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Friday
December 14, 1984

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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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Presidential Documents

Title 3—

The President

Proclamation 5288 of December 12, 1984

Wright Brothers Day, 1984

By the President of the United States of America

A Proclamation

This year marks the eighty-first anniversary of human flight in a powered, winged aircraft. The dedicated efforts of Orville and Wilbur Wright made this possible. In the years that have passed since that time, the world has undergone a revolution in transportation that has brought nations closer together and helped unite the global community in ways never before possible.

Though only 120 feet in length and 12 seconds in duration, the first successful flight of the Wright Brothers' aero-vehicle on December 17, 1903, was truly the "flight heard round the world." That flight—limited in immediate, practical application but infinite in conceptual progress—helped foster the Nation's spirit of innovation and dedication to technological advancement. This spirit has thrust the United States into world leadership in all facets of aviation, both civil and military. Aviation in the United States and throughout the world countinues to build on the foundation provided by the Wright Brothers.

To commemorate the historic achievement of the Wright Brothers, the Congress, by joint resolution of December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the seventeenth day of December of each year as Wright Brothers Day and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 17, 1984, as Wright Brothers Day, and I call upon the people of this Nation and local and national governmental officials to observe this day with appropriate ceremonies and activities, both to recall the accomplishments of the Wright Brothers and to provide a stimulus to aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of December, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

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Filed 12-12-84; 2:35 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegation of authority from the Secretary of Agriculture and General Officers of the Department to delegate to the Assistant Secretary for Marketing and Inspection Services and to the Director, Office of Transportation, the authority to exercise the functions of the Secretary of Agriculture relating to the International Carriage of Perishable Foodstuffs Act of October 15, 1982 (7 U.S.C. 4401–4406).

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Martin F. Fitzpatrick, Director, Office of Transportation, U.S. Department of Agriculture, Room 1405 Auditor's Bldg., 14th Street and Independence Avenue, SW., Washington, D.C. 20250 (202–447–3963).

SUPPLEMENTARY INFORMATION: The United States, as a member of the Economic Commission for Europe of the United Nations, participated in the development by that Commission of the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage. The agreement requires that equipment involved in the international carriage of foodstuffs be inspected, tested, and certified to specified standards. The Congress determined, in the International Carriage of Perishable Foodstuffs Act, that the Secretary of Agriculture is the competent authority to implement the agreement. To ensure compliance with the standards specified in the agreement, the Secretary is placing the responsibility for administering the International Carriage of Perishable Foodstuffs Act with the Assistant Secretary for Marketing and Inspection Services and the Director, Office of Transportation. This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register.** Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Finally, this action is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR Part 2 is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, except as otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (d)(6) to read as follows:

§ 2.17 Delegations of Authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(d) * * *

(6) Exercise the functions of the Secretary of Agriculture relating to the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.52 is amended by adding a new paragraph (a)(6) to read as follows.

§ 2.52 Director, Office of Transportation.

* * * * *

(a) * * *

(6) Exercise the functions of the Secretary of Agriculture relating to the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406).

For Subpart C:

Dated: December 7, 1984.

John R. Block,

Secretary of Agriculture.

For Subpart F:

Dated: December 7, 1984.

John Ford,

Deputy Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 84–32591 Filed 12–13–84; 8:45 am]
BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Barrow and Gilt Carcasses and Standards for Grades of Slaughter Barrows and Gilts

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Final rule.

SUMMARY: This rule revises the official U.S. standards for grades of barrow and gilt carcasses and the associated standards for grades of slaughter barrows and gilts. The revised grades will: (1) Simplify the application of the standards, (2) more accurately reflect actual yields of lean cuts, and (3) more evenly distribute carcasses among several grades. These results will be achieved by basing the grade on the backfat thickness over the last rib, with an adjustment up or down for superior or inferior muscling, respectively. The revised grades will more nearly reflect current industry practices, and will make market reports, which are based on the official grades, more meaningful to producers.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch,

Livestock Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4486.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a non-major rule pursuant to sections 1(b) (1), (2), and (3) of that order because: (1) It will not have an annual effect on the economy of $100 million or more; (2) it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) which deals with the impact of regulations on small entities, were also satisfied, in that William T. Manley, Deputy Administrator, Agricultural Marketing Service, certified that this rule will not have a significant impact on a substantial number of small entities, because: (i) The revised standards will more nearly reflect current industry practices, and will make market reports, which are based on the official standards, more meaningful to producers, (ii) the standards are applied equally by employees of, or persons authorized by, the Department to all size entities, and (iii) the use of the standards is voluntary.

Background

The grading of hogs and pork carcasses (barrows, gilts, and sows) is a voluntary service, provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), which is designed to facilitate the marketing of livestock and meat. Official grade standards for slaughter barrows and gilts (7 CFR Part 53) and for barrow and gilt carcasses (7 CFR Part 54) were adopted in 1952, and changes were made in 1955 and 1968 to reflect improvements in hog production through the years. When the revised standards became effective in 1968, it was estimated that the grade distribution was: U.S. No. 1, 8 percent; U.S. No. 2, 42 percent; U.S. No. 3, 36 percent; U.S. No. 4, 12 percent; and U.S. Utility, 2 percent. Since 1968, it is evident that continued improvements have been made in hog production, particularly in reducing the amount of fat on pork carcasses. A 1980 survey of over 36,000 pork carcasses found the following grade distribution: U.S. No. 1, 71.7 percent; U.S. No. 2, 24.2 percent; U.S. No. 3, 3.7 percent; U.S. No. 4, 0.3 percent; and U.S. Utility, 0.1 percent. These data indicate that tremendous changes have taken place in the past 15 years and that realignment of the grade lines is necessary if the grades are to be useful tools to sort hogs and pork carcasses by yield of lean cuts and value.

The proposal to revise the official standards was published in the **Federal Register** on April 6, 1984 (Vol. 49, No. 68, pages 13704-13710), and comments were invited for 90 days ending on July 5, 1984. The need for revision of the standards and the justification for the changes proposed were detailed in the proposal. Generally, the official standards: (1) Did not reflect current industry practices, (2) underestimated the expected yields of lean cuts from most pork carcasses, and (3) did not adequately distribute pork carcasses among the grades. Information presented in the proposal indicated that the revised standards would remedy these shortcomings.

Summary of Comments

During the comment period a total of 31 comments were received. The distribution of these comments was: National producer organizations (2), state producer organizations (5), individual producers (14), State Department of Agriculture officials (4) university staff members (5), and meat packing companies (1). Twenty-one of the 31 comments supported the proposal in total or with only minor reservations. The comments opposed to the proposed changes focused primarily on the reduced prediction accuracy which the revised grades would have. Several individual producers expressed opposition on the grounds that revising the standards would be detrimental to consumers and small producers. In addition several comments were directed toward the quality requirements and some toward the muscling requirements or the way muscling was proposed to be used. Each area raised by these comments is dealt with below.

Producers and producer organizations were generally in favor of the proposed changes. Two national producer organizations, the National Pork Producers Council (NPPC), and the American Farm Bureau Federation (AFBF), and four of five state producer organizations supported the proposal. Several of the comments referred to a need for improved market news reporting—for example, quoting prices for all the grades—based on the proposed grades. One state organization also added that it believed a minimum fatness may need to be specified for the numerical grades. The state organization opposing the proposed grades did so on the basis of a loss of accuracy under the proposed grades, adding that carcass weight or length should be used as a grade factor. Nine of the 14 comments from individual producers supported adoption of the proposed revisions. Those in opposition mostly expressed a nonspecific opinion that the proposed changes would be detrimental to producers and consumers.

The meat packing company that commented on the proposal stated that it had testing the proposed grades on about 75,000 pork carcasses and found that grades 1 through 4 were very acceptable for its purposes. It added, however, that the Utility grade was too much of a "catchall", and suggested splitting that grade to address the problem.

Two of the four State Department of Agriculture officials supported the proposed changes although one indicated that a considerable amount of retraining for live animal grades would be necessary to accurately evaluate fatness under the revised standards. The two state officials opposed to the proposed changes were concerned with the reduced accuracy of the revised standards, especially in relation to live hog grading programs. These felt that more fat measurements should be used and weight or length added to the grades. They favored updating the present standards to distribute hogs more uniformly through several grades.

Three of the five comments from university staff members supported the proposal although two of the three raised questions concerning parts of the proposal. One had reservations about the use of a subjective muscling score and felt more attention should be given to lean quality, and another was concerned about the coding system used for muscling in the grade equation. One of those opposed to the proposal made a number of comments, especially concerning the effect of using discrete muscling scores, rather than continuous values, on the accuracy of lean cut yield prediction. The other opposing commenter suggested that the numerical grades be eliminated and that market reports reflect an estimated backfat thickness range.

Market News Reports

One of the greatest potential benefits foreseen for the revised grades was that market news reports based on the official grades would be more meaningful to producers. Four of the comments from producer organizations specifically mentioned that market news reports should report individual prices for all grades and not combine grades under the revised standards. This is certainly a desirable goal and, since the revised grades will distribute the hog population through all the grades, the market reports can be expected to reflect prices for all the grades. Also, to the extent that hogs are marketed in uniform grade lots, the Agency's Livestock and Grain Market News Branch will report single grade prices. However, since hogs are often marketed in lots that include more than one grade, it will not always be possible to avoid combining grades in the reports.

Five comments stated that the revised grades would be detrimental to producers and/or consumers. One went on to say that packing companies should begin to pay for the quality of product they are getting. However, without an effective grading system to sort the product there is no mechanism for packers to pay for the better hogs. Under the revised grades the best hogs will continue to grade U.S. No. 1 and will be separated from average or below average hogs that now grade No. 1. Producers of better hogs will benefit from the revisions. Other producers, whose hogs now grade No. 1 or 2 because of the inadequacies of the grading system, would have to improve their production to receive top prices.

