jones, Waldo, Holbrook & McDonough) counsels the Trustee on its responsibilities under the Act.

2. The Property consists of land improved by a one-story commercial warehouse comprising approximately 52,500 square feet located at 656 South 300 West and 326 West 700 South in Salt Lake City Utah. The Property is not subject to an outstanding mortgage or any other indebtedness and constituted 11.39% of the Plan's total assets as of August 16, 1984. The Property constitutes an integral part of the Employer's business of producing two daily newspapers seven days a week. The Employer uses the Property to receive, by railroad and by truck,

newsprint and other supply items for printing newspapers and related functions; to store such supplies; and to house a five-unit Goss Urbanite offset press used to print various sections of the newspapers.

3. The Plan purchased the Property in 1971 and has leased the Property continuously to the Employer pursuant to a lease entered into on July 21, 1971 (the Original Lease). It is represented that the Employer has consistently complied with the terms of both the Original Lease and the existing lease (described in 5, below) in a timely manner. The applicant represents that the leasing of the Property has satisfied the conditions provided by section 414(c)(2) of the Act because the Original Lease was entered into before July 1, 1974 and was not a prohibited transaction within the meaning of section 503(b) of the Code and the terms under which the leasing has occurred have been as favorable to the Plan as those of an arm's-length transaction with an unrelated party.<sup>6</sup>

4. Mr. Ralph B. Wright, Member of the American Institute of Real Estate Appraisers, has estimated the Property's fair market value as of June 30, 1983, at \$1,252,500, and is fair market rental value as of July 1, 1984 at \$100,000 to \$110,000 per year under a triple net lease. Mr. Wright states that he is not related to the Employer, the Employer's Owners, or their principals and that after personally inspecting the Property, he finds it well maintained and in first class condition throughout. He explains that although the Property lacks finished office space and off-street parking, it is conveniently located, has rail service, is near the freeway, is dock-high, and has good overhead clearance, inside truck docks, overhead storage mezzanine, sprinkling and heating systems.

5. The Plan and the Employer have entered into an agreement dated August 1, 1983 (the Current Lease), which supersedes the Original Lease on condition that the proposed exemption is granted. The Current Lease is a triple-net lease for a term of 10 years. The Employer is obligated to pay all taxes levied against the Property, all utility charges, the cost of installing any fixtures and equipment, all maintenance and repair costs, and premiums for both liability and casualty insurance for the benefit of the Plan as an additional named insured. All trade fixtures and

equipment installed by the Employer remain the Employer's property and may be removed by the Employer, who must repair any damage caused by such removal. The Employer has agreed to indemnify the Plan from all liabilities for personal injury or property damage occurring on the property and not caused by the Plan's negligence.

6. The Current Lease gives the Employer the option to extend the Current Lease for two additional terms of 10 years each. It requires a rental payment of \$8,900 per month (\$106,800 per year) for the first 3 years of the Current Lease. For every subsequent 3-year period, rental payments will be adjusted to reflect the fair rental value of the Property at the beginning of each such period as determined by a qualified (i.e., M.A.I.) appraiser who is not related, directly or indirectly, to the parties to the Current Lease. In no event, however, will the monthly rental payment be reduced below \$8,900 per month. The Employer's Owners, each of whom owns half of the Employer, have guaranteed performance of all conditions of the Current Lease, including the payment of rent, by the Employer and have agreed to perform such conditions themselves if the Employer is unable to do so.

7. Article 19 of the Current Lease permits the Employer, under certain circumstances, to purchase the Property from the Plan for cash during the term of the Current Lease or any extension thereof, at a price offered to and accepted by the Plan under a bona fide offer (the Right of First Refusal). If such offer is not in the form of cash but in the form of any other valuable consideration, the Employer may exercise the Right of First Refusal by tendering the reasonable cash value of the other valuable consideration offered by the third party offer. The Employer may not exercise the Right of First Refusal unless the trustee or other independent fiduciary, having determined that the sale to the Employer is in the best interests of the Plan, approves of the sale.

8. Article 20 of the Current Lease gives the Employer an option to purchase the Property for cash (the Purchase Option) at any time during the term of the Current Lease and extensions thereof at a price equal to the Property's fair market value. The Purchase Option shall not be exercised unless the trustee or other independent fiduciary to the Plan, having determined that the sale to the Tenant is in the best interests of the Plan, approves the sale. To determine the fair market value of the Property, the Employer and the Plan shall each

appoint an MAI appraiser (each at their own expense) who shall appoint a third MAI appraiser; all 3 MAI appraisers, working together, shall then determine the Property's fair market value.

9. The Trustee states that in many respect the Current Lease is more favorable to the Plan and its participants and beneficiaries than other leases negotiated by the Trustee. For example, the Property is located in an area of Salt Lake City which has an excellent opportunity to appreciate because of inflation and demand for warehouse space. Additionally, rents are adjusted throughout the term of the Current Lease to generate a good return, according to the Trustee, on the Property's fair market value. Also, the Current Lease insures that any sale of the Property will be completed at its fair market value. By diversifying approximately 11% of the total Plan assets into real estate, the Trustee asserts that it is taking steps to protect the Plan participants and beneficiaries from stock and bond market fluctuations. For these reasons, the Trustee believes the Current Lease to be in the best interests of the Plan and its participants and beneficiaries.

10. The Trustee's investment personnel review the Plan's assets at least monthly. In addition, the real estate section of the Trustee's Trust Department take an active role in analyzing the Property as part of the Plan's entire portfolio. The Trustee's Investment Committee after reviewing the real estate section's suggestions, makes the final decision to hold or to sell any Plan asset (including the Property). The Trustee represents that diversification, investment return, safety and market conditions are some of the considerations which are reviewed before the final investment decision is made. The Trustee will monitor the Current Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan.

11. The Trustee explains that it has agreed to give the Employer the Right of First Refusal under Article 19 of the Current Lease as a necessary condition to attract good quality tenants and that such provision is appropriate and commercially acceptable in Salt Lake City. The Trustee represents further that the Property will not be offered for sale and the Employer would not be allowed to exercise the Right of First Refusal unless it is in the best interest of the Plan. Pursuant to the Trustee's standard policy, the Property would be appraised to determine its fair market value before it is offered for sale. In determining such

<sup>6</sup>Section 414(c)(2) of the Act provided a transitional exemption ending June 30, 1984 for certain leases meeting specified conditions. The Department expresses no opinion herein as to the applicability of section 414(c)(2) to the past leasing of the Property.

fair market value, any reduction in value attributable to the Right of First Refusal and the Purchase Option will be disregarded. The Trustee states that the Employer would pay cash in the full amount of the sales price on the date of the sale. The Trustee also represents that all of the statements in this paragraph apply to the Purchase Option, as well as to the Right of First Refusal.

12. In summary, the applicant represents that the subject transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the current rental rate is within the range of fair market rental value of the Property as determined by a qualified appraiser unrelated to the Employer, the Employer's Owners, or their principals; (b) the rental rate will be adjusted every 3 years to reflect the fair rental value of the Property at the beginning of each such period as determined by an M.A.I. appraiser who is not related, directly or indirectly, to the parties to the Current Lease, but will never be less than the current rental rate; (c) the Current Lease does not require the Plan to pay any costs relating to the Property and requires the Employer to indemnify the Plan for certain liabilities relating to the Property; (d) the Employer will maintain both liability and casualty insurance, naming the Plan as an additional insured, with respect to the Property; (e) the Trustee, an independent fiduciary with respect to the Plan, represents that the Current Lease is in the best interests of the Plan and its participants and beneficiaries; (f) the Trustee will monitor the Current Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan; (g) neither the Right of First Refusal nor the Purchase Option may be exercised unless the Trustee determines that such exercise would be in the best interest of the Plan; (h) the Trustee represents that the Right of First Refusal and the Purchase Option are appropriate and commercially acceptable in Salt Lake City; and (i) if either the Right of First Refusal or the Purchase Option is exercised, the sales price (I) will not be less than the fair market value of the Property on the date of the sale—disregarding, in determining such fair market value, any reduction in value attributable to the Right of First Refusal or the Purchase Option, and (II) will be paid in cash in full on the date of the sale.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

### Armstrong Rubber Company Pension Plan (the Plan) Located in New Haven, Connecticut

[Application No. D-5588]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c) (2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a) and 406 (b) (1) and (b) (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code shall not apply to the cash sale by the Plan of a \$1,000,000 Series B note (the B Note) to Armstrong Rubber Company (the Employer), the sponsor of the Plan, provided that the sales price is not less than the fair market value of the B Note at the time the sale is consummated.

#### Summary of Facts and Representations

1. The Plan is a defined benefit pension plan. As of September 30, 1983, the Plan had 2,150 participants and net assets of \$55,717,087. Chemical Bank (Chemical) was the trustee of the Plan from January 2, 1964 through September 30, 1982. Effective October 1, 1982, Manufacturers Hanover Trust Company became trustee of the Plan. However, Chemical retained investment management over the B Note. On October 1, 1983, Favia Hill and Associates, Inc. (Favia Hill), a wholly owned subsidiary of Chemical New York Corporation, a bank holding company and an affiliate of Chemical became the investment manager for the B Note and has sole discretion with respect to any disposition of the B Note.

2. In 1970, the Employer constructed its corporate headquarters (the Building) on a parcel of land (the Land) it owned in New Haven, Connecticut. On February 28, 1973, Chemical Bank, the then trustee of the Plan, acting through Second New Haven Bank as its subtrustee (the Subtrustee), purchased the Land from the Employer for \$1,000,000 in cash. Immediately following this purchase, the Subtrustee conveyed the Land to Long Wharf, Inc. (Long Wharf) in consideration for the B Note. Also on February 28, 1973, the Employer conveyed the Building to Long Wharf for \$6,000,000 in cash. Long Wharf is a corporation all of whose shareholders are employees or partners of Goldman, Sachs and Company, investment bankers. Long Wharf's sole

purpose is to act as an intermediary in the transaction.