Quality

Statements concerning quality were included in five comments. Two of these indicated that hogs with less than some minimum fatness (e.g., one inch of backfat) should be graded Utility and one thought that the Utility grade should be split into several categories. A fourth commenter felt that cured pork consumption will decrease in the future and, as fresh pork consumption increases, palatability problems, especially tenderness, will increase. The Department feels that the safeguards provided by the Utility grade are currently adequate for both cured and fresh pork purposes. Another comment pointed out an apparent minor discrepancy in the wording of the quality requirements in § 54.134, paragraph (c). This has been corrected through the deletion of language which modified the U.S. Utility grade in this section as proposed. Also in § 54.135, paragraph (b)(5); § 53.152, paragraph (c); and § 53.153, paragraph (b)(5), as proposed, references to pale, soft and exudative pork were eliminated since carcasses meeting the lean quality requirements could not be pale, soft, or exudative. In §§ 54.134 and 54.135 and §§ 53.152 and 53.153, as proposed, miscellaneous minor changes are made also for clarity and understandability of the standards. The comment that recommended splitting the Utility grade came from a meatpacker considering use of the revised grades for their hog buying program. However, the commenter indicated that it was using the Utility grade for more than intended in the standards. It was including thinly muscled hogs and mutilated or trimmed carcasses in the Utility grade. There is no prohibition against sorting certain categories of hogs in addition to the grades, if a packer chooses to do so. Finally, as the revised standards are written, mutilated or heavily trimmed carcasses would not be eligible for any grade.

Muscling

The proposed use of muscling was mentioned in six comments. One commenter felt that the use of three muscling scores was acceptable while another felt that three scores were not adequate because of reduced accuracy compared to the present six scores. Another was concerned about the subjective nature of muscling evaluation. While the evaluation is subject to some error if made at high slaughter line speeds, research shows that the use of properly applied muscling scores does improve the accuracy of lean cut yield prediction. However, using more muscling scores would increase the chance of error and make the grades more difficult to apply at high speeds. Another comment concerned the coding of muscling when using the grade equation. The commenter pointed out that the numerical coding was the opposite of that used in the feeder cattle grades and that confusion could result if similar muscling scores are later used for feeder pigs. However, to reverse the coding for pork carcasses would not be feasible in a regression equation.

The other two comments which addressed muscling commented on the need for a "meatless" grade. Such a grade was considered before the proposed grades were published, but USDA did not have enough information on which to base such a grade and the incidence of such hogs was considered to be low. Based on the comments and other information obtained since the proposal was published, there is evidence that the incidence of these hogs and the need for such a grade may be greater than previously thought. However, such a grade could not be implemented without further proposed rulemaking and USDA still does not have enough information to define such a grade. Therefore, the Department will implement the revised grades as proposed, but will seek additional information on the need for a "meatless" grade and how to define it. This could be included in later rulemaking if it is determined to be needed.

Accuracy

Concern was raised as to the reduced accuracy of the equation for predicting lean cut yield. Four commenters generally focused on the need to use more factors, such as weight or length, more fat measurements, or more muscling scores. It is true that the cutability equation on which the proposed grades are based accounts for less variation ($R^2 = 0.67$) than one using the current grade factors ($R^2 = 0.83$). However, considering the lack of conformity of the current pork carcass grades with industry practices and their resulting lack of use, this reduced accuracy is considered acceptable when offset by the potential increased acceptance of the official grades. In live hog grading there may also be a transition period of reduced application accuracy until live hog graders become accustomed to estimating the single backfat thickness measurement rather than the average of three backfat thickness measurements.

Another concern raised over grade accuracy was that raised by a university staff member who questioned the effect of variations within a degree of muscling on lean cut yields. It was pointed out that, with the exact same backfat thickness, there could be a 3.0 percent variation in lean cut yield within a grade due to variation within a muscling score. Thus, if the minimum of a muscling degree was coupled with the maximum fatness for a grade, compared to the maximum of the same muscling degree and the minimum fatness for that grade, variation in yield within that grade would be much more than the 3 percent stated. Thus, using a discrete code number (1, 2, or 3) for muscling would not account for this variation and would result in considerable overlap in expected lean cut yields between grades. The solution to this situation would be to make finer muscling evaluations (e.g., 1.0, 1.1, 1.2, etc.) and each muscling increment would then be offset by smaller fatness changes (e.g., 0.025 inches for each 0/1 muscling score). This would, however, remove all

the advantages of the simplified system for use in high speed operations.

Other Comments

One commenter pointed out that in § 54.134, paragraph (f) of the proposed fat thickness adjustments are provided for skinned carcasses although it was stated elsewhere in that paragraph that actual measurements are used for all carcasses. This discrepancy has been corrected by clarifying the language of § 54.134, paragraph (f), as proposed. In one of the comments the writer questioned what the grade would be when the grade equation gave a fractional result such as 1.8 or 2.3. In all cases the final grade is the whole number, with all fractions dropped. For example, any result from 2.00 to 2.99 would be a 2. This point has been clarified in § 54.134, paragraph (j), as proposed.

A final comment suggested that within 10 years the revised grades will once again be obsolete as producers continue to improve their hogs to meet the tightened standards. Instead of a numerical grading system, it was suggested that the grades and market reports reflect a fat thickness range. Although the commenter's analysis of future progress may be correct, the suggested solution would not actually be a grading system at all and, without a goal in the form of the U.S. No. 1 grade, progress in making these improvements might be slowed.

Therefore, based on the analysis discussed in the proposed rule (49 FR 13704), and the analysis of the comments outlined above, the standards for grades of barrow and gilt carcasses and the standards for grades of slaughter barrows and gilts are, except for the cases noted above, finalized as proposed.

In summary, the changes involved in these amendments to the standards for grades of barrow and gilt carcasses and the standards for grades of slaughter barrows and gilts provide for the following:

(1) Revised grades will be based on last rib backfat thickness and muscling (7 CFR 54.134 (e)).

(2) Only three levels of muscling (thick, average, and thin) will be recognized (7 CFR 54.134 (h)).

(3) The width of the grades will still be 3.0 percent of four lean cuts, but the expected yield from each proposed grade will be 7.4 percent higher than for the previous grades (7 CFR 54.134 (d)).

(4) With average muscling, the minimum last rib backfat thickness for Grades 2, 3, and 4, will be set at 1.0, 1.25, and 1.50 inches, respectively (7 CFR 54.135 (a)).

List of Subjects

7 CFR Part 53

Livestock, Barrows and gilts, Grading and certification, Standards.

7 CFR Part 54

Pork carcasses, Meat and meat products, Grading and certification, Standards.

A. For the reasons set out above, the official U.S. standards for grades of barrow and gilt carcasses in 7 CFR Part 54 are revised as set forth below.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

(1) The authority citation for Part 54 is as follows:

Authority: Sec. 203, 60 Stat. 1087, as amended; Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1622 and 1624).

(2) A new § 54.131 is added and §§ 54.132–54.135, are revised to read as follows:

Subpart B—Standards

Pork Carcasses

§ 54.131 Scope.

These standards for grades of pork are written primarily in terms of carcasses. However, they also are applicable to the grading of sides. To simplify the phrasing of the standards, the words "carcass" and "carcasses" are used also to mean "side" or "sides."

§ 54.132 Bases for pork carcass standards.

The official standards for pork carcass grades provide for segregation according to (a) class, as determined by the apparent sex condition of the animal at the time of slaughter, and (b) grade, which reflects quality and the expected yield of lean cuts in the carcass.

§ 54.133 Pork carcass classes.

The five classes of pork carcasses, comparable to the same five classes of slaughter hogs, are barrow, gilt, sow, stag, and boar carcasses. The official standards provide for the grading of barrow, gilt, and sow carcasses. Grades are not provided for stag and boar carcasses.

§ 54.134 Application of standards for grades of barrow and gilt carcasses.

(a) Grades for barrow and gilt carcasses are based on two general considerations: (1) Quality—which includes characteristics of the lean and fat, and (2) the expected yield of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

(b) Two general levels of quality are recognized: (1) Acceptable and (2) unacceptable. The quality of the lean is best evaluated by a direct observation of its characteristics in a cut surface, and when a cut surface of a major muscle is available, this shall be used as the basis for the quality determination. Quality of the lean is described in terms of characteristics of the loin eye muscle at the 10th rib. When this surface is not available, other exposed major muscle surfaces can be used for quality determinations based on the normal development of the characteristics in relation to those described for the loin eye muscle at the 10th rib. When a major muscle cut surface is not available, the quality of the lean shall be evaluated indirectly based on the quality-indicating characteristics that are evident in the carcass. These include firmness of the fat and lean, amount of feathering between the ribs, and color of the lean. The degree of external fatness, as such, is not considered in evaluating the quality of the lean. However, a pork carcass must have a belly with sufficient thickness to be suitable for bacon production to be considered acceptable in quality. Belly thickness is determined by an overall evaluation of its thickness, with primary consideration being given to the thickness along the navel edge and the thickness of the belly (flank) pocket.

(c) For barrow and gilt carcasses with the minimum acceptable lean quality, the cut surface of the loin eye muscle at the 10th rib will be slightly firm, have a slight amount of marbling, and be grayish pink to moderately dark red in color. For intact carcasses, minimum acceptable quality of lean is indicated by a slight amount of feathering, fat that is slightly firm, and lean that is slightly firm and grayish pink to moderately dark red in color. The belly is at least slightly thick with a minimum of 0.6 inches of thickness at any point. Barrow and gilt carcasses which meet or exceed these minimum quality requirements are eligible for one of the four numerical grades which reflect expected yields of four lean cuts. Barrow and gilt carcasses with unacceptable quality are graded U.S. Utility. Also graded U.S. Utility are carcasses which have soft and/or oily fat.

(d) Barrow and gilt carcasses which have indications of acceptable lean quality and acceptable belly thickness are placed in one of four grades, denoted by numbers 1 through 4. These grades are based entirely on the expected carcass yields of the four lean cuts, and no consideration is given to a development of quality superior to that

described as minimum for these grades. The expected yields of the four lean cuts for each of these four grades are shown in Table 1.

TABLE 1.—EXPECTED YIELDS OF THE FOUR LEAN CUTS, BY GRADE, BASED ON CHILLED CARCASS WEIGHT [1]

Grade	Yield
U.S. No. 1	60.4 percent and over.
U.S. No. 2	57.4 to 60.3 percent.
U.S. No. 3	54.4 to 57.3 percent.
U.S. No. 4	Less than 54.4 percent.

[1] These yields will be approximately 1 percent lower if based on hot carcass weight.

The yields shown in Table 1 are based on cutting and trimming methods used by the U.S. Department of Agriculture in developing the standards. (These cutting and trimming methods may be obtained from the Livestock Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.) Other cutting and trimming methods may result in different yields. For example, if more fat is left on the four lean cuts than prescribed in the USDA methods, the yield of each grade will be higher than indicated. However, such a method of trimming, if applied uniformly, should result in similar differences in yields between grades.

(e) The grade of a barrow or gilt carcass with acceptable lean quality and belly thickness is determined by considering two characteristics: (1) The backfat thickness over the last rib, and (2) the degree of muscling (thickness of muscling in relation to skeletal size).

(f) The amount of external fat on a barrow or gilt carcass is the major factor affecting the yield of lean cuts. As the amount of external fat increases, the yield of lean cuts decreases. An accurate evaluation of the amount of external fat may be made by measuring the backfat thickness at one or more points on the carcass. In grading barrow and gilt carcasses, the amount of external fat is considered by measuring the backfat thickness (including skin) over the last rib, perpendicular to the skin surface. The actual measurement, without adjustment, is used for the grade determination, except for carcasses from which the skin has been smoothly and evenly removed, which will have one-tenth inch added to the measurement to compensate for the loss of the skin. Carcasses which have had the skin removed in a rough, uneven manner, or which have had more than a slight amount of trimming to remove bruised or otherwise damaged parts, are ineligible for grading. The yield of four lean cuts from skinned carcasses will be higher than indicated in Table 1. Port carcasses with average fatness will usually have 1.1 to 1.2 inches of backfat over the last rib. Each one-tenth inch change in backfat thickness over the last rib changes the grade by 40 percent of a grade.

(g) The second factor considered in barrow and gilt carcass grading is the degree of muscling. The degree of muscling is determined by a subjective evaluation of the thickness of muscling in relation to skeletal size. Since the total thickness of a carcass is affected by both the amount of fat and the amount of muscle in relation to skeletal size, the fatness must also be considered when degree of muscling is evaluated. To best evaluate muscling, primary consideration is given to those parts least affected by fatness, such as the ham. In evaluating the ham for degree of muscling, consideration should be given to both the stifle and back views. The size of the lumbar lean area and the relative width through the back or loin and through the center of the ham are also good indications of muscling.

(h) In barrow and gilt carcass grading, three degrees of muscling—thick (superior), average, and thin (inferior)—are considered. In previous standards (33 FR 5081) six degrees of muscling (very thick, thick, moderately thick, slightly thin, thin, and very thin) were recognized. The current thick (superior) muscling includes only those carcasses previously classed as very thick. Current average muscling includes the previous thick and moderately thick degrees, and the current thin (inferior) muscling includes the previous slightly thin, thin, and very thin degrees. Carcasses with thick muscling and a low degree of fatness will be much thicker through the hams than through the loins and the loins will appear full and well-rounded. Thick muscled carcasses with a high degree of fatness will be slightly thicker through the hams than through the loins, will be nearly flat over the loins, and will have a slight break into the sides. Thick muscled carcasses will usually have a large lumbar lean area and greater than average depth of chine. Average muscled carcasses with a low degree of fatness will be thicker through the hams than through the loins, and the loins will appear slightly full and rounded. Carcasses with average muscling and a high degree of fatness will have about equal thickness through the hams and loins. Carcasses with thin muscling and a low degree of fatness usually are slightly thicker through the shoulders and the center of the hams than through the back and the loins will appear sloping and flat. Thin muscled carcasses with a high degree of fatness will be wider through the loins than through the hams and will have a distinct break from over the loins into the sides. Thin muscled carcasses will usually have a small lumbar lean area and less than average depth of chine.

(i) Barrow and gilt carcasses with average muscling will be graded according to their backfat thickness over the last rib. Carcasses with thin muscling will be graded one grade lower than indicated by the backfat thickness over the last rib. Carcasses with thick muscling will be graded one grade higher than indicated by their backfat thickness over the last rib except that carcasses with 1.75 inches or greater backfat thickness over the last rib must remain in the U.S. No. 4 grade.

(j) The official barrow and gilt carcass grade standards contain a mathematical equation for calculating the grade and a table for determining a preliminary grade based on the backfat thickness over the last rib. In determining the final grade all fractions are dropped, the grade is not rounded to the nearest whole number. Also, the individual grade specifications describe the various combinations of muscling and backfat thickness over the last rib which qualify for that grade.

§ 54.135 Specifications for Official United States Standards for grades of barrow and gilt carcasses.

(a) The grade of a barrow or gilt carcass is determined on the basis of the following equation: Carcass grade = (4.0 × backfat thickness over the last rib, inches) − (1.0 × muscling score). To apply this equation, muscling should be scored as follows: thin muscling = 1, average muscling = 2, and thick muscling = 3. Carcasses with thin muscling cannot grade U.S. No. 1. The grade may also be determined by calculating a preliminary grade according to the schedule shown in Table 2, and adjusting up or down one grade for thick or thin muscling, respectively.

TABLE 2.—PRELIMINARY CARCASS GRADE BASED ON BACKFAT THICKNESS OVER THE LAST RIB

Preliminary grade	Backfat thickness range
U.S. No. 1	Less than 1.00 inch.
U.S. No. 2	1.00 to 1.24 inches.
U.S. No. 3	1.25 to 1.49 inches.
U.S. No. 4	1.50 inches and over.[2]

[2] Carcasses with last rib backfat thickness of 1.75 inches or over cannot be graded U.S. No. 3, even with thick muscling.

(b) The following descriptions provide a guide to the characteristics of barrow and gilt carcasses in each grade.

(1) *U.S. No. 1.* (i) Barrow and gilt carcasses in this grade have an

acceptable quality of lean and belly thickness and a high expected yield (60.4 percent and over) of four lean cuts. U.S. No. 1 barrow and gilt carcasses must have less than average backfat thickness over the last rib with average muscling, or average backfat thickness over the last rib coupled with thick muscling.

(ii) Barrow and gilt carcasses with average muscling will be graded U.S. No. 1 if their backfat thickness over the last rib is less than 1.00 inch. Carcasses with thick muscling will be graded U.S. No. 1 if their backfat thickness over the last rib is less than 1.25 inches. Carcasses with thin muscling may not be graded U.S. No. 1.

(2) *U.S. No. 2.* (i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and an average expected yield (57.4 to 60.3 percent) of four lean cuts. Carcasses with average backfat thickness over the last rib and average muscling, less than average backfat thickness over the last rib and thin muscling, or greater than average backfat thickness over the last rib and thick muscling will qualify for this grade.

(ii) Barrow and gilt carcasses with average muscling will be graded U.S. No. 2 if their backfat thickness over the last rib is 1.00 to 1.24 inches. Carcasses with thick muscling will be graded U.S. No. 2 if their backfat thickness over the last rib is 1.25 to 1.49 inches. Carcasses with thin muscling must have less than 1.00 inch of backfat thickness over the last rib to be graded U.S. No. 2.

(3) *U.S. No. 3.* (i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and a slightly low expected yield (54.4 to 57.3 percent) of four lean cuts. Carcasses with average muscling and more than average backfat thickness over the last rib, thin muscling and average backfat thickness over the last rib, or thick muscling and much greater than average backfat thickness over the last rib will qualify for this grade.

(ii) Barrow and gilt carcasses with average muscling will be graded U.S. No. 3 if their backfat thickness over the last rib is 1.25 to 1.49 inches. Carcasses with thick muscling will be graded U.S. No. 3 if their backfat thickness over the last rib is 1.50 to 1.74 inches. Carcasses with 1.75 inches or greater backfat thickness over the last rib cannot grade U.S. No. 3. Carcasses with thin muscling will be graded U.S. No. 3 if their backfat thickness over the last rib is 1.00 to 1.24 inches.

(4) *U.S. No. 4.* (i) Barrow and gilt carcasses in this grade have an acceptable quality of lean and belly thickness and a low expected yield (less than 54.4 percent) of four lean cuts. Carcasses in the U.S. No. 4 grade always have more than average backfat thickness over the last rib, and thick, average, or thin muscling, depending on the degree to which the backfat thickness over the last rib exceeds the average.

(ii) Barrow and gilt carcasses with average muscling will be graded U.S. No. 4 if their backfat thickness over the last rib is 1.50 inches or greater. Carcasses with thick muscling will be graded U.S. No. 4 with backfat thickness over the last rib of 1.75 inches or greater, and those with thin muscling will be graded U.S. No. 4 with 1.25 inches or greater backfat thickness over the last rib.

(5) *U.S. Utility.* All carcasses with unacceptable quality of lean or belly thickness will be graded U.S. Utility, regardless of their degree of muscling or backfat thickness over the last rib. Also, all carcasses which have soft and/or oily fat will be graded U.S. Utility.

B. For the reasons set out above, the official U.S. standards for grades of slaughter barrows and gilts in 7 CFR Part 53 are revised as set forth below.

PART 53—LIVESTOCK (GRADING, CERTIFICATION, AND STANDARDS)

(1) The authority citation for Part 53 is as follows:

Authority: Sec. 203, 60 Stat. 1087, as amended; Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1622 and 1624).

(2) Sections 53.152 and 53.153 are revised to read as follows:

Subpart B—Standards

Swine

§ 53.152 Application of standards for grades of slaughter barrows and gilts.

(a) Grades of slaughter barrows and gilts are intended to be directly related to the grades of the carcasses they produce. To accomplish this, the slaughter barrow and gilt grades are predicated on the same two general considerations that provide the basis for the grades of barrow and gilt carcasses: quality—which includes characteristics of the lean and firmness of fat, and characteristics related to the combined carcass yields of the four lean cuts (ham, loin, picnic shoulder, and Boston butt).

(b) With respect to quality, two general levels are considered, one for barrows and gilts with characteristics which indicate that the carcass will have acceptable belly thickness and lean quality, and acceptable firmness of fat, and one for barrows and gilts with characteristics which indicate that the carcass will have unacceptable belly thickness, lean quality, and/or firmness of fat. The bellies of carcasses with acceptable quality are at least slightly thick overall and are not less than 0.6 inches thick at any point. Since carcass indices of lean quality are not directly evident in slaughter barrows and gilts, some other factors in which differences can be noted must be used to evaluate quality. Therefore, the amount and distribution of external finish and indications of firmness of fat and muscle are used as quality-indicating factors.