3. Long Wharf raised the \$6,000,000 it paid the Employer through the sale of notes (the Series A Notes). The Series A Notes mature on March 1, 2003 and yield 8½% interest with full amortization of principal over the 30 year period. The Series A Notes were sold to third party institutional investors for \$6,000,000. The B Note matures on March 1, 2083 and yields 8½% interest plus partial amortization of principal over the 30 year period. The total quarterly payment is \$20,687.07. The principal is amortized at the rate of ⅓ of 1% per year. At maturity, the scheduled unpaid principal balance of the B Note will be \$812,493.82. At that time the Land will be deeded to the Plan in lieu of repayment of the remaining principal. Should the appraised value of the Land be less than \$812,493.82, the difference will be paid to the Plan by the Employer pursuant to a collateral agreement (the Agreement) between the Subtrustee and the Employer.

4. Payment of principal and interest on the A Notes and the B Note (collectively, the Notes) is funded by a 43 year lease (the Lease) of the Land and the Building (collectively, the Property) dated February 28, 1973, between the Employer and Long Wharf. The rent during the initial 30 year term of the Lease is set so as to equal the amount required by Long Wharf to make its principal and interest payments. Upon maturity of the B Note, the Land reverts to the Plan and the Lease provides a formula for determining the rental payments for the remaining thirteen year term of the Lease. Upon the expiration of the Lease, the Building will revert to the Plan.

5. The Notes are secured by a Deed of Trust and Indenture of Mortgage (the Mortgage) from Long Wharf to First New Haven Bank (First New Haven, now known as Connecticut National Bank). At the closing, February 28, 1973, the Lease was assigned by Long Wharf to First New Haven as collateral security for the Mortgage and rental payments have been made directly to First New Haven which has then made all debt service payments. The applicant represents that on February 28, 1973, in order to be insulated against Connecticut taxes, Long Wharf conveyed the Property by quitclaim deed containing a non-merger provision to the Employer. The Employer expressly assumed and agreed to be bound by the Lease, the assignment of the Lease to First New Haven and the Mortgage (with the exception of the obligation to pay the principal and

interest due or to become due on the Notes). In addition, the Employer and the Trustee executed the Agreement and had it recorded. In the Agreement, the Employer again assumed and agreed to be bound by the Lease, the assignment of the Lease to First New Haven, the Mortgage (with the exception mentioned above), and also agreed that upon expiration or sooner termination of the Lease, it will convey the Building and any other improvements on the Land to the Plan.

6. The Employer now seeks to purchase the B Note from the Plan for its appraised value. The applicant submitted two appraisals, both of which establish the fair market value of the B Note by combining the present value of the income stream to be generated by the B Note and the present value of the Plan's reversionary interest in the Property, as of March 1, 2003. The applicant represents that the appraisers did not reduce their appraisals of the B Note as a result of the terms of the Lease between the years 2003 and 2016.

7. On June 30, 1984, Arthur B. Estrada, MAI determined that the present value of the income stream to be generated by the B Note was \$614,444 and the present value of the Plan's reversionary interest in the Property was \$2,346,719. Mr. Estrada concluded that the fair market value of the B Note as of June 30, 1984 was \$2,960,000. Also on June 30, 1984, Norman R. Benedict, MAI determined that the present value of the income stream to be generated by the B Note was \$578,708 and the present value of the Plan's reversionary interest in the Property was \$1,521,364. Mr. Benedict concluded that the fair market value of the B Note as of June 30, 1984, was \$2,100,000. Favia Hill, acting as independent fiduciary on behalf of the Plan, represents that the two appraisals will be updated as of the date of closing and that it will use the higher of the two appraisals to establish the value of the B Note. The updated appraisals will not be reduced as a result of the terms of the Lease between the years 2003 and 2016.

8. As mentioned in representation 1 above, Favia Hill, the Plan's investment manager with respect to the B Note, is a wholly owned subsidiary of Chemical New York Corporation which is an affiliate of Chemical. The applicant represents the following with respect to business relationships between the Employer and Chemical: (a) the average checking account balances for the period June 1, 1983 through May 31, 1984, that the Employer had with Chemical totaled \$993,000 which was less than 1% of the checking account balances held by Chemical; (b) the average loan

balances for the period June 1, 1983 through May 31, 1984, totaled \$7,300,000 which was less than 1% of the average loan balances for all Chemical loans; (c) Chemical is the registrar and transfer agent for the Employer's stock; (d) Chemical is the trustee of the Employer's Sinking Fund Debentures due April 15, 1996 (as of July 1, 1984, the sinking fund balance was \$14,999,000 and \$1,350,000 is being paid into the sinking fund annually); (e) neither Chemical New York Corporation nor any of its affiliates owns any stock of the Employer for its own portfolio, and although Chemical is custodian for 65,202 shares of stock of the Employer, it does not have voting or investment authority over those shares; (f) the Employer does not own any shares of Chemical New York Corporation; and (g) no members of the boards of directors of Chemical New York Corporation and the Employer sit on both boards.

Finally, Chemical is the agent and major participant for a revolving credit and term loan agreement into which the Employer entered on June 15, 1984. The revolving credit period will end on approximately June 14, 1988 and the payback period is for an additional four year period beginning approximately June 15, 1988. Chemical will provide 46.67% of the credit under this agreement, and if the Employer utilizes all of the available credit, the credit extended by Chemical will be approximately 1% of its outstanding credit.

9. Favia Hill, acting as independent fiduciary on behalf of the Plan, represents that the proposed sale is prudent and in the best interest of the participants and beneficiaries of the Plan. Favia Hill further represents that it concluded that the proposed sale is as favorable to the Plan as could be obtained in arm's-length negotiations between totally unrelated parties and that the sale should occur as soon as practicable after taking into account several factors, including the following: (a) the MAI appraisals submitted to the Department; (b) concern about holding an investment which yields 8½% which is less than current market rates and does not provide liquidity and cash flow returns when compared to other real estate investments; (c) concern about being locked into an investment until the year 2003, where the investment is backed by real estate located in New Haven, Connecticut, without regard to changes in commercial real estate values in New Haven; and (d) the appraised value of the B Note is higher than the value of the B Note to a third

party because it represents the fair market value of the Property without taking into account any diminution in value based upon the favorable lease terms between the years 2003 and 2016 which would result in a third party paying a lower value for the B Note. In addition, Favia Hill represents that it will review the value of the Property and the updated appraisals as of the date of the sale and it will complete the sale only if the sale is in the best interests of the Plan, its participants and beneficiaries as of that date.

10. In summary, the applicant represents that the proposed sale meets the statutory criteria of section 408(a) of the Act because (a) this is a one time transaction for cash; (b) the sales price will be determined by qualified, independent appraisers; and (c) Favia Hill, acting as independent fiduciary on behalf of the Plan has determined and will determine at the time of the sale, that the proposed transaction is in the best interests and protective of the Plan, its participants and beneficiaries.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**Stamford Computer Group, Inc. Defined Benefit Pension Trust (the Plan) Located in Stamford Connecticut**

[Application No. D-5599]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply for a period of five years from the date of an exemption grant to: (1) the purchase by the Plan of certain leases of computer equipment (the Leases) from Stamford Computer Group, Inc. (the Employer); and (2) the agreement by the Employer to indemnify the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (C) below, provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. The acquisition of a Lease from the Employer shall not, immediately following the acquisition, cause the Plan to hold more than 25 percent of the

current value (as that term is defined in section 3(26) of the Act) of Plan assets in Leases sold by the Employer.

C. Upon default by the lessee on any payment due under a Lease, the Employer guarantees in writing the immediate payment of all remaining rental payments and all other amounts due and owing under the Lease. A Lease shall be deemed to be in default for purposes of this section, if a payment due under the terms and conditions of the Lease is past due for 10 days; or in the event the lessee shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the lessee; or in the event of appointment under any jurisdiction at law or in equity of any receiver of any property of the lessee; or in the event the condition of affairs of the lessee shall so change as to, in the opinion of the independent fiduciary (discussed below), impair its security or increase its credit risk.

D. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property is secured by a perfected security interest in the property leased, so that, if there is a default on the Lease, and the security is foreclosed upon, or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan will experience no loss.

E. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee, and the proceeds from such insurance will be assigned to the Plan.

Temporary Nature of the Exemption: This exemption, if granted, will be temporary in nature and will expire 5 years after the date of grant with respect to the acquisition of Leases from the Employer.

#### Summary of Facts and Representations

1. The Plan is a defined benefit plan with 2 participants, Lawrence Goichman and his wife, Jennifer Goichman. Mr. Goichman is the sole shareholder of the Employer and is co-trustee of the Plan with Mrs. Goichman.<sup>7</sup> As of August 31,

1983, the Plan had net assets of \$237,033.61.

2. The Employer is engaged in the business of purchasing and leasing IBM computer equipment. The Leases that the Plan proposes to purchase from the Employer will involve equipment which is leased to third parties. These Leases vary in length from 24 months to a maximum of 72 months, with an average length of 36 months, depending on the useful life of the equipment. The Leases will be sold to the Plan for cash. The Plan proposes to invest up to 25% of its assets in such Leases. The Leases are completely net to the Plan and similar Employer leases have been yielding a net return of approximately 13% per annum.

3. When the Employer leases a specific computer to a lessee, that lease is generally evidenced by four documents. The Lease Agreement (the Agreement) describes the type of equipment leased and the terms of the lease, including the monthly rental payments. The lessee's obligation to make rental payments is absolute and unconditional. The lessee is responsible for maintaining the equipment through a maintenance contract with the manufacturer of the equipment. The lessee can not assign, sublease or encumber the equipment. The lessee bears the risk of physical damage to or loss on destruction of the equipment, however caused. During the term of the lease, the lessee must keep in effect risk insurance on the equipment.