(c) Slaughter barrows and gilts with characteristics which indicate they will not have an acceptable belly thickness or quality of lean are graded U.S. Utility. Also graded U.S. Utility are slaughter barrows and gilts with indications that they will produce carcasses which will have oily or less than slightly firm fat.

(d) Four grades—U.S. No. 1, U.S. No. 2, U.S. No. 3, and U.S. No. 4 are provided for slaughter barrows and gilts with characteristics which indicate that their carcasses will have an acceptable level of lean quality and acceptable firmness of fat. These grades are based entirely on the combination of factors that predict the expected combined carcass yields of the four lean cuts—hams, loins, picnic shoulders, and Boston butts.

(e) The official grade for slaughter barrows and gilts having acceptable quality is determined by considering two characteristics: (1) The estimated backfat thickness over the last rib, and (2) the muscling score. Values for these factors are then used in a mathematical equation to arrive at the final grade.

(f) In evaluating barrows and gilts for fatness and muscling, variations in the degree of fatness have a greater effect on the yield of the lean cuts than do variations in muscling. The fatness and muscling evaluations can best be made simultaneously. This is accomplished by considering the development of the various parts based on an understanding of how the appearance of each part is affected by variations in muscling and fatness. While the muscling of most barrows and gilts develops uniformly, the fat is normally deposited at a considerably faster rate on some parts than on others. Therefore, muscling can be appraised best by giving primary consideration to the parts least affected by fatness, such as the hams. Differences in thickness and fullness of the hams—with appropriate adjustments for the effects of variations in fatness—are the best indicators of the overall degree of muscling. Conversely, the overall fatness can be determined best

by observing those parts on which fat is deposited at a faster than average rate. These include backfat, the edge of the loin, the rear flank, the shoulder, the jowl, and the belly. As barrows and gilts increased in fatness, these parts appear progressively fuller, thicker, and more distended in relation to the thickness and fullness of the other parts, especially the thickness through the hams.

(g) When grading live animals it is usually necessary to consider indications of fatness on all parts of the animal in order to most accurately estimate the backfat thickness over the last rib. As slaughter barrows and gilts increase in fatness, they also become deeper bodied because of deposits of fat in the flanks and along the underline. The fullness of the flanks, best observed when the animal walks, and the thickness and fullness of the jowl are other indications of fatness.

(h)(1) In slaughter barrow and gilt grading three degrees of muscling—thick (superior), average, and thin (inferior)—are considered. In previous standards (33 FR 9249) six degrees of muscling (very thick, thick, moderately thick, slightly thin, thin, and very thin) were recognized. The current thick (superior) muscling includes only the previous very thick degree of muscling. Current average muscling includes the previous thick and moderately thick degrees, and the current thin (inferior) muscling includes the previous slightly thin, thin, and very thin degrees.

(2) Slaughter barrows and gilts with thick muscling and a low degree of fatness will be much thicker through the hams than through the loins and the loins will appear full and well-rounded. Thick muscled animals with a high degree of fatness will be slightly thicker through the hams than through the loins, will be nearly flat over the back, and will have a slight break into the sides. Animals with average muscling and a low degree of fatness will be thicker through the hams than through the loins, and the loins, and the loins will appear slightly full and rounded. Animals with average muscling and a high degree of fatness will have about equal thickness through the hams and loins. Animals with thin muscling and a low degree of fatness usually are slightly thicker through the shoulders and the center of the hams than through the back and the loins will appear sloping and flat. Thin muscled animals with a high degree of fatness will be wider through the loins than through the hams and will have a distinct break from over the loins into the sides.

(3) Slaughter barrows and gilts with average muscling will be graded according to their estimated backfat thickness over the last rib. Animals with thin muscling will be graded one grade lower than indicated by the estimated backfat thickness over the last rib. Animals with thick muscling will be graded one grade higher than indicated by their estimated backfat thickness over the last rib, except that animals with an estimated 1.75 inches or greater last rib backfat thickness must remain in the U.S. No. 4 grade.

(i) The official grade standards contain a mathematical equation for calculating the grade and a table for determining a preliminary grade based on the estimated backfat thickness over the last rib. Also, the individual grade specifications describe the various combinations of muscling and last rib backfat thickness which qualify for that grade.

§ 53.153 Specifications for official United States standards for grades of slaughter barrows and gilts.

(a) The grade of a slaughter barrow or gilt with indications of acceptable quality is determined on the basis of the following equation: Grade = (4.0 X last rib backfat thickness, inches) − (1.0 X muscling score). To apply this equation, muscling should be scored as follows: thin (inferior) = 1, average = 2, and thick (superior) = 3. Animals with thin muscling cannot grade U.S. No. 1. The grade may also be determined by calculating a preliminary grade according to the schedule shown in Table 1 and adjusting up or down one grade for superior or inferior muscling, respectively.

TABLE 1.—PRELIMINARY GRADE BASED ON BACKFAT THICKNESS OVER THE LAST RIB

Preliminary grade	Backfat thickness range
U.S. No. 1	Less than 1.00 inch.
U.S. No. 2	1.00 to 1.24 inches.
U.S. No. 3	1.25 to 1.49 inches.
U.S. No. 4	1.50 inches and over.[1]

[1] Animals with an estimated last rib backfat thickness of 1.75 inches or over cannot be graded U.S. 3, even with thick muscling.

(b) The following descriptions provide a guide to the characteristics of slaughter barrows and gilts in each grade.

(1) *U.S. No. 1.* (i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a high expected yield (60.4 percent and over) of four lean cuts. U.S. No. 1 barrows and gilts must have less than average estimated backfat thickness over the last rib with average muscling, or average estimated backfat over the last rib coupled with thick muscling.

(ii) Barrows and gilts with average muscling may be graded U.S. No. 1 if their estimated backfat thickness over the last rib is less than 1.00 inch. Animals with thick muscling may be graded U.S. No. 1 if their estimated backfat thickness over the last rib is less than 1.25 inches. Barrows and gilts with thin muscling may not be graded U.S. No. 1.

(2) *U.S. No. 2.* (i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and an average expected yield (57.4 to 60.3 percent) of four lean cuts. Animals with average estimated backfat thickness over the last rib and average muscling, less than average estimated backfat thickness over the last rib and thin muscling, or greater than average estimated backfat thickness over the last rib and thick muscling will qualify for this grade.

(ii) Barrows and gilts with average muscling will be graded U.S. No. 2 if their estimated backfat thickness over the last rib is 1.00 to 1.24 inches. Barrows and gilts with thick muscling will be graded U.S. No. 2 if their estimated backfat thickness over the last rib is 1.25 to 1.49 inches. Barrows and gilts with thin muscling must have less than 1.00 inch of estimated backfat over the last rib to be graded U.S. No. 2.

(3) *U.S. No. 3.* (i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a slightly low expected yield (54.4 to 57.3 percent) of four lean cuts. Barrows and gilts with average muscling and more than average estimated backfat thickness over last rib, thin muscling and average estimated backfat thickness over the last rib, or thick muscling and much greater than average estimated backfat thickness over the last rib will qualify for this grade.

(ii) Barrows and gilts with average muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.25 to 1.49 inches. Barrows and gilts with thick muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.50 to 1.74 inches. Barrows and gilts with 1.75 inches or more of estimated backfat thickness over the last rib cannot grade U.S. No. 3. Barrows and gilts with thin muscling will be graded U.S. No. 3 if their estimated backfat thickness over the last rib is 1.00 to 1.24 inches.

(4) *U.S. No. 4.* (i) Barrows and gilts in this grade are expected to have an acceptable quality of lean and belly thickness and a low expected yield (less than 54.4 percent) of four lean cuts.

Barrows and gilts in the U.S. No. 4 grade always have more than average estimated backfat over the last rib and thick, average, or thin muscling, depending on the degree to which the estimated backfat thickness over the last rib exceeds the average.

(ii) Barrows and gilts with average muscling will be graded U.S. No. 4 if their estimated backfat thickness over the last rib is 1.50 inches or greater. Barrows and gilts with thick muscling will be graded U.S. No. 4 with estimated backfat thickness over the last rib of 1.75 inches or greater, and those with thin muscling will be graded U.S. No. 4 with 1.25 inches or greater estimated backfat over the last rib.

(5) *U.S. Utility.* All barrows and gilts with probable unacceptable quality of lean or belly thickness will be graded U.S. Utility, regardless of their muscling or estimated backfat thickness over the last rib. Also, all barrows and gilts which may produce soft and/or oily fat will be graded U.S. Utility.

Done at Washington, D.C. on December 10, 1984.

Eddie F. Kimbrell,

Acting Administrator.

[FR Doc. 84-32592 Filed 12-13-84; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 180

Plant Variety Protection Act: Increase of Certification Fee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes the Interim Final Rule published in the Federal Register (49 FR 8233) which amended the regulations under the Plant Variety Protection Act of 1970 (7 U.S.C. 2321 *et seq.*, "Act") to increase the fees for plant variety protection certification services to make the administration of the Act substantially self-supporting.

EFFECTIVE DATE: January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Evans, Commissioner, Plant Variety Protection Office, Livestock Division, AMS, National Agricultural Library Building, Room 500, Beltsville, Maryland 20705, telephone: (301) 344-2518.

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action has been reviewed under USDA procedures established to implement Executive Order 12291 and the Secretary's Memorandum 1512-1 and has been determined to be "nonmajor". It will not result in an annual effect on the economy of $100 million or more; a major increase in production costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*,) full consideration has been given to the potential economic impact upon small businesses. A number of breeders of novel varieties fall within the confines of "small business" as defined in the Regulatory Flexibility Act.

William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on these small entities because the fee adjustment reflects the costs incurred by the Department and is a relatively small cost in the total cost of the development and release of a new variety. It has been determined that the economic impact upon all entities, small and large, by the increased fee will not be significant and will not affect normal competition in the marketplace.

Background

The United States Plant Variety Protection Act of December 24, 1970, 84 Stat. 1542 (7 U.S.C. 2321 *et seq.*), authorizes the Secretary of Agriculture to provide plant variety protection to breeders of novel varieties of sexually-reproduced plants. It also provides for the assessment and collection of fees which make the administration of these services substantially self-supporting. The fee for service is established in accordance with salaries and fringe benefits of the examining staff, the cost of supervision, travel, and administrative costs of operating the program.

The cost of the administration of the program has increased since 1972 when the fees were initially set, and the fees were increased November 8, 1982, to more nearly reflect the cost of providing the service in order that the program remain financially stable, as required by law. The costs of the program have been more accurately evaluated and the fees are being adjusted accordingly.

Comments

On March 6, 1984, the Agricultural Marketing Service published in the Federal Register (49 FR 8233) an interim final rule adjusting the fees for plant variety protection certification services, effective the same date. The rule was published on an interim basis within a request for comments as a means of providing full public participation in the rulemaking process. This rule was implemented on an interim basis without a prior proposal because increased revenues were needed at the earliest date to cover increased costs of providing the service. Comments on this amendment were requested by May 7, 1984. During the 60-day comment period, the Agency received four letters in response to the interim final rule.

Discussion of Comments

The commentors' primary concerns were about the level of the fees. In particular, the commentors argued that overhead costs should not be considered in determining the level of the fee, and that the relationship of funding of the Plant Variety Protection Office between appropriated public funding and fee-supported funding should be more compatible to that of the U.S. Patent Office—fees should not reflect the full cost of the program. Concern was also expressed that: (1) Higher fees would discourage amateur breeders and breeding of important crops with small sales potential; (2) higher fees would inhibit the release of multiple varieties from a breeding program; (3) the support for full funding in the legislative history was for a user fee program and not for the budgetary program enacted and did not support funding administrative costs; (4) efficiency improvements should be completed before fees are increased; (5) library searching be eliminated in favor of relying on voluntary descriptions submitted by breeders on nonapplication varieties; and (6) a provision should be made to reduce search fees on similar varieties submitted at one time by the same applicant.

The United States Plan Variety Protection Act provides that the Secretary shall charge and collect reasonable fees for services performed under the Act. In the House Agricultural Hearings on June 10, 1970, several people testified in support of the proposed plant variety protection legislation (H.R. 13631). Congressman Kleppe in questioning witnesses indicated he expected the program to be essentially self-funding with the possible exception of some administrative costs in setting up the program. Thus, overhead costs of conducting the program must be included in determining the costs and

fees necessary to fund the program. The fees for plant variety protection certificates are higher than those for plant patents, but this is due in part to the expenses of the search which must be conducted by the Plant Variety Protection Office to determine whether a sexually reproducing plant is indeed novel. No comparable search is conducted by the Patent Office. Also, the Patent Office requires maintenance fees, which substantially increase the cost of a patent in the long run.

There has been no decline in applications by apparent amateur breeders since the fee was increased to $1,500 on November 8, 1982. The frequency of application on varieties of crops with small sales potential has not decreased as measured by the rate of applications received for previously unprotected kinds or species.

The $500 per variety fee increase for certificates of protection would be a very small portion of the cost of developing and marketing new varieties from a large breeding program and would not likely be a consideration in the decision to release multiple varieties.

There is no authority under the Act to fund plant variety certification services through user fees which were mentioned by one commentor. But the record does not show that full funding support was only meant to apply to a user fee program.

The office has begun implementing many measures to improve efficiency. They have not all been implemented completely; however, they have been sufficiently implemented to estimate the cost of operating with the known efficiency improvements. Second and third generation improvements may be possible; however, this is not sufficient reason to delay a fee increase.

There were comments with regard to eliminating the library searches and for reducing search fees for similar varieties submitted at one time by the same applicant.

Section 42(a)(1) of the Plant Variety Protection Act lists as a bar against certification: "(1) Before the date of determination thereof by the breeder, or more than one year before the effective filing date of the application therefor, the variety was (A) a public variety in this country, or (B) effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country which description must include a disclosure of the principal characteristics by which the variety is distinguished." Under the above section of the law, previous publication and release of a variety are important elements in issuing a certificate. These can only be ascertained by reviewing technical publications.

For an examiner to search or examine an application requires the examiner to be knowledgeable in the crop to have the crop computer files up to date. This requires the examiner to keep up to date on recently released varieties and new descriptive characters useful in describing varieties. It also requires the examiner to code and add variety descriptive information to the computer descriptive file. This portion of the examiner's search time is not distributable to individual applications on time use attributable to individual applications. The time involved in searching an application which is directly attributable to an individual application could be relatively small, but required recordkeeping could offset much of the savings which may accrue to an individual applicant. For the above reasons no provision is being made to reduce the search fee for similar varieties submitted by an individual applicant.

It appears that the increased fees have not had an adverse impact on applicants. The Plant Variety Protection Office is continuing to review the fee schedule in order to keep fees at the minimum necessary to substantially recover costs. The present fees are not in excess of costs.

Pursuant to the authority in 5 U.S.C. 553 it is found that further public procedure and notice with respect to this amendment are unnecessary and good cause is found for making this amendment effective as a final rule without change because the amendment is presently in effect as an interim final rule.

List of Subjects in 7 CFR Part 180

Plant Variety Protection Act, Administrative practices and procedures, Fees

PART 180—[AMENDED]

Accordingly, the Department amends Part 180 Code of Federal Regulations as follows:

§ 180.1 [Amended]

Section 180.1 is amended by revising paragraph (a)(17) to read as follows:

(a) * * *

(17) "Office" or "Plant Variety Protection Office" means the Plant Variety Protection Office, Livestock Division, AMS, USDA.

§ 180.5 [Amended]

Section 180.5 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) Application and exhibit forms shall be issued by the Commissioner. [Copies of the forms may be obtained from the Plant Variety Protection Office, Livestock Division, AMS, USDA, Room 500, National Agricultural Library Building, Beltsville, Maryland 20705.]

* * * * *

§ 180.175 [Amended]

Section 180.175 is amended by revising paragraphs (a), (b), (c), (d), (g), (i), (j) and (m), to read as follows:

* * * * *

(a) Filing application and notifying public of filing	$200
(b) Search or examination	1,600
(c) Allowance and issuance of certificate and notifying public of issuance	200
(d) Revive an abandoned application	200
* * * * *	
(g) Correcting or reissuance of a certificate	200
* * * * *	
(i) Copies of 8 × 10 photographs in color	25
(j) Additional fee for reconsideration	200
* * * * *	
(m) Appeal to Secretary (refundable if appeal overturns Commissioner's decision)	2,000

* * * * *

(7 U.S.C. 2326, 2371, 2372)

Done at Washington, D.C., December 11, 1984.

Eddie F. Kimbrell,

Acting Administrator.

[FR Doc. 84-32657 Filed 12-13-84; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 247]

Food Stamp Program; Disclosure of Information and Noncompliance With Other Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking contains final regulations for the Food Stamp Program to implement certain provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and

the Omnibus Budget Reconciliation Act of 1982 relating to the disclosure of information and noncompliance with other programs. The rulemaking provides for disclosure of casefile information to the Comptroller General, law enforcement officials, and persons responsible for administering other Federal assistance programs and federally assisted State assistance programs. In addition, this rulemaking prohibits State agencies from increasing the benefits to households which have decreased income resulting from penalties imposed for intentional failure to comply with the requirements of another means-tested program. These changes provide those persons responsible for administering or enforcing the requirements of the Food Stamp Program and other means-tested programs additional mechanisms for detecting recipients who have incorrectly reported their household's circumstances and taking appropriate action to ensure program integrity.

DATES: This rule is effective January 14, 1985. State agencies must implement the provisions relative to noncompliance with other programs no later than April 1, 1985. The provisions relative to disclosure of information must be implemented no later than February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this final rule will not affect the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the rule will not have a significant impact on a substantial number of small entities. The rule will implement those provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and the Omnibus Budget Reconciliation Act of 1982 relating to the disclosure of information and noncompliance with other programs. State and local welfare agencies will be affected to the extent that they administer the Program. Those most affected will be individuals participating in the program who are suspected of having provided incorrect information to obtain benefits under another means-tested program or who have experienced decreases in income as a result of penalties imposed under other such means-tested programs.

Paperwork Reduction Act

This regulation does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Department, on April 19, 1983, at 48 FR 16834, issued proposed regulations, based on provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and the Omnibus Budget Reconciliation Act of 1982 relating to the disclosure of information and a provision of the Omnibus Budget Reconciliation Act of 1982 relating to noncompliance with other programs.

The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97–98, enacted on December 22, 1981) contained a provision (Section 1319) which states that State agencies shall provide for access to applicant and recipient records by the Comptroller General of the United States for audit and examination purposes, and by local, State or Federal law enforcement officials for the purpose of investigating possible violations of the Food Stamp Act and regulations. This rulemaking incorporates this provision of the Food Stamp and Commodity Distribution Amendments of 1981 into the federal regulations.

The Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253, enacted on September 8, 1982) contained a provision (Section 169) stating that State agencies shall provide for access to information included in food stamp applications by administrators of other Federal assistance programs and federally assisted State assistance programs. This rule also incorporates into federal regulations this provision of Pub. L. 97–253.

In addition, Pub. L. 97–253 contained a provision (Section 164) which prohibits any increase in food stamp benefits to households on which penalties, resulting in decreases in income, have been imposed for *intentional failure to comply* with Federal, State or local welfare laws. This provision of Pub. L. 97–253 is also implemented through this rulemaking, thereby ensuring that the Food Stamp Program does not mitigate the penalties imposed by other programs in which food stamp recipients also participate.

A total of 20 commenters sent in comments and suggestions on the proposed rulemaking. These comments will be discussed in more detail later in this preamble. A complete explanation of the rationale and purposes for this rule was provided in the preamble to the proposed rulemaking. This preamble repeats some of this explanation and addresses areas receiving significant comments on the proposed rulemaking. For a full discussion of the background of this rule the reader should refer to the preamble of the proposed rules (48 FR 16834).

Disclosure of Information

Current Food Stamp Program regulations limit the use of disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the Food Stamp Act or regulations, the Food Distribution Program, other federally aided, means-tested assistance programs such as Aid to Families with Dependent Children (AFDC), Medicaid, Supplemental Security Income (SSI), and General Assistance (GA) programs subject to the joint processing requirements. The regulations also permit the sharing of Food Stamp Program participation lists with the Food Distribution Program.

The proposed rule published on April 19, 1983, deleted from the regulation the reference to specific programs and inserted broader statutory language. The proposed rule also added language to the current regulations to clarify the access authority of the Comptroller General and local, State and Federal law enforcement officials. Local, State and Federal law enforcement officials having access authority under this

provision are those who are conducting investigations of alleged Program violations. (See 7 CFR 272.1(c).)