4. In addition to the Agreement, an Employer lease is also evidenced by a Delivery and Acceptance Certificate wherein the lessee certifies that the equipment described in the Agreement was satisfactorily installed and accepted as satisfactory in all respects. The Secretary's Certificate of Incumbency acknowledges the lessee's obligation under the Agreement and the ability of the signer to so bind the lessee. The Lessee's Acknowledgement acknowledges the Employer's right to assign the Agreement to a financing entity and consents to make the rental payments to the assignee absolutely and unconditionally, regardless of any termination of the lease and regardless of any defenses the lessee may have against the Employer. Any Lease which the Plan purchases shall be evidenced by the four above mentioned documents. In addition, the Employer will forward a Notice of Assignment of the Lease

notifying the lessee that all payments under the Agreement are to be made to the Plan. The lessee shall acknowledge and return the Notice of Assignment of Lease.

5. The purchase price of a Lease will be based upon the retail price of the equipment being leased. In addition, no commissions will be paid to anyone as a result of the sale of Leases to the Plan. The rental for the Leases purchased by the Plan will be calculated by the same method used to calculate the rental for the Employer's leases. Rentals will be comparable to what the Plan could obtain in a direct transaction with an unrelated third party. Title to the equipment does not pass to the Plan upon the purchase of a Lease. However, a UCC-1 Financing Statement will be filed naming the lessee as the debtor, the Employer as the secured party and the Plan as the assignee of the secured party. This perfects the Plan's security interest in the leased equipment. In the event of default, if the security would be foreclosed upon, the applicant represents that the value and liquidity of the security will be such that it may reasonably be anticipated that loss of principal or interest will not result.

6. An indemnification agreement will be entered into between the Employer and the Plan under which, upon default by the lessee on any payment due under a Lease, the Employer agrees to indemnify the Plan against any loss resulting from such default (including repurchasing such Lease at a price equal to the remaining unpaid rental for the term of the Lease that would otherwise have been paid by the defaulting lessee). The agreement will provide that a Lease shall be deemed in default under the terms of the lease if: (1) Lessee fails to pay any installment payment due under the Lease within 10 days after the date such payment becomes due and payable; (2) a lessee defaults in the performance of any other term or condition of the Lease for a period of 10 days after written notice and demand to correct same; or (3) the lessee ceases doing business or becomes insolvent or bankrupt.

7. Edmund Pilla, CPA has agreed to serve as independent fiduciary on behalf of the Plan with respect to the proposed transactions. Mr. Pilla represents that he is a principal in the firm of Tackman, Pilla, Arnone & Company, P.C. and that his firm provides accounting services for the Employer, the Plan and Mr. Goichman individually. Mr. Pilla further represents that the income derived by his firm from the Employer, the Plan and Mr. Goichman is not in excess of 1% of the total income derived from all of the

Mrs. Goichman, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

<sup>7</sup> Since Mr. Goichman is the sole shareholder of the Employer and the only participants are Mr. and

firm's clients. Mr. Pilla represents that he has over three years experience with investments by pension plans and with investments in computer leasing. Mr. Pilla further represents that he is familiar with the stringent rules of the Act governing prudent investments and that he was advised by counsel of the obligations and responsibilities as independent fiduciary of the Plan.

8. Mr. Pilla represents that as independent fiduciary acting on behalf of the Plan he will (a) be responsible for the selection of Leases to be acquired by the Plan; (b) review all proposed transactions in order to confirm in each case that the Plan is acquiring only "top quality" leases, e.g. leases with companies having top credit ratings and good prior leasing experience; (c) review lessee's credit application; (d) review lessee's financial condition; (e) review lessee's credit references and make a determination regarding appropriate credit limits; (f) determine the appropriate discount rate and purchase price for a Lease; and (g) monitor and enforce the terms of the transactions including the Employer's indemnification agreement.

9. Mr. Pilla represents that the Plan's purchase of Leases is in the best interest of the Plan, its participants and beneficiaries because: (a) the lessees will be solid and reputable companies; (b) the investment is safe and fully secured; (c) the Leases are negotiated at arm's length and guarantee and assured annual investment return to the Plan which is higher than the rate of return available in other investments; and (d) there will be ample liquidity and diversification of assets.

10. The applicant represents that in the event that new participants enter the Plan, a new trust will be established to fund the benefits of the new participants. This action will be taken in order to assure that any new participant will not be prejudiced by the investment in the Leases.

11. In summary, the applicant represents that the proposed transactions meet the requirements of section 4975(c) (2) of the Code because: (a) the purchase of Leases will be limited to a five-year period and will be limited to 25% of Plan assets; (b) the decision to purchase a Lease will be made by Mr. Pilla acting as independent fiduciary on behalf of the Plan; (c) the Plan will have a perfected security interest in the equipment underlying the Lease; and (d) the Employer will repurchase any Lease in default, indemnifying the Plan against any loss in case of default.

#### Notice to Interested Persons

Because Mr. Goichman is the sole shareholder of the Employer and the Goichmans are the only participants in the plan, it has been determined that there is not need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For further information contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

#### Employee Retirement Plan of Doubleday & Company, Inc. and Associated Companies (the Plan) Located in New York City, New York

[Application No. D-5638]

#### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the continuation, beyond June 30, 1984, of a guaranty made to the Plan by Doubleday Broadcasting Company, Inc. (DBC), a party in interest with respect to the Plan, in order to secure the obligation of Christian Broadcasting Network (CBN), under a lease by the Plan to CBN, provided that the terms and conditions of such guaranty are at least as favorable to the Plan as those obtainable by the Plan in a similar transaction with an unrelated party.

Effective Date: If granted, the exemption will be effective July 1, 1984.

#### Summary of Facts and Representations

1. The Plan is a defined benefit pension plan which had approximately 3,350 participants and net assets of approximately \$53,436,543 as of June 30, 1984. The sponsor of the Plan is Doubleday & Company, Inc. (Doubleday) and certain affiliated companies, including DBC. Chemical Bank New York Trust Company (the Trustee) is the trustee of the Plan's assets pursuant to a trust agreement with Doubleday dated October 27, 1960, and Interfirst Bank Dallas, N.A. (the sub-Trustee), formerly First National Bank in Dallas, serves as a secondary trustee under a secondary trust

agreement (the Secondary Trust Agreement) with the Trustee dated January 16, 1968. DBC and the Sub-Trustee are financially independent unrelated entities which have no common officers or directors and no contractual arrangements, formal or informal, between them.

2. Until January 23, 1968, DBC owned and occupied certain improved real property (the Property) located at 3900 Harry Hines Boulevard, Dallas, Texas, where it operated a television broadcasting facility known as Station KDTV. On January 23, 1968, DBC conveyed the Property to the Sub-Trustee for the Plan, and subsequently entered into a lease of the Property from the Sub-Trustee dated March 15, 1968. In November, 1973, CBN, an unrelated party, acquired Station KDTV and executed a new lease of the Property from the Sub-Trustee.<sup>8</sup> As a condition to permitting the Plan to enter into the new lease with CBN and releasing DBC from liability under its lease, the Sub-Trustee required DBC to guaranty CBN's obligations under the new lease between the Plan and CBN. For this reason, DBC executed a Surrender, Release and Lease Guaranty Agreement (the Guaranty Agreement) with the Sub-Trustee dated November 15, 1973. Under the Guaranty Agreement, DBC unconditionally guaranteed to the Sub-Trustee the full and punctual performance and observance by CBN of each term, covenant and condition of its lease, including any modification, renewal or extension therefore.<sup>9</sup> The sole consideration for DBC's guaranty under the Guaranty Agreement was the Sub-Trustee's agreement to cancel DBC's lease, to accept DBC's surrender of such lease and to enter into the new lease with CBN.

3. The Sub-Trustee is a national bank chartered in 1929 with resources in excess of \$11 billion. The application states that the Sub-Trustee has regularly and frequently exercised discretion as a trustee or other fiduciary with respect to the assets and administration of employee benefit plans and is an experienced and qualified fiduciary fully familiar with its statutory duties, responsibilities and liabilities as a

<sup>8</sup> In this proposed exemption the Department is not proposing exemptive relief for the lease by the Plan to CBN, nor is the Department expressing any opinion as to whether the lease is within the scope of any of the provisions of Part 4 of Title I of the Act.

<sup>9</sup> The Sub-Trustee represents that the Guaranty Agreement was exempted until June 30, 1984 by section 414(c)(1) of the Act. The Department expresses no opinion as to whether the Guaranty Agreement met the requirements of section 414(c)(1) of the Act.

fiduciary under the Act. The Secondary Trust Agreement with the Trustee provides the Sub-Trustee with the power to own, hold and manage the Property for the Plan, and further provides that the Sub-Trustee has full authority to take an action on behalf of the Plan which it deems necessary to ensure the performance of, enforce and carry out any of the provisions of any existing or future leases of the Property.

4. Pursuant to this authority, the Sub-Trustee negotiated and executed the Guaranty Agreement with DBC and has continued to monitor and enforce its provisions on behalf of the Plan. The application states that the Sub-Trustee considers the Guaranty Agreement to be in the best interest of the Plan and its participants and beneficiaries because it secures CBN's duties under the lease and therefore serves to protect Plan assets. As of June 30, 1984, the fair market value of the Property with respect to which DBC unconditionally guaranteed the lessee's lease obligations, constituted less than 1% of the Plan's net assets. The lease to CBN provides for a term of twenty years, to expire in 1993, subject to certain extension and purchase options of the lessee.

5. The applicants state that they are concerned that DBC's guaranty of CBN's lease obligations to the Plan may constitute a prohibited extension of credit between the Plan and a party in interest with respect to the Plan after June 30, 1984, and therefore request relief, effective July 1, 1984, for the continuation of the guaranty pursuant to the Guaranty Agreement. The Sub-Trustee has approved the Guaranty Agreement, and will continue to monitor and enforce its terms.