This section of the proposed rule received 14 comments. The majority of the commenters supported the rule. However, some commenters suggested a clarification and/or change in the language relative to who could access food stamp information. One commenter believed the rules should specify that food stamp casefile information may be disclosed to persons directly connected with the administration or enforcement of the State's Title IV-D (Parent Locator Service for Child Support Enforcement) Program. Similar questions have been raised about access to food stamp casefiles by State unemployment agencies. The proposed rule provided for disclosure of food stamp casefile information to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, or federally assisted State programs. The rule further identified such programs as means-tested programs. Examples of means-tested programs include AFDC, Medicaid and SSI.

Since the proposed rulemaking was published, the Deficit Reduction Act of 1984 (Pub. L. 98-369), which authorizes the release of food stamp casefile information to both the Parent Locator Service (PLS) and Unemployment Compensation (UC), has been enacted. Due to the fact that the Deficit Reduction Act will allow the release of food stamp casefile information to both PLS and UC effective April 1, 1985, we are not making changes in this rule. The authority of the Deficit Reduction Act will be exercised in a separate rulemaking.

One commenter suggested that the rule be expanded to provide examples of law enforcement officials who would have routine access to food stamp casefile information. The proposed rule clearly defined law enforcement officials as local, State and Federal law enforcement officials investigating an alleged violation of the Food Stamp Act or regulations. The Department feels that this is sufficient and has made no change to the final rule. The Department believes that State agencies are in a better position to identify which specific law enforcement officials should appropriately have access to food stamp casefiles. We are, therefore, suggesting that State agencies may want to provide individual offices with a list of potential users.

Several commenters stated that the rule offered the opportunity for law enforcement officials to access food stamp casefiles for non-food stamp related investigations and suggested that it would be prudent to allow State agencies to require reasonable proof of the reason for the request. These commenters also suggested that the rule should stipulate what, if any, conditions would be placed upon the release of information. The 1981 Amendments stated that State agencies shall provide for access to applicant information by law enforcement officials for the purpose of investigating possible violations of the Food Stamp Act and regulations. It is the State agency's responsibility to insure that the information is not released to officials for any reason other than for the administration of the Food Stamp Program and the enforcement of its rules. To help State agencies ensure that the disclosure provisions are not abused, we have added a requirement to section 272.1(c)(1)(iii) of the final rule that a request for information be made in writing. The written request should be sufficiently detailed so that State agencies will be assured of the right of access to the information by the requesting individual. For example, the request should clearly identify the requester as having authority to investigate the violation, the nature of the violation and its connection with food stamp enforcement, and the identity of the individual on whom the information is being requested.

Another commenter said the final rule should contain penalties for the unauthorized release of food stamp casefile information. We do not have the authority to establish additional penalties under this rule. However, State agencies are required to establish safeguards for protecting against the release of information to unauthorized sources. We will monitor the release of information through the Management Evaluation System to determine if State Agencies are releasing food stamp casefile information inappropriately. Systematic abuses may be subject to sanctioning under section 276.4 of the current regulations.

Noncompliance with Other Programs

Current Food Stamp Program regulations in § 273.9(b)(5) state, in part, that income shall not include moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned to repay a prior overpayment received from that income source, provided that the overpayment is not excluded under § 273.9(c) of the regulations. As a result, when a welfare program recoups an overpayment from a food stamp recipient household by imposing a reduction in cash benefits, food stamp benefits increase because the household has less countable income. Section 164 of the 1982 Food Stamp Amendments states that a household against which a penalty has been imposed for an intentional failure to comply with a Federal, State, or local law relating to welfare or a public assistance program may not, for the duration of the penalty, receive an increased allotment as the result of a decrease in the household's income to the extent that the decrease is the result of such penalty. The proposed rule published on April 19, 1983, reflected section 164 of the 1982 Food Stamp Amendments by requiring that each State agency take appropriate action to ensure that food stamp benefits do not increase as a result of such a reduction.

This section of the proposed regulations received fifteen comments. Six of these comments concerned defining "intentional failure to comply." These commenters stated that intent is difficult to define. Without adequate federal guidelines, these commenters felt that this policy may be applied inconsisently among State agencies due to varying interpretations.

As the Department stated in the proposed rule, it does not want to further define intentional failure to comply beyond the language in the statute. When another program (e.g., the Aid to Families with Dependent Children program (AFDC)) has determined that a recipient action is due to fraud (e.g., intentional failure to report income), the Food Stamp Program will accept that determination and consequently not increase the food stamp benefit. We cannot change another program's definition. When another program imposes a penalty, it is that program's responsibility to define intentional failure to comply. The purpose of the law is to reinforce another program's penalty.

A few commenters also wanted to define "penalty". The Department defines "penalty" as a portion of a payment which is being used to pay back benefits overissued as a result of the household's intentional violation. For example, a household may have intentionally withheld a source of income causing an AFDC overpayment. After discovery, the AFDC grant may be reduced both to reflect the additional income and to repay the overpayment. In this situation, the latter reduction would be identified as the penalty for the purposes of this rule.

The proposed rule required that each State agency take appropriate action to

ensure that food stamp benefits do not increase as a result of a noncompliance penalty. One commenter stated that the State agency has no way of knowing whether a reduction in a means-tested program is for intentional violation or for some other reason, such as, inadvertent error or a misunderstanding. For example, AFDC rules do not require that a State agency identify that a reduction is due to an intentional violation. While the Department recognizes this problem, it cannot impose such a requirement for other programs. However, to increase the effectiveness of this provision, the Department encourages State agencies to develop the capability to determine if a benefit is reduced because of a household's intentional noncompliance. State agencies should be able to share AFDC information with food stamp workers (information affecting benefit levels reported to the AFDC program is considered to have been reported to the Food Stamp Program). State agencies may have to strengthen their mechanisms for communicating between AFDC and food stamp workers to identify if a reduction is due to intentional noncompliance.

Other commenters stated that the proposed rulemaking should apply to all programs (such as Social Security, Railroad retirement, etc.), not just means-tested programs. These commenters felt that "welfare" recipients on food stamps will be subjected to more stringent treatment than all other food stamp recipients.

The Department disagrees and again reiterates what is stated in the preamble to the proposed rule concerning "Federal, State or local welfare programs." The Department considers Federal, State or local welfare programs to be any that are means-tested and in which public funds are used to pay for benefits. The Department does not believe that the statute provides that application of this provision be intended for programs that are not means-tested.

Two other commenters felt that the final rule should provide for a notice of adverse action (NOAA) to recipients whose food stamp coupon allotments do not increase due to a reduction in means-tested program income. These commenters believed that the failure to increase the coupon allotment in these instances is in effect an adverse action since it results in a reduction of a household's overall benefits. The Department disagrees as the coupon allotment is actually not reduced. For example, if a household's AFDC benefit is reduced as a result of a penalty for fraud, since the Act prohibits State agencies from increasing the household's food stamp benefit, a change in the food stamp benefit does not occur. Therefore, since there is not any action taken to *reduce* a household's benefit, the Department has not added to the final rules a requirement that the State agency provide the household with an NOAA in such a situation.

In the proposed rule the Department would have implemented the noncompliance provision by adding a new paragraph (vii) (mistakenly cited as paragraph (vi) in the proposed rule) to § 273.10(e)(2). After reexamining this the Department has decided that it is more appropriate to revise § 273.9(b)(5)(i) and the final rule no longer contains a reference to § 273.10(e)(2)(vii). Section 273.9(b)(5)(i) states, in part, that income shall not include moneys withheld from an assistance payment. This final rule revises § 273.9(b)(5)(i) to ensure that moneys withheld from an assistance payment to repay an overissuance caused by a household's intentional failure to comply with another program's requirements shall be counted as income.

Implementation

The April 19, 1983, rules proposed that State agencies would begin implementing the portions of this rule regarding the disclosure of information and regarding noncompliance with other programs no later than the first day of the month 30 days following publication of the final rule. Several commenters felt that the 30 day implementation timeframe was too short, especially for the noncompliance with other programs provision. Commenters gave several reasons: a delay of a week or ten days in getting the final rule after publication, State agencies with automated systems needing more than 30 days to reprogram their computers and the need for more time to revise, print and distribute handbook material. Implementation timeframes of up to 120 days were suggested.

After reviewing the comments, the Department decided to require State agencies to implement these two provisions on different time schedules. The provisions relating to disclosure of information must be implemented no later than the first day of the month 30 days following publication of the final rule in the **Federal Register.** The Department feels that 30 days is sufficient time as there are no changes in policy or certification and this provision will not have an impact on State agency workload or paperwork.

The noncompliance provision must be implemented no later than the first day of the month 90 days following publication of the final rule in the **Federal Register.** The Department feels that this will allow State agencies adequate time for implementation. There is still no requirement that a casefile search be done.

State agencies will apply this provision on a case-by-case basis as the situation arises. However a State agency may perform a casefile search if it wishes. If, during a casefile search the State agency finds a case with a noncompliance violation and the food stamp benefits have been increased, the certification staff would have to apply this rule and reduce food stamp benefits for the remainder of the penalty period. In this case a Notice of Adverse Action would of course be sent to the client explaining the action.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, paragraph (c)(1) is revised and paragraph (62), previously reserved, is added to paragraph (g). The revisions and additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to the following persons:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, or federally assisted State programs which provide assistance, on a means-tested basis, to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit examination authorized by any other provision of law; and

(iii) Local, State or Federal law enforcement officials, upon their written

request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations. The written request shall include the identity of the individual requesting the information, and his authority to do so, the violation being investigated and the identity of the person on whom the information is requested.

* * * * *

(g) *Implementation.* * * *

(62) *Amendment 247.* State agencies must implement the provisions relative to noncompliance with other programs no later than April 1, 1985. The provisions relative to disclosure of information must be implemented no later than February 1, 1985.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.9, a sentence is added to the end of paragraph (b)(5)(i) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definitions of income.* * * *

(5) * * *

(i) * * * However, moneys withheld from assistance from another program, as specified in § 273.11(j), for purposes of recouping from a household an overpayment which resulted from the household's intentional failure to comply with the other program's requirements shall be included as income.

* * * * *

3. In § 273.11, a new paragraph (j) is added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(j) *Households with a decrease in income due to intentional failure to comply.* The State agency shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure a comply with a Federal, State, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefit under a Federal, State, or local means-tested program (such as but not limited to SSI, AFDC, GA) is decreased due to intentional noncompliance, the State agency shall identify that portion of the decrease which is a penalty. The penalty shall be that portion of the decrease attributed to the repayment of benefits overissued as a result of the household's intentional violation.

(2) The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: December 10, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 84–32567 Filed 12–13–84; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 330

[Docket No. 84–304]

Imported Fire Ant; Soil

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document establishes as final the provisions of an interim rule which amended the "Imported Fire Ant" quarantine and regulations by quarantining the Commonwealth of Puerto Rico and by adding all of Puerto Rico to the list of regulated areas. The interim rule also added footnotes to the "Imported Fire Ant" quarantine and regulations and the "Movement of Soil, Stone, and Quarry Products" regulations to explain that both sets of regulations restrict certain movements of soil from Puerto Rico. This action is necessary to prevent the artificial spread of the imported fire ant (*Solenopsis* spp.) and to avoid confusion between the provisions in the "Imported Fire Ant" quarantine and regulations and the "Movement of Soil, Stone, and Quarry Products" regulations.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Charles Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

The Department published an interim rule in the **Federal Register** on August 19, 1982 (47 FR 36101–36103), which amended the "Imported Fire Ant" quarantine and regulations (7 CFR 301.81 *et seq.*) on an emergency basis under the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*). The interim rule quarantined Puerto Rico because of the imported fire ant (*Solenopsis* spp.) and added all of Puerto Rico to the list of regulated areas by designating it as a "generally infested area". In addition, the interim rule added footnotes to the "Imported Fire Ant" quarantine and regulations and to the "Movement of Soil, Stone, and Quarry Products" regulations (7 CFR 300 *et seq.*) to explain that both sets of regulations restrict certain movements of soil from Puerto Rico.

In addition to the interim rule, a companion document published as a proposed rule in the **Federal Register** on August 19, 1982 (47 FR 36213), proposed to establish the provisions of the interim rule as a final rule, pursuant to authority under the Plant Quarantine Act, as amended (7 U.S.C. 151 *et seq.*) and the Federal Plant Pest Act, as amended. The two documents of August 19, 1982, invited the submission of written comments on or before October 19, 1982, and announced that a public hearing would be held on September 21, 1982, in Hato Rey, Puerto Rico.

Comments Received at a Public Hearing

No written comments were received. However, at the public hearing held in Hato Rey, Puerto Rico on September 21, 1982, several persons presented comments. One commenter representing the Puerto Rico Department of Agriculture asserted that the quarantine and regulations are unnecessary because the imported fire ant is not found in areas in Puerto Rico where it could be transported to the mainland. Further, he asserted that existing regulations govern the movement of articles likely to spread the imported fire ant; that certain regulated articles, such as straw, hay, and used soil moving equipment, are not shipped from Puerto Rico interstate; and that the Government of Puerto Rico intends to implement its own regulatory program to reduce areas of known infestation.

No changes are made in the final rule based on this comment. The Department has determined that the quarantine and regulations are necessary after evaluating the criteria for designating an area as a regulated area in § 301.81–2(a). Specifically, the imported fire ant has been found in different areas of Puerto Rico. Further, Puerto Rico has not adopted and is not enforcing a quarantine and regulations which impose restrictions intended to prevent

the intrastate movement of articles likely to spread the imported fire ant. Also, because Puerto Rico is relatively small in size and because the imported fire ant can be easily spread naturally or by artificial means, the Department concluded that it was necessary to designate the entire island as a generally infested area in order to prevent the spread of the imported fire ant interstate. Second, although 7 CFR 318.30, 318.58, and 318.60 regulate the interstate movement of certain articles, such as sweetpotatoes and other vegetables or fruits, soil and sand, which may also cause the spread of imported fire ant, the Department has determined that these regulations are not sufficient by themselves to protect against the artificial spread of the imported fire ant because they are intended and designed to prevent the artificial spread interstate of other injurious plant pests or diseases other than imported fire ant. Third, although currently there may be little or no interstate movement of articles, such as straw, hay, and used soil moving equipment, this does not remove the likelihood that such articles could be moved interstate. Since such articles present a significant risk of spreading the imported fire ant, they are designated as a regulated article. Finally, the assertion that the Government of Puerto Rico intends to put into effect a plan to control the spread of the imported fire ant by reducing areas of known infestation is not relevant to the determination to impose a quarantine and regulations on Puerto Rico for the interstate movement of the imported fire ant. This is because the federally imposed quarantine and regulations are intended to prevent the interstate spread of the imported fire ant, whereas action taken by Puerto Rico to reduce areas of known infestation would only affect the intrastate spread of the imported fire ant.

Another commenter asserted that it was unnecessary to designate ornamental plants as regulated articles because such plants are not shipped in soil. Rather, new peat moss is used as the growing media.

No changes are made based on this comment. The regulations designate as regulated articles only plants with roots with soil attached, except houseplants grown in the home and not for sale. Further, § 301.81–2b(d) specifically exempts from the regulations transplants that are substantially free of soil. Thus, ornamental plants shipped without soil or in peat moss (which does not fall within the definition of soil found in § 301.81–1(s)) are not subject to the quarantine and regulations.

The factual situation set forth in the document of August 19, 1982, has not changed. Therefore, based on the reasons set forth in that document, and for the reasons discussed herein, the provisions of the interim rule (the provisions of the proposed rule are identical to the interim rule) have been adopted in the final rule without change.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will 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.

The rule establishes restrictions on the interstate movement from Puerto Rico of certain regulated articles. Based on information compiled by the Department, it appears that there is little interstate movement of such regulated articles from Puerto Rico.

Alternatives were considered in connection with the rule. Consideration was given concerning whether: (1) To allow the unrestricted interstate movement from Puerto Rico of such regulated articles, or (2) to establish a Federal quarantine for Puerto Rico and impose restrictions on the interstate movement from Puerto Rico of such articles. Alternative (2) was chosen because it appears that without a Federal quarantine and implementing regulations the unrestricted interstate movement of such articles could cause the spread of the imported fire ant. Further, it appears that there is no feasible alternative to consider regarding the requirement that agencies choose the alternative that maximizes net benefits to society at the lowest net cost.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of certain regulated articles from Puerto Rico. There are thousands of small entities that move such articles interestate from other States. However, based on information compiled by the Department, it has been determined that there is little movement of such articles interstate from Puerto Rico. Further, it has been determined that the rule will not have a significant effect on the economy.

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Imported Fire Ant.

7 CFR Part 330

Customs Duties and Inspection, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Garbage, Soil, Stone and quarry products.

Accordingly, the amendments to "Subpart—Imported Fire Ant" (7 CFR 301.81 through 301.81–10) and "Subpart—Movement of Soil, Stone, Quarry Products" (7 CFR 330.300 through 330.301) published as an interim rule on August 19, 1982 (47 FR 36101) are adopted as final rules without change.

(Secs. 8 and 9, 37 Stat. 318 as amended (7 U.S.C. 161, 162); 105, 106, 71 Stat. 32, 33 (7 U.S.C. 150dd, 150ee); 7 CFR 2.17, 2.51, 371.2(c))

Done at Washington, D.C., this 10th day of December 1984.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84–32530 Filed 12–13–84; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 494]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 250,000 cartons during the period December 16–22, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period December 16–22, 1984.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on December 11, 1984, at Redlands, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.794 is added as follows:

§ 910.794 Lemon Regulation 494.

The quantity of lemons grown in California and Arizona which may be handled during the period December 16, 1984, through December 22, 1984, is established at 250,000 cartons.

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

Dated: December 12, 1984.

Thomas R. Clark,

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

[FR Doc. 84–32748 Filed 12–13–84; 8:45 am]

BILLING CODE 3410–02–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

Standard for the Flammability of Clothing Textiles; Revocation of Definition

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission issues a final rule to revoke 16 CFR 1610.31(k), defining the term "initial test" for purposes of administrative and enforcement rules implementing the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). The Commission is revoking the rule defining "initial test" because that term is no longer used in the administrative and enforcement rules as a result of a recent amendment of Part 1610.

EFFECTIVE: This revocation will become effective on January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492–6400.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Consumer Product Safety Commission issues a final amendment of 16 CFR 1610.37, which prescribes requirements for testing to support guaranties of products, fabrics, and related materials subject to the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610). The notice issuing the final amendment discusses issues raised by written comments on the Commission's proposal to amend the rule, and the Commission's resolution of those issues.

The notice proposing the amendment of 16 CFR 1610.37 was published in the **Federal Register** of August 12, 1982 (47 FR 35006). In that notice, the Commission observed that if the proposed amendment of § 1610.37 is issued on a final basis, the term "initial test," as defined in § 1610.31(k) will no longer be used in the enforcement rules implementing the clothing textiles flammability standard. For that reason, in the notice of August 12, 1982, the Commission also proposed to revoke § 1610.31(k), defining the term "initial test."

The amendment of § 1610.37 has been issued on a final basis. For that reason, the Commission is publishing this notice to revoke § 1610.31(k).

List of Subjects in 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Textiles, Warranties, Records.

Therefore, in accordance with provisions of the Flammable Fabrics Act (sec. 5, Pub. L. 90–189, 81 Stat. 569 (15 U.S.C. 1194)) and the Consumer Product Safety Act (sec. 30, Pub. L. 92–573, 86 Stat. 1231 (15 U.S.C. 2079)), the Commission hereby amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

§ 1610.31 [Amended]

Part 1610, Subpart B is amended by revoking, removing, and reserving § 1610.31(k).