6. In summary, the applicants represent that the transaction satisfies the criteria of section 408(a) of the Act because (a) the Sub-Trustee, as an independent fiduciary for the Plan, negotiated and executed the guaranty on the Plan's behalf; and (b) the Sub-Trustee has approved, monitored and enforced the guaranty and will continue to monitor and enforce the guaranty on the Plan's behalf.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

**A.F. Abdullah, M.D., P.A. Pension Plan (the Plan) Located in Hagerstown, Maryland**

[Application No. D-5678]

#### *Proposed Exemption*

The Department is considering an exemption under the authority of section

408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed borrowing by the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms and conditions of such loans are at least as favorable to the Plan as those it could obtain from an unrelated party.

#### *Summary of Facts and Representations*

1. The Plan covers four participants and, as of May 1, 1984, has assets totalling \$342,886.85. The trustee of the Plan (the Trustee) is Hagerstown Trust Company. Dr. A. Abdullah (the Administrator) is the administrator of the Plan. John Hancock Mutual Life Insurance Company (the Insurer) is the issuer of the life insurance policies in question and also provides services to the Plan. The Insurer does not serve in the capacity of a fiduciary to the Plan with respect to the proposed loans, according to the Trustee.

2. The proposed loans, one for each participant, will total \$30,662.78 and will bear interest, payable yearly, at the rate of 8.0% per year. There is no repayment schedule for the principal amount of each proposed loan. Each proposed loan matures on the death of the participant or at the election of the Trustee to pay the loan. All loan proceeds will be invested in a group deferred annuity contract yielding approximately 13% per year.

3. Upon the death or retirement of a participant for whom such an annuity was purchased with such loan proceeds, there would be a partial surrender of the group annuity contract, the loan from the life insurance policy insuring such participant would be repaid, and the participant or beneficiary would receive the full face amount of the life insurance policy plus allocations from a side fund held by the Trustee as part of the Plan's benefits. It is represented that the terms and conditions of the proposed loans are the same as those of similar policy loans made by the Insurer to other policy holders.

4. The Trustee made the decision to borrow on these policies after consulting with the Administrator. The Trustee states that the proposed loans will be administratively feasible as policy loans involve nominal paperwork and are simple transactions, and that the proposed loans will benefit and protect

plan participants and beneficiaries by producing a return in excess of the interest payable on the proposed loans, thereby providing increased benefits to participants in the Plan. The Trustee represents that any loans for future participants in the Plan will be made under the same terms and conditions as those of the proposed loans for the present participants in the Plan.

5. In summary, the Trustee represents that the proposed loans meet the exemptive criteria provided by section 408(a) of the Act (a) for the reasons stated in 4, above; (b) because the loan terms and conditions are the same as those of similar policy loans made by the Insurer to other policy holders; and (c) the decision to make the proposed loans will be made by the Trustee, who has determined that the transactions are appropriate for the Plan.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

**J. Michael Pisas, Jr., a Professional Corporation Pension Plan Located in San Francisco, California**

[Application No. D-5679]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of a limited partnership interest (the Interest) in the Western Mud Co., Limited (the Partnership) to J. Michael Pisas, Jr., the trustee of the Plan, provided that the sales price is no less than the fair market value of the Interest at the time the sale is consummated.<sup>10</sup>

#### *Summary of Facts and Representations*

1. The Plan is a defined benefit plan with one participant, J. Michael Pisas. As of February 28, 1984, the Plan had net assets of \$120,626. Mr. Pisas is engaged in the practice of law.

2. Among the assets of the Plan is the Interest in the Partnership. The

<sup>10</sup> Since Mr. Pisas is the sole shareholder of J. Michael Pisas, Jr., A Professional Corporation (the Employer), the Plan sponsor, and the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

Partnership which is located in Elk City, Oklahoma, manufactures a special mud used in drilling natural gas and oil wells. The Plan purchased its interest in the Partnership on September 13, 1982, from Capital Concepts Investment Corp. (Capital), a party unrelated with respect to the Plan. Mr. Piasis represents that the Plan purchased the Interest after he was introduced to James H. Hunt III (Mr. Hunt), Senior Financial Advisory to Capital. Mr. Piasis further represents that, except in connection with the Partnership, he has no business relationship with any of the general partners. Besides Mr. Hunt, and Beverly Igoe his personal and corporate accountant, Mr. Piasis states that he does not have any knowledge as to the identities of any other limited partners.

3. The original purchase price for the Interest was \$46,875, including an initial cash contribution of \$12,500; an interest free promissory note (the Note) by the Plan to the Partnership in the sum of \$18,750 payable in three installments of \$6,250 each and due on June 1, 1983, June 1, 1984 and June 1, 1985; and an assumption agreement (the Agreement) in the amount of \$15,625 representing the Plan's proportionate share of the Partnership's debt to the Commerce Bank. Mr. Piasis represents that when he purchased the Interest on behalf of the Plan he was informed that the Agreement would never be called and that the cash flow of the Partnership was so high that the Plan would probably not need to make the three \$6,250 contributions required under the Note. However, the Partnership's cash flow was insufficient to alleviate the Plan from making the \$6,250 contributions due in June, 1983 and June, 1984. As of September 14, 1984, the Plan's total cash expenditure with respect to the acquisition and holding of the Interest was \$25,000. The Plan has paid no brokerage commissions or any other fees with respect to the acquisition or holding of the interests. The Partnership has used a portion of the Plan's capital contributions to reduce the Plan's debt liability under the Agreement. As of July 30, 1984, the Plan's remaining debt under the Agreement was \$4,418.75 which accrues interest at Commerce Bank prime plus 1½% per annum.

4. Mr. Piasis will purchase the Interest from the Plan for cash at the higher of its fair market value or the total cash expenditure of the Plan in connection with the acquisition and holding of the Interest. Mr. Hunt who is currently a Vice President of Winthrop Securities Co., Inc. and was previously a Senior Financial Advisor to Capital has

appraised the Interest and determined that the fair market value of the Interest on September 24, 1984, was \$6,250. Mr. Hunt has an MBA in Economics and represents that he has 13 years of experience in the securities field and 12 years of experience in the banking field. Mr. Hunt further represents that he is a limited partner of the Partnership and that he is familiar with the operations of the Partnership. In addition, Mr. Hunt represents that he concurs with the analysis of the general partners of the Partnership which is as follows: (a) due to the severely depressed conditions in and around Elk City, Oklahoma, the assets currently held by the Partnership have a value of approximately 25% of their original cost; (b) the company will continue to generate losses for at least three more years; (c) the type of equipment owned by the Partnership has glutted the market by virtue of repossession and default, causing a large drop in value; and (d) the present mortgage on the equipment exceeds the value of the equipment. The Plan will incur no fees in connection with the sale.

5. In summary, the applicant represents that the proposed sale meets the statutory criteria of section 408(a) of the Act because (a) this is a one time transaction for cash; (b) the Plan will incur no expenses in connection with the sale; (c) the fair market value of the Interest is only 25% of the amount expended by the Plan in connection with the acquisition and holding of the Interest but the Plan will not incur a loss on the sale; and (d) the general partners of the Partnership anticipate that the Partnership will continue to generate losses for at least three more years.

Notice to Interested Persons: Because Mr. Piasis is the sole shareholder of the Employer and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of the proposed exemption.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**Rumph Chiropractic Clinic, P.C.  
Employees' Pension Plan and Trust (the  
Plan) Located in Waterford, Michigan**

[Application No. D-5687]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in

accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of an unimproved parcel of real property (the Property) by the Plan to a partnership, as described herein, which will be a party in interest with respect to the Plan, provided that the sales price of the Property is not less than its fair market value at the time the sale is consummated.

#### *Summary of Facts and Representations*

1. The Plan is a defined contribution plan with 5 participants. Mr. Paul A. Rumph (Mr. Rumph) is the sole shareholder and officer of Rumph Chiropractic Clinic, P.C., the sponsor of the Plan, and serves as the trustee of the Plan. As of September 30, 1983, the Plan has total assets of \$165,533.

2. On September 23, 1977, the Plan purchased the Property from Weinberger & Wilsek, an unrelated party for \$20,000. The Property consists of .74 acres of vacant land and is located in the Waterford Township, Oakland County, Michigan. The Property was purchased pursuant to a land sales contract providing that the Plan make a down payment of \$500 and pay the balance of the purchase price with interest at 8½% per annum in seven annual payments. Payments on the land have been made in full and the Plan currently owns the Property free and clear of any debt.<sup>11</sup> Since the date of purchase the Plan has paid real estate taxes with respect to the Property totalling approximately \$943.00.

On January 1, 1977, Mr. Rumph and his wife purchased a parcel of property which is located adjacent (the Adjacent Parcel) to the Property. The Adjacent Parcel currently has approximately 8,400 square feet of retail space and is leased, in part, to the Plan sponsor.

3. The applicant represents that there has been interest in the construction and lease of new retail space in the area of the properties, and that construction of new space on the Property would provide approximately 4,100 square feet of additional retail space. The applicant therefore seeks an exemption for the Plan to sell the Property to a developer

<sup>11</sup> In this proposed exemption the Department expresses no opinion as to whether the Plan's acquisition of the Property violated any provision of Part 4 of Title I of the Act.

which will be a partnership in which Mr. Rumph will have an interest. The exact composition of the Partnership is not known at this time pending approval of this exemption request.

4. Mr. Robert R. Butcher, ASA, an independent appraiser located in Madison Heights, Michigan, appraised the Property and determined that, as of June 26, 1984, it had a fair market value of \$40,000. Mr. Butcher then specifically evaluated the value of the Property if sold to an adjoining owner, and determined that the Property would have an added increment of value to the owner of 19%, which would cause the final sales price to be \$48,000.

5. The Plan proposes to sell the Property for cash at its full appraised value of \$48,000 provided that this amount is not less than its fair market value on the date of sale. The Plan will not pay any commissions or expenses with regard to the sale of the Property.

6. The Michigan National Bank of Detroit (the Bank) has been appointed to serve as the independent fiduciary for the Plan with respect to the proposed sale of the Property. The Bank acknowledges its duties, responsibilities, and liabilities as a fiduciary for the Plan with respect to the Property. The Bank is independent of and unrelated to the Plan sponsor and Mr. Rumph except for certain depository relationships which represent less than .0013% of its total deposits and loans which represent less than .0045% of its total loans. The Bank has completely reviewed all relevant documents involving the proposed sale, including the Plan's financial statements and the appraisal, and has determined that the sale of the Property at this time is in the best interests of the Plan and their participants and beneficiaries. In this regard the Bank states that the Property's value represents at least 34% of the Plan's assets and this is an undue concentration of the Plan's assets in a single, non-income producing asset which is not readily marketable. The Bank also represents that the sale of the Property would result in a substantial return on investment to the Plan. The Bank further represents that a cash sale of the Property would enable the Plan to reinvest the proceeds in diversified, readily marketable income-producing assets which will be more beneficial to the Plan than the continued investment in real estate.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale will be a one-time transaction for cash; (b) the Bank will serve as the fiduciary for the Plan with respect to the Property

and has determined that the sale of the Property will be in the best interests of the Plan; (c) the Plan will receive the fair market value of the Property as determined by an independent appraiser; and (d) the Plan will not incur any expenses with respect to the sale.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Sheboygan Oral and Maxillofacial Associates, Ltd. Defined Contribution Plan (the Plan) Located in Sheboygan, Wisconsin**

[Application No. D-5756]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the individually directed account (the Account) of Richard F. Morrissey (Dr. Morrissey) in the Plan, of five units in the Limited Partnership of Doctors Park Investment Club for cash in the amount of \$34,398.45 to Dr. Morrissey, provided that such amount is not less than the fair market value of the units on the date of sale.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan which had six participants and net assets of approximately \$985,859 as of July 31, 1983. The trustees of the Plan (the Trustees) are John J. Keller, D.D.S. and Dr. Morrissey. A provision in the Plan permits participants to direct the Trustees with respect to the investment of all or a portion of the assets in their accounts.

2. The Account had assets of approximately \$833,803 on July 31, 1983. Pursuant to the Plan provision permitting individually directed investments, Dr. Morrissey directed the Trustees of the Plan to invest \$50,000 of the assets in the Account in five units (at \$10,000 each) in the Limited Partnership of Doctors Park Investment Club (the Partnership) on February 1, 1981. The Account has incurred no additional expenses in connection with the holding of the Partnership units. The Partnership was formed on February 1, 1981 for the purpose of acquiring a portfolio of numismatic materials, i.e.,

collectible coins. Each limited partner contributed at least \$30,000 in cash for three units of \$10,000 per unit. The Partnership currently consists of thirty-two units.

3. The applicant represents that as of July 31, 1983 the value of the Partnership units was \$7,500, or \$37,500 for the five units held by the Account. Other than approximately \$2,000 in working capital, the only asset of the Partnership is its portfolio of collectible coins. The Partnership has no outstanding liabilities. The application states that the fair market value of the Partnership's portfolio plus the \$2,000 in working capital divided by the thirty-two Partnership units represents the fair market value per unit. The Partnership's portfolio was appraised on August 30, 1984 by Mr. Maurice Rosen, president of Numismatic Counseling, Inc., 1975 Hempstead Turnpike, East Meadow, New York, who determined that the fair market value of the portfolio as of July 31, 1984 was \$218,150. Mr. Rosen is independent of the Partnership and Dr. Morrissey and has been appraising coins since 1968. Mr. Rosen states that he based his determination of value on his own expertise and experience, current market conditions and data provided in *Numismatic News* and *Coin Magazine*. Based upon Mr. Rosen's appraisal of the Partnership's portfolio and the Partnership's approximately \$2,000 of working capital, the Partnership units each had a fair market value of approximately \$6,879.69 as of July 31, 1984.

4. Dr. Morrissey proposes to purchase the units from the Account for cash in the amount of \$6,879.69 per unit, for a total of \$34,398.45, provided that such amount is not less than the fair market value of the units on the date of sale. No Commissions or fees will be paid by the Account with respect to the sale and no accounts of any other participants in the Plan will be affected by the sale. Dr. Morrissey represents that the sale of the Partnership units is in the best interest of the Account and because they have declined in value since their purchase by the Account.

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) this is a one-time transaction for cash; (b) the Account will incur no expenses in connection with the sale; (c) the Account will receive the fair market value of the Partnership units as based upon an appraisal by a qualified independent appraiser; and (d) the only person to be affected by the transaction is Dr.

Morrissey and he desires that the transaction be consummated.

Notice to Interested Persons: Since the only assets of the Plan involved in the proposed transaction are those of Dr. Morrissey's Account, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and hearing requests are due 30 days after the date of publication in the Federal Register.

For Further Information Contact: Katherine D. Lewis of the Department, telephone (202) 523-8972. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a) (1) (B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975 (c) (2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately

describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 29th day of November, 1984.

**Elliott I. Daniel,**

*Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Department of Labor.*

[FR Doc. 84-31653 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-29-M

#### Pension Fund Investments and Corporate Governance; Hearings

Pursuant to section 513 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1143, public hearings on pension fund investments and corporate governance will be held by the Office of Pension and Welfare Benefit Programs beginning at 9:30 a.m. on Wednesday and Thursday, January 9 and 10, 1985 in the Terrace Room, Plaza Hotel, 768 Fifth Avenue, New York, New York and at 9:30 a.m. Monday and Tuesday, January 14 and 15, 1985 in the Washington Room, Holiday Inn, 760 Kearny Street, San Francisco, California.

The hearing will be concentrated on two subjects. The hearing on the first day in each city will concentrate on the investment performance of pension funds. It will explore various aspects of pension fund performance. Among the questions to be explored are the following:

1. What has been the historic performance of pension funds?
2. How has this performance compared to the performance of other institutional investors and indices (e.g. mutual funds, U.S. Treasury bills, S&P 500, consumer price index)?
3. To the extent there is any difference between rates of return earned by pension funds and other investors, what may explain the difference?
4. Is there any reason to believe in light of overall rate of return experience over the past 20 years, that an active investment policy for pensions has produced superior results to a passive (index fund) investment policy, after management and turnover costs are netted-out? Is there any evidence of a difference in results for pension plans actively managed by in-house managers from results of pension plans actively managed by outside investment managers?
5. What is a legitimate target rate of return for a pension fund? Why?
6. What is the relationship of investment performance of pension funds to participant benefits?

The second day in each city will be devoted to issues relating to the role of corporate pension funds with respect to issues of corporate governance. The Office of Pension and Welfare Benefit Programs (OPWBP) wants to develop a record on the experience of those pension funds that have been actively involved in corporate governance issues, including especially:

1. Voting on proposals of management to discourage takeovers (such as "fair price" provisions, "super majority" provisions, and the creation of new classes of stock).

2. Initiation or participation in shareholder initiatives relating to corporate governance (such as initiatives relating to executive compensation, "targeted buybacks," or requirements for committees composed of outside directors to consider merger offers).

3. Voting on other matters which may be brought before corporate shareholders.

OPWBP is especially interested in testimony concerning the basis for those investment managers' decision to take an active role in voting shares, the basis for selecting the proposals or initiatives to vote on, the process for determining how to vote in each particular case, the difference (if any) in voting shares held by a pension fund versus shares held in other fiduciary capacities, and decisions to take action beyond voting, such as bringing or joining in a lawsuit against management.

OPWBP emphasizes that its purpose is to explore the experience of those managers that have taken a role with respect to corporate governance.

Individuals, or representatives of organizations wishing to appear at the hearing on any of the above issues should submit written requests to be heard, copies of their statements, and an outline indicating the time to be allocated to each topic, on or before December 28, 1984 to Edward F. Lysczek, Office of the Administrator, U.S. Department of Labor, Room S-4522, Third and Constitution Avenue, NW., Washington, D.C. 20210. Telephone number (202) 523-8753.

Individuals or organizations wishing to submit written statements on any aspect of the hearing should send 10 copies to Mr. Lysczek at the above address. Papers will be included in the record of the meeting if received on or before January 7, 1985.

The Department will prepare an agenda indicating the order of presentation of oral comments and the time allotted to each person making oral comments. In the absence of special

circumstances, each commentator will be allotted 10 minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after January 4, 1985, by telephoning Mr. Edward Lysczek at (202) 523-8753. This is not a toll-free number. Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments should be prepared to answer questions regarding their comments.

A written record of the hearing will be made.

Signed at Washington, D.C., this 28th day of November, 1984.

**Robert A.G. Monks,**

*Administrator, Office of Pension and Welfare Benefit Programs.*

[FR Doc. 84-31379 Filed 12-3-84; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted by December 20, 1984.

**ADDRESSES:** Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202-682-5464).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506; (202-682-5464) from whom copies of the documents are available.

**SUPPLEMENTARY INFORMATION:** Each entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if

applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Title: International Panel Exhibition

Project Description

Form Number: N/A

Frequency of Collection: Annually

Respondents: Non Profit Institutions

Use: The National Endowment for the Arts, the National Endowment for the Humanities and USIA cooperate in selecting cultural programming including exhibitions for overseas presentation by USIA. The collection of information enables an International Panel to determine the suitability of exhibitions for international touring.

Estimated Number of Respondents: 200

Estimated Hours for Respondents to

Provide Information: 200

**Peter J. Basso,**

*Director of Administration, National Endowment for the Arts.*

[FR Doc. 84-31615 Filed 12-3-84; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357-7934.

**SUPPLEMENTARY INFORMATION:** On September 28, 1984 and October 18, 1984, the National Science Foundation published a notice in the Federal Register of permit applications received. On November 21, 1984 permits were issued to:

Jeanette Thomas

Philip R. Kyle.

Charles, E. Myers.

*Permit Office, Division of Polar Programs.*

[FR Doc. 84-31607 Filed 12-3-84; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements.

3. The form number, if applicable. Not applicable.

4. How often the collection is required: Per occurrence (non-recurring) or annually for certain subsections.

5. Who will be required to ask to report: All licensees subject to Price-Anderson liability and financial protection requirements.

6. An estimate of the number of responses: 136.

7. An indication of the total number of hours needed to complete the requirement or request: 940 hours.

8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: The information to be collected is needed to provide appropriate procedures and requirements for determining the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to section 170 of the Atomic Energy Act of 1954, as amended.

**ADDRESSES:** Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.

**FOR FURTHER INFORMATION CONTACT:** Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

Approved: NRC Clearance Officer is R. Stephen Scott, (301) 492-8585. Dated at Bethesda, Maryland, this 28th day of November 1984.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

*Director, Office of Administration.*

[FR Doc. 84-31645 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

**The Connecticut Light and Power Co.,  
Western Massachusetts Electric Co.,  
and Northeast Nuclear Energy Co.;  
Consideration of Issuance of  
Amendment to Provisional Operating  
License and Proposed No Significant  
Hazards Consideration Determination  
and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-21 issued to Connecticut Light and Power Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees), for operation of the Millstone Nuclear Power Plant, Unit 1 located in New London County, Connecticut.

The amendment would change the March 14, 1983 Order confirming licensee commitments on Post-TMI related issues for the Millstone Nuclear Power Plant, Unit 1 relating to the completion data of the Control Room Habitability modifications in accordance with the licensees' application for amendment dated November 7, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

By letter dated December 28, 1983, Northeast Nuclear Energy Company (NNECO) proposed that the NRC grant deferral of several NRC-required modifications for the purpose of conducting an integrated review of those requirements and other ongoing projects. One of the specific projects for which deferral was requested was NUREG-0737 (Clarification of TMI Action Plan Requirements) Item III.D.3.4, Control Room Habitability. The purpose of this integrated review was to reassess the safety significance of planned modifications and establish long-term implementation schedules for all plant

backfits that would provide improved resource management and result in plant modifications being implemented on a schedule commensurate with their overall significance. The December 28, 1983 submittal also provided a basis for requesting deferral from the implementation of modifications associated with Item III.D.3.4, and provided justification for continued operation in the interim.

By letter dated April 5, 1983, the NRC staff concluded that deferral of the Control Room Habitability modifications was justified and acceptable, and informed NNECO that a request for a license amendment to modify the completion date contained in the Confirmatory Order would be required. NNECO's November 7, 1984 submittal requested a proposed amendment that would remove the required completion date for Item III.D.3.4 of December 31, 1984 and replace it with "To Be determined." The proposed change would also indicate that this item is no longer considered part of the Confirmatory Order. The completion date for the modifications will be developed in conjunction with the Integrated Safety Assessment Program (ISAP) which is scheduled to be completed by November, 1985, for the Millstone, Unit 1 Plant. At the completion of ISAP a living schedule will be developed which will be incorporated into the license by an amendment. If during the course of the review the staff determines that a more expeditious schedule is needed for a particular item or items, those schedules will be appropriately modified.

NNECO has reviewed the proposed change and concluded that it does not involve a significant hazards consideration. The basis for this conclusion is that the three criteria for 10 CFR 50.92(c) are not compromised. Their determination that there is no significant hazards consideration is based on the fact that: (1) Deferral of installation of upgraded control room habitability systems will have no impact on existing safety analyses, (2) the plant will continue to operate with the margin of safety as defined in the original FSAR, and (3) the control room operators can be adequately protected against the effects of toxic gases by isolating the control room and using self-contained breathing apparatus and the effects of radioactive gases by maintaining doses within the guidelines of 10 CFR 50 Appendix A, General Design Criterion 19, and therefore the plant can be safely shutdown from the control room under accident conditions.

In addition, NNECO maintains that an evaluation of the examples provided in

48 FR 14870 of amendment requests likely involving no significant hazards consideration reveals that the intent of example (iv) is applicable to this situation. NNECO states that since the staff documented its conclusion that deferral of the subject modifications was justified and acceptable, the acceptability of relief has been established in prior reviews by both NNECO and the NRC. The applicability of example (iv), coupled with the facts discussed above, forms the basis for NNECO's conclusion that no significant hazards considerations are involved.

Based on the review of NNECO's determination, the NRC staff proposes to determine that the requested action does not constitute a significant hazards condition.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By January 3, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change

during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 [in Missouri (800) 342-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment and NRC's letter and Safety Evaluation dated April 5, 1984 which are available for public inspection at the Commission's Public Document Room,

1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 29th day of November 1984.

For the Nuclear Regulatory Commission,  
John A. Zwolinski,  
Chief, Operating Reactors Branch No. 5,  
Division of Licensing.

[FR Doc. 84-31540 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

**Connecticut Yankee Atomic Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The amendment would modify the March 14, 1983 Order confirming licensee commitments on Post-TMI related issues for the Haddam Neck Plant relating to the completion date of the Control Room Habitability modifications in accordance with the licensee's application for amendment dated November 7, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

By letter dated December 29, 1983, Connecticut Yankee Atomic Power Company (CYAPCO) proposed that the NRC grant deferral of several NRC-required modifications for the purpose of conducting an integrated review of

those requirements and other ongoing projects. One of the specific projects for which deferral was requested was NUREG-0737 (Clarification of TMI Action Plan Requirements) Item III.D.3.4, Control Room Habitability. The purpose of this integrated review was to reassess the safety significance of planned modifications and establish long-term implementation schedules for all plant backfits that would provide improved resource management and result in plant modifications being implemented on a schedule commensurate with their overall significance. The December 28, 1983 submittal also provided a basis for requesting deferral from the implementation of modifications associated with Item III.D.3.4 and provided justification for continued operation in the interim.

By letter dated April 5, 1984, the NRC staff concluded that deferral of the Control Room Habitability modifications was justified and acceptable, and informed CYAPCO that a request for a license amendment to modify the completion date contained in the Confirmatory Order would be required. The licensee's November 7, 1984 submittal requested a proposed amendment that would remove the required completion date for Item III.D.3.4 of December 31, 1984 and replace it with "To Be Determined." The proposed change would also indicate that this item is no longer considered part of the Confirmatory Order. The completion date for the modifications will be developed in conjunction with the Integrated Safety Assessment Program (ISAP) which is scheduled to be completed by November, 1986, for the Haddam Neck Plant. At the completion of ISAP a "living schedule" will be developed which will be incorporated into the license by an amendment. If during the course of the review the staff determines that a more expeditious schedule is needed for a particular item or items, those schedules will be appropriately modified.

CYAPCO has reviewed the proposed change and concluded that it does not involve a significant hazards consideration. The licensee's basis for this conclusion is that the three criteria for 10 CFR 50.92(c) are not compromised. This determination that there is no significant hazards consideration is based on the fact that: (1) Deferral of installation of upgraded control room habitability systems will have no impact on existing safety analyses, (2) the plant will continue to operate with the margin of safety as defined in the original FSAR, and (3) the control room operators can be

adequately protected against the effects of toxic gases as shown by previous analysis and the effects of radioactive gases by maintaining doses within the guidelines of 10 CFR 50 Appendix A, General Design Criterion 19, and therefore the plant can be safely shutdown from the control room under accident conditions.

In addition, the licensee maintains that an evaluation of the examples provided in 48 FR 14870 of amendment requests likely involving no significant hazards considerations reveals that the intent of example (iv) is applicable to this situation. The licensee states that since the staff documented its conclusion that deferral of the subject modifications was justified and acceptable, the acceptability of relief has been established in prior reviews by both CYAPCO and the NRC. The applicability of example (iv), coupled with the facts discussed above, forms the basis for CYAPCO's conclusion that no significant hazards considerations are involved.

Based on the review of the licensee's determination the NRC staff proposes to determine that the requested action does not constitute a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By January 3, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request

and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies those requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment

and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 [in Missouri (800) 343-6700]. The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John A. Zwolinski: petitioner's name and telephone; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or

request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment and NRC's letter and Safety Evaluation dated April 5, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 29th day of November 1984.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Chief, Operating Reactors Branch No. 5,  
Division of Licensing.*

[FR Doc. 84-31637 Filed 12-3-84; 8:45 am]

**BILLING CODE 7590-01-M**

**[Docket: 30-19532; License: 11-19921-01;  
EA 84-18]**

#### **Inspection and Testing, Inc.; Order Revoking License**

Inspection & Testing, Inc., ATTN: T. L. Finkenbinder, President, 4990 Valenty Road, Chubbuck, Idaho (Licensee) is the holder of License 11-19921-01 (license) issued by the Nuclear Regulatory Commission (NRC). License 11-19921-01 authorizes the possession and use of byproduct materials for industrial radiography and is due to expire February 28, 1987.

#### **II**

On April 14, 1984 the Commission issued a Notice of Violation and Proposed Imposition of Civil Penalties in the amount of \$4,800.00 to the licensee for violations of NRC requirements in the conduct of radiographic field operations which resulted in a personnel overexposure.

The licensee responded on April 23, 1984 to the Notice of Violation and Proposed Imposition of Civil Penalties requesting that the civil penalties be mitigated due to the severe financial impact it would have on the state of its business and its ability to survive. The licensee indicated that it was seriously considering bankruptcy. As a result, the proposed civil penalties were reduced to \$1,000.00 and an Order imposing the penalties was issued on July 6, 1984.

Subsequently, the licensee indicated that bankruptcy proceedings would be commenced shortly and that he expected repossession of his assets to begin within a few days.

By Order dated August 31, 1984 the license was suspended, effective immediately, and the licensee was given an opportunity to show cause why the license should not be revoked. As described in that Order, the Commission took these actions on the basis of the licensee's failure to pay the civil penalties imposed by the NRC Order issued on July 6, 1984, and because of NRC concerns as to whether the licensee had sufficient resources to properly safeguard the licensed material until an authorized transfer could be made.

In accordance with the August 31, 1984 Order, the licensee was required, among other things, to transfer within 7 days of the issuance of the Order all radioactive material within its possession to a person authorized to possess such material. By letter dated October 19, 1984 the licensee notified the NRC that such a transfer had been made to the licensee's state of Idaho License IDA-193.

The Order also provided the licensee opportunity to file a written answer within 25 days of the date of the Order, and stated that, upon the licensee's failure to file an answer within the specified time, the Director, Office of Inspection and Enforcement, would issue a subsequent Order, without further notice, revoking the license. No answer was filed to show why the license should not be revoked. Because the circumstances described in the Order dated August 31, 1984, would warrant revocation of a license and the license has not demonstrated, though given an opportunity to do so, why its license should not be revoked, I have determined that Byproduct Material License 11-19921-01 should be revoked.

#### **III**

In view of the above, it is hereby ordered, pursuant to Sections 81, 161(b), 186 of the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2 and 30, that:

Byproduct Material License 11-19921-01 is revoked.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 27th day of November 1984.

For the Nuclear Regulatory Commission

**James M. Taylor,**

*Deputy Director, Office of Inspection and Enforcement.*

[FR Doc. 84-31638 Filed 12-3-84; 8:45 am]

**BILLING CODE 7590-01-M**

[Docket Nos. 50-352-OL, 50-353-OL;  
ASLBP No. 81-465-07-OL]

**Philadelphia Electric Co.; Establishing  
an Additional Limited Appearance  
Session in the Limerick Area**

Atomic Safety and Licensing Board; before Administrative Judges; Helen F. Hoyt, Chairperson, Dr. Richard F. Cole, Dr. Jerry Harbour. In the matter of Philadelphia Electric Company (Limerick Generating Station, Units 1 and 2).

November 27, 1984.

In the limited appearance session of this Board on November 15 and 16, 1984, a number of persons who requested time to make a statement to this Board were not heard because time allotted for the session expired before they could be called. The Board, therefore, has decided to schedule an additional session to be held on December 13, 1984 (Thursday) between the hours of 6:00 p.m. (e.s.t.) and 10:00 p.m. (e.s.t.) at the Stowe Fire Company, Vine and Rice Streets, Stowe, Pennsylvania 19464. The following procedures will be in force:

1. 10 CFR 2.715(a) provides that:

A person who is not a party may, in the discretion of the presiding officer, be permitted to make a limited appearance by making oral or written statement of his position on the issues at any session of the hearing or any prehearing conference within such limits and on such conditions as may be fixed by the presiding officer, but he may not otherwise participate in the proceeding.

The subject of this limited appearance session is offsite emergency planning. This Board is presently conducting evidentiary hearings in Philadelphia, Pennsylvania on the issues of offsite emergency planning.

2. The limited appearance permits the making of a statement (oral or written) of one's views of the issues which will become a part of the record of the proceedings. However, the statement is not evidence; but it may serve to alert the Board and parties to areas in which evidence may need to be adduced.

3. Persons who have not made a limited appearance on this record will be accorded priority. The Board has retained a register of those persons who did not make an appearance on November 15 and 16, 1984 because of insufficient time. Those persons on the register will be called before persons registering on the evening of the session on December 13, 1984.

4. For those persons wishing to make written statements, the address is: Judge Helen F. Hoyt, Chairperson, Atomic Safety and Licensing Board (Limerick), U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

5. The limited appearance session at Stowe is a federal judicial proceeding

and will be conducted as if it were being held in a courtroom. No signs or demonstrations will be permitted in the hearing room. Cameras will be permitted, but only in fixed positions and only with available lighting.

Dated at Bethesda, Maryland, this 27th day of November, 1984.

For the Atomic Safety and Licensing Board.  
Helen F. Hoyt,  
Chairperson, Administrative Judge.

[FR Doc. 84-31642 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344 OLA (SFP Amendment)]

**Portland General Electric Co., et al.  
(Trojan Nuclear Plant); Assignment of  
Atomic Safety and Licensing Appeal  
Board**

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this spent fuel pool amendment proceeding:

Thomas S. Moore, Chairman  
Gary J. Edles  
Dr. Reginald L. Gotchy.

Dated: November 28, 1984.

C. Jean Shoemaker,  
Secretary to the Appeal Board.

[FR Doc. 84-331639 Filed 12-3-84; 8:45 am]

BILLING CODE 1590-01-M

[Docket No. 50-260]

**Tennessee Valley Authority;  
Environmental Assessment and  
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.48(c)(4) to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Plant, Unit 2 located in Limestone County, Alabama.

**Environmental Assessment**

*Identification of Proposed Action*

The exemption would grant the licensee a schedular deferment from the provisions of Appendix R, Section III.G, fire protection of the equipment used for safe shutdown capability, from the current cycle 5 refueling outage to the end of the cycle 6 refueling outage. The exemption is responsive to the licensee's application for exemption dated June 5, 1984.

*The Need for the Proposed Action*

Appendix R, Section III.G requires a licensee authorized to operate a nuclear power reactor to provide fire protection for equipment used for safe shutdown by means of separation and barriers or provide alternative safe shutdown capability. The schedular requirements of 10 CFR 50.48(c)(4) call for the implementation of modifications before startup after the earliest of the following events commencing 180 days after Commission approval:

- (1) The first refueling outage;
- (2) Another planned outage that lasts for at least 60 days; or
- (3) An unplanned outage that lasts for at least 120 days.

In a submittal dated June 5, 1984, the licensee requested that the implementation schedule for the proposed fire protection modification at Browns Ferry be extended in accordance with the proposed integrated schedule for plant modifications (TVA letter dated August 14, 1984). The integrated schedule calls for the modifications to be completed during the cycle 6 outage which is one cycle later than required by 10 CFR 50.48(c)(4), based on Commission approval of proposed modifications having been granted on October 12, 1983 (letter from D.B. Vassallo to H.G. Parris dated October 12, 1983).

The level of modification work associated with the current cycle 5 outage does not permit significant additional work to be added to the outage work scope without delaying restart of the plant. As an alternative to implementation of the required modifications during the current cycle 5 outage, the licensee has proposed interim compensatory fire protection measures to be instituted during cycle 6. These measures are being evaluated by the staff.

*Environmental Impacts of the Proposed Action*

By using reasonable interim compensatory measures, the proposed exemption will provide a degree of fire protection such that there is no significant increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

#### Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement dated September 2, 1972 for the Browns Ferry Nuclear Plant.

#### Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

#### Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated June 5, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 36511.

Dated at Bethesda, Maryland this 28th day of November, 1984.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors,  
Division of Licensing.

[FR Doc. 84-31641 Filed 12-3-84; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the *Federal Register* of January 4, 1980, (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, and 47 FR 16697.

Under Section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section

2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now, therefore, William E. Brock, United States Trade Representative, in conformance with the provisions of Section 2(b) of the Act, Section 701(b) of the Tariff Act of 1930 as amended, and section 1-103(b) of Executive Order 12188, does hereby determine, effective on the date of signature of this Notice that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), Portugal has accepted the obligations of the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of November 28, 1984, Portugal is a "country under the Agreement."

Inquires concerning this notice should be addressed to Catherine Curtiss, Office of Bilateral Affairs, Japan and Western Europe, Office of the U.S. Trade Representative, Washington, D.C. 20506, (202) 395-3074.

Dated: November 28, 1984.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-31597 Filed 12-3-84; 8:45 am]

BILLING CODE 3190-01-M

## POSTAL RATE COMMISSION

[Order No. 591; Docket No. A85-6]

**Durbin, North Dakota 58023 (Susan Bernstein et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)**

Issued: November 28, 1984.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy.

Docket Number: A85-6.  
Name of affected Post Office: Durbin, North Dakota 58023.

Name(s) of petitioner(s): Susan Bernstein; Mr. & Mrs. Ben Bautz.

Type of determination: Closing.

Date of filing of appeal papers: November 26, 1984.

Categories of issues apparently raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

*The Commission orders:*

(A) The record in this appeal shall be filed on or before December 11, 1984.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the *Federal Register*.

By the Commission.

Charles L. Clapp,

Secretary.

## Appendix

November 26, 1984—Filing of Petitions

November 28, 1984—Notice and Order of Filing of Appeal

December 21, 1984—Last day for filing of petitions to intervene [see 39 CFR 3001.111(b)].

December 31, 1984—Petitioners' Participant Statement or Initial Brief [see 39 CFR § 3001.115(a) and (b)].

January 22, 1985—Postal Service Answering Brief [see 39 CFR 3001.115(c)].

February 6, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [see 39 CFR 3001.115(d)].

February 13, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [see 39 CFR 3001.116].

March 26, 1985—Expiration of 120-day decisional schedule [see 39 U.S.C. 404(b)(5)].

[FR Doc. 84-31666 Filed 12-3-84; 8:45 am]

BILLING CODE 7715-01-M

## SECURITIES AND EXCHANGE COMMISSION

**Self-Regulatory Organizations;  
Midwest Stock Exchange; Applications  
for Unlisted Trading Privileges and of  
Opportunity for Hearing**

November 28, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the

Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

B.A.T. Industries Ltd.

ADR Ordinary Shares, 25 Pence Par Value, File No. 7-8167

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 19, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protections of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,  
*Acting Secretary.*

[FR Doc. 84-31644 Filed 12-3-84; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[License No. (04/04-0116)]

### H&T Capital Corp.; Surrender of License

Notice is hereby given that H & T Capital Corporation, 4750 Selma Highway, Montgomery, Alabama, 36105 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). H & T Capital Corporation was licensed on July 15, 1975.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on November 16, 1984, and accordingly all rights, privileges, and franchises derived therefrom have been terminated.

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

Dated: November 21, 1984.

Robert G. Lineberry,

*Deputy Associate Administrator for Investment.*

[FR Doc 84-31626 Filed 12-3-84; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

[ATF 0 1100.76A; Notice 544; Correction]

#### Authority To Administer Seized Personal Property Program in 27 CFR Part 72, Disposition of Seized Personal Property, and 26 CFR Part 601, Statement of Procedural Rules; Delegation Order

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Correction to FR notice on Delegation Order.

**SUMMARY:** This document clarifies and corrects the signature authority for all documents and correspondence concerning petitions for remission or mitigation of forfeiture relating to the seized personal property program, which appeared in the seized personal property program, which appeared in the issue of Friday, September 21, 1984 (49 FR 37203). This action is necessary to correct a technical error.

**FOR FURTHER INFORMATION CONTACT:** Frank W. Nickell or Gayle P. Miller, Planning and Analysis Staff, Office of Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, DC 20226 (202-566-7123).

**SUPPLEMENTARY INFORMATION:** In FR Doc. 84-25055, appearing in the issue of Friday, September 21, 1984, omissions occurred on pages 37203 and 37204.

#### Paragraph 4.b. [Corrected]

This paragraph should be corrected to read as follows: "To sign all documents and correspondence relating to petitions for remission or mitigation of forfeiture, including the authority to affix the signature of the Director."

#### Paragraph 5.b. [Corrected]

This paragraph should be corrected to read as follows: "The authorities in paragraph 4b above may be redelegated to personnel in Bureau Headquarters not

lower than the position of seized property examiner, except that the authority to affix the signature of the Director may not be redelegated below the level of Chief in the Office of Law Enforcement."

Approved: November 26, 1984.

Stephen E. Higgins,  
*Director.*

[FR Doc. 84-31659 Filed 12-3-84; 8:45 am]

BILLING CODE 4810-31-M

## VETERANS ADMINISTRATION

### Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in Room 139, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC, on December 13 and 14, 1984. These meetings will begin at 9 a.m. and conclude at 4:30 p.m.

Both meetings will be open to the public to the seating capacity of the conference room. Anyone having questions concerning the meetings may contact Mr. Edward Lord, Assistant Director for Administration and Development, Readjustment Counseling Service, Veterans Administration Central Office, at phone number 202/389-5410/5419.

This notice does not appear in the *Federal Register* at least 15 days prior to the date of the first meeting due to delays in administrative processing.

Dated: November 27, 1984.

By direction of the Administrator.

Rosa Maria Fontanez,  
*Committee Management Officer.*

[FR Doc. 84-31622 Filed 12-3-84; 8:45 am]

BILLING CODE 8320-01-M

### Station Committee on Educational Allowances; Hearing

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on December 27, 1984, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee.

conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Rice College (formerly American College and Memphis School of Commerce) 2829 Lamar Avenue, Memphis, Tennessee 38114, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Commission at that time and place.

Dated: November 27, 1984.

**R.S. Bielak,**

Director, VA Regional Office, 110 Ninth Avenue South, Nashville, Tennessee.

[FR Doc. 84-31860 Filed 12-3-84; 8:45 am]

BILLING CODE 6320-01-M

# Sunshine Act Meetings

Federal Register

Vol. 49, No. 234

Tuesday, December 4, 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).

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### 1

#### FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" DOC. NO. 84-31411.  
PREVIOUSLY ANNOUNCED DATE AND TIME:  
Tuesday, December 4, 1984, 10:00 a.m.

Pursuant to § 3.2(a)(1) and (b)(v) of the Commission's Sunshine Act regulations, the following item has been added to the agenda: Application of 11 CFR 104.14(d).

**PERSON TO CONTACT FOR INFORMATION:**  
Mr. Fred Eiland, Information Officer,  
202-523-4065.

Marjorie W. Emmons,  
Secretary of the Commission.

[FR Doc. 84-31708 Filed 10-30-84; 1:16 pm]  
BILLING CODE 7615-01-M

### 2

#### FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:55 p.m. on Thursday, November 29, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in The Strong City State Bank, Strong City, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Thursday, November 29, 1984; (2) accept the bid for the transaction submitted by Chase County Bank, Strong City, Kansas, a newly-chartered State nonmember bank subsidiary of Chase County Bankshares, Incorporated, Strong City, Kansas; (3) approve the applications of Chase

County Bank, Strong City, Kansas, for Federal deposit insurance, and for consent to purchase certain assets of and to assume the liability to pay deposits made in The Strong City State Bank, Strong City, Kansas; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. David L. Chew, acting in the place and stead of Director C.T. Conover, (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: November 30, 1984.  
Federal Deposit Insurance Corporation.  
Margaret M. Olsen,  
Deputy Executive Secretary.

[FR Doc. 84-31785 Filed 11-30-84; 3:57 pm]  
BILLING CODE 6714-01-M

### 3

#### FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday,  
December 10, 1984.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

**STATUS:** Closed.

#### MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was previously announced for a closed meeting on December 5, 1984.)
2. Proposed purchase of computers within the Federal Reserve System.
3. Appointment of new members to the Consumer Advisory Council.

4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. 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 30, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-31764 Filed 11-30-84; 3:57 pm]

BILLING CODE 6210-01-M

### 4

#### NATIONAL TRANSPORTATION SAFETY BOARD

[NM-84-37]

**TIME AND DATE:** 9 a.m., Tuesday,  
December 11, 1984.

**PLACE:** NTSB Board Room, Eighth Floor,  
800 Independence Ave., SW.,  
Washington, D.C. 20594.

**STATUS:** Open.

#### MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Illinois Hawker Siddeley HS 748-2A, N748LL, near Pinckneyville, Illinois, October 11, 1983.
2. *Highway Accident Report*—Collision of Isle of Wight County, Virginia, Schoolbus with Chesapeake and Ohio Railway Company Freight Train, State Route 615, near Carrsville, Virginia, April 12, 1984.
3. *Marine Accident Report*—Collision of the Panamanian Cement Carrier M/V AMPARO PAOLA with the Danzier Bridge, Inner Harbor Navigation Canal, New Orleans, Louisiana, November 23, 1983.
4. *Response to Petition for Reconsideration of Probable Cause: Aircraft Accident*—Texasgulf Aviation, Inc., Lockheed Jetstar, L-1329-731, N5205, Westchester County Airport, White Plains, New York, February 11, 1981.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Sharon Flemming (202)  
382-6528.

H. Ray Smith, Jr.,

Federal Register Liaison Officer,  
November 30, 1984.

[FR Doc. 84-31726 Filed 11-30-84; 2:07 pm]

BILLING CODE 7533-01-M

5

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of December 3, 10, 17, and 24, 1984.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of December 3*

*Monday, December 3*

2:00 p.m.

Discussion/Possible Vote on Severe Accident Policy Statement (Public Meeting)

*Wednesday, December 5*

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Meeting on Indian Point *postponed*.

*Thursday, December 6*

2:00 p.m.

Affirmation Meeting (Public Meeting) (if needed)

*Week of December 10—Tentative*

*Monday, December 10*

1:30 p.m.

Discussion/Possible Vote on Hydrogen Rule (Public Meeting)

3:00 p.m.

Discussion of Adjudication Matters Related to Catawba-1 (Closed—ex. 10) (if needed)

*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.

Affirmative 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*

10:00 a.m.

Discussion/Possible Vote on Full Power Operating License for Catawba-1 (Public Meeting)

2:00 p.m.

Discussion of Need for and Impact of Further TMI-1 Hearings (Public Meeting) (Tentative)

*Wednesday, December 19*

10:00 a.m.

Discussion/Affirmation of Indian Point Order (Public Meeting)

*Thursday, December 20*

10:00 a.m.

Affirmation Meeting (Public Meeting) (if needed)

*Week of December 24 Tentative*

*Friday, December 28*

11:30 a.m.

Affirmation Meeting (Public Meeting) (if needed)

**TO VERIFY THE STATUS OF MEETINGS**

**CALL (RECORDING):** (202) 634-1498

**CONTACT PERSON FOR MORE**

**INFORMATION:** Julia Corrado (202) 634-1410.

George T. Mazuzan,

Office of the Secretary.

November 28, 1984.

[FR Doc. 84-31843 Filed 11-29-84; 4:42 p.m.]

**BILLING CODE 7590-01-M**

6

**POSTAL SERVICE (BOARD OF GOVERNORS)****Notice of a Meeting**

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Tuesday, December 11, 1984, in Washington, D.C., and at 8:30 a.m. on Wednesday, December 12, 1984, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, D.C. As indicated in the following paragraph, the December 11 meeting is closed to public observation. The December 12 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on November 13, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for December 11. (See 49 FR 46237, November 23, 1984.) The agenda items of

the meeting to be closed concern: (1) Strategic planning in connection with possible continued collective bargaining negotiations involving the Postal Service and four labor organizations representing certain postal employees; and (2) Further consideration of the Postal Rate Commission's September 7, 1984, Opinion and Recommended Decision in Docket No. R84-1.

**Agenda**

*Tuesday Session, December 11—1:00 p.m. (Closed)*

1. Strategic Planning—Collective Bargaining.
2. Consideration of Postal Rate Commission recommended decision in the omnibus rate case, Docket No. R84-1.

*Wednesday Session, December 12—8:30 a.m. (Open)*

1. Minutes of the Previous Meeting, November 13-14, 1984.
2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. Officer Compensation.
4. Review of the Postal Service's Budget Program. (Mr. Coughlin, Senior Assistant Postmaster General, Finance Group, will present the Postal Service's budget for FY 1986, as it is proposed for transmission to OMB and the Congress, for the approval of the Board.)
5. Consideration of the FY 1984 Financial Statements. (The Board will review the audited financial statements and footnotes for the Postal Service for FY 1984.)
6. Amendment to the Bylaws of the Board of Governors. (The Board will consider a proposed revision to its Bylaws to clarify the description of matters that the Board reserves for its approval.)
7. Report on Consumer Protection under Pub. L. 98-186. (The Board will review the semi-annual report on consumer protection distributed to the Board in advance of the meeting in accordance with section 3013, title 39, United States Code.)
8. Capital Investments:
  - a. Summit, New Jersey General Mail Facility.
  - b. Postal Source Data System (PSDS) replacement.
9. Consideration of a Tentative Agenda for the January 7-8, 1984, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 84-31877 Filed 11-30-84, 11:00 am]

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Federal Register

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Tuesday, December 4, 1984

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