(Sec. 5, Pub. L. 90–189, 81 Stat. 569, 15 U.S.C. 1194; sec. 30, Pub. L. 92–573, 86 Stat. 1231, 15 U.S.C. 2079)

Dated: December 7, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84–32479 Filed 12–13–84; 8:45 am]

BILLING CODE 6355–01–M

16 CFR Part 1610

Standard for the Flammability of Clothing Textiles; Requirements for Testing and Recordkeeping To Support Guaranties

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

SUMMARY: The Commission issues final amendments of regulations which prescribe requirements for testing to support guaranties of products, fabrics, and related materials subject to the Standard for the Flammability of

Clothing Textiles.[1] These amendments provide that each person or firm issuing guaranties of items subject to the standard shall devise and implement a program of reasonable and representative tests to support those guaranties, but do not prescribe any specific requirements for the number or frequency of tests. The Commission is issuing these amendments because it concludes that existing requirements for testing to support guaranties of items subject to the Standard can be made less burdensome to the regulated industry without diminishing the level of safety afforded to the public. The Commission also withdraws a proposal to reduce the period required for retention of records of testing to support guaranties from three years to one year. Although enforcement of the Standard would not be hindered by that proposal, the Commission acknowledges that such a change could increase the difficulty of enforcing requirements applicable to issuance of guaranties of items subject to the Standard, and would provide little if any reduction in burden to persons and firms issuing those guaranties.

EFFECTIVE DATE: The amendments will become effective on January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6400.

SUPPLEMENTARY INFORMATION: The Standard for the Flammability of Clothing Textiles (the Standard, 16 CFR Part 1610) and the Flammable Fabrics Act (FFA, 15 U.S.C. 1191 *et seq.*) requires that articles of wearing apparel and fabrics used or intended for use as clothing textiles must not exhibit "rapid and intense burning" when tested in accordance with the Standard.

The manufacture for sale, importation into the United States, or introduction in commerce of any item of wearing apparel or fabric which is subject to the Standard and which exhibits "rapid and intense burning" when tested in accordance with the Standard violates section 3 of the FFA (15 U.S.C. 1192) and section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Such a violation may give rise to an administrative order to cease and desist from further violation of the FFA and the FTCA, as well as to a civil action in a United States District Court under provisions of the FFA for injunction or seizure of items which fail to comply with an applicable standard of flammability.

In addition to seeking an administrative order, or initiating civil actions for violation of the Standard, the FFA, and the FTCA, the Commission may also proceed under section 7 of the FFA (15 U.S.C. 1196) to seek criminal penalties against any person who "willfully" violates the FFA.

Section 8(a) of the FFA (15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the FFA. A guaranty does not provide the holder any defense to an administrative action for an order to cease and desist from further violation of the applicable standard, the FFA, and the FTCA; nor to any civil action for injunction or seizure brought under the FFA.

Requirements for Guaranties

Section 8 of the FFA provides for two types of guaranties. The first is an initial guaranty, which must be based on "reasonable and representative tests" made in accordance with the applicable standard of flammability issued under the FFA. The second is a guaranty based on a guaranty, received in good faith, to the effect that reasonable and representative tests made in accordance with the applicable standard show conformance with that Standard.

Requirements for the types and amounts of testing deemed to be "reasonable and representative" for purposes of supporting initial guaranties of items subject to the Standard appear in regulations implementing the Standard at § 1610.37. Requirements for maintenance of records of testing to support guaranties appear at § 1610.38.

Section 8(b) of the FFA (15 U.S.C. 1197(b)) prohibits the issuance of a false guaranty.

Review of Standard

Although the FFA and the Standard do not require any person or firm to issue guaranties, information available to the Commission indicates that approximately 1,000 firms conduct testing each year to support initial guaranties of items subject to the Standard. That information also indicates that on the average, each of these firms conducts approximately 100 tests, for an industry total of about 100,000 tests each year. (1,7)[2]

During fiscal year 1982, the Commission staff reviewed the Standard and implementing regulations to determine if any burden which they may impose on the textiles industry could be eliminated or reduced, without decreasing the level of safety available to consumers. Among the alternatives considered by the staff were the following:

1. Revocation of the Standard and implementing regulations.
2. Simplification of the test procedures in the Standard.
3. Revision of the regulations implementing the Standard which prescribe the frequency of testing required to support guaranties.
4. Revision of the regulations implementing the Standard which prescribe requirements for maintenance of records of testing to support guaranties.

The staff prepared a memorandum describing its review of the Standard and implementing regulations and setting forth recommendations for revisions of the implementing regulations intended to reduce the burden imposed by the Standard on the regulated industry without diminishing the level of safety afforded to consumers. (1)

Staff Recommendations

The staff recommended against revocation of the Standard after concluding that the Standard is still needed to protect the public from risks of injury and death which might otherwise result from garments made from fabrics which are dangerously flammable because of rapid and intense burning. (1, 4, 5, 6)

With regard to the possibility of simplifying the test procedures in the Standard, the staff observed that issuance of an administrative rule to allow use of alternate apparatus and procedures for testing to support guaranties of fabrics and garments subject to the Standard could result in a significant reduction of the burden then imposed on the textile industry by the Standard and implementing regulations. (1, 8) In the **Federal Register** of May 17, 1982 (47 FR 21081), the Commission proposed a rule to allow persons and firms performing testing to support guaranties to use apparatus and procedures other than the ones specified in the Standard, provided that the apparatus or procedure is as stringent

[1] Vice-Chairman Saundra Brown Armstrong dissented on the basis of her vote against issuance of the amendment of 16 CFR 1610.37(c) published in this notice.

[2] Numbers in parentheses identify reference documents listed in the Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., 8th Floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492–6800.

as, or more stringent than, the apparatus and procedure prescribed by the Standard. That rule was issued on a final basis on May 12, 1983 (48 FR 21310) and is codified at 16 CFR 1610.40.

The staff memorandum recommended revision of § 1610.37 of the regulations implementing the Standard to allow persons and firms greater flexibility to determine the amounts and frequency of testing to support guaranties of items subject to the Standard. (1, 4, 6) Before issuance of the amendments published below, that section set forth a schedule for the amounts and frequency of testing deemed to be "reasonable and representative" for purposes of supporting guaranties. The staff also recommended revision of § 1610.38 of the regulations to reduce the period required for maintenance of records of testing to support guaranties from three to one year. (1, 6)

After consideration of the staff memorandum and an informational briefing, the Commission voted to propose revision of §§ 1610.37 1610.38 in the manner recommended by the staff memorandum.

Proposed Amendments

In the **Federal Register** of August 12, 1982 (47 FR 35006), the Commission proposed amendment of the rules implementing the Standard to replace the schedule of testing established by § 1610.37 with a requirement that each person or firm issuing an initial guaranty of a product, fabric, or related material which is subject to the Standard shall support that guaranty with a "program of reasonable and representative test." (12)

Section 1610.37(c)(2) of the proposal stated that the number and frequency of tests which comprise such a program of reasonable and representative tests shall be left to the discretion of the person or firm issuing the initial guaranty. However, proposed § 1610.37(c)(2) provided that a "program of reasonable and representative tests" requires at least one test with results demonstrating conformance with the Standard for the item which is the subject of an initial guaranty. (12)

Proposed § 1610.37(c)(3) contained provisions allowing a program of reasonable and representative tests to support an initial guaranty to include tests of a fabric or related material of the same class of fabrics for related materials as the one which is the subject to an initial guaranty. The provisions of the proposal relating to class tests were similar to provisions in former § 1610.37, and did not impose any new restriction or limitation on the use of class tests to support guaranties. (12)

In addition to allowing persons and firms issuing initial guaranties greater discretion to devise and implement testing programs to support those guaranties, § 1610.37(d) of the proposal contained provisions to exempt certain types of fabrics from any requirements for further testing to support guaranties because those types of fabrics consistently yield acceptable results when tested in accordance with the Standard. The types of fabrics proposed for exemption from requirements for further testing to support guaranties were:

(1) All plain surface fabrics weighing 2.6 ounces or more per square yard, regardless of fiber content;

(2) All fabrics made entirely from acrylic, modacrylic, nylon, olefin, or polyester fibers, or entirely from combinations of those fibers, both plain surface and raised-fiber surface, regardless of weight.

The proposal acknowledged that this list may not include all fabrics which consistently yield acceptable results when tested in accordance with the Standard and solicited comments concerning other types of fabrics which may be eligible for exemption from testing to support guaranties. (12)

The Commission also proposed amendment of § 1610.38(d) of the regulations to reduce the period required for retention of records of testing to support guaranties from three years to one year. The proposal expressed the Commission's belief that such change might reduce the burden on the regulated industry to some extent without unduly hindering activities to enforce the Standard and implementing regulations. (12)

Comments on Proposal

In response to the proposal of August 12, 1982, the Commission received written comments from three manufacturers, seven trade associations, and one consumer group.

Comments from three manufacturers and six trade associations favored issuance of final amendments based on the proposal. (13, 14, 15, 16, 18, 19, 20, 22, 23) Comments from a consumer group and one trade association opposed issuance of final amendments. (17, 21)

Those comments and a staff briefing package concerning the proposed amendments (11) were considered by the Commission. At a meeting on September 22, 1983, to consider issuance of final amendments based on the proposal, the Commission expressed concern that consumer groups may not have been aware of or may not have fully understood the proposal for amendment of the guaranty testing rules. Although the notice of proposal contained a certification that the proposed amendments, if issued on a final basis, would not have a significant economic impact on a substantial number of small businesses, the Commission also expressed concern at that meeting that many small businesses and associations representing such firms may have been unaware of the proceeding for amendment of the guaranty testing rules.

The Commission directed the staff to contact individuals and groups representing the interests of consumers and small businesses to ensure that they were aware of the proceeding and their opportunity to comment on the proposal. (29, 31)

After the meeting on September 22, 1983, the consumer group submitted an additional comment concerning the effect of the proposed amendments on small businesses. (30)

In the **Federal Register** of December 14, 1983, the Commission published a notice to reopen the period for receipt of written comments on the proposed amendments. (33) In response to the notice of December 14, 1983, the Commission received ten comments. These comments were submitted by a county consumer affairs office (35); four consumer organizations (36, 39, 40, 43); two foundations conterned with treatment of accident victims (38, 42); a textile manufacturer (41); and two trade associations (37, 44). Some of these comments were from parties who had submitted comments in response to the proposal of August 12, 1983.

The issues raised by all comments concerning the proposal, and the Commission's response to the comments are discussed below.

Requirements for Testing

Comments favoring the proposal to replace the schedule for testing to support guaranties with provisions allowing each person or firm issuing an initial guaranty to devise and implement a program of reasonable and representative tests to support those guaranties state that such a change will provide greater flexibility to persons and firms issuing guaranties without reducing the level of protection afforded to the public by the Standard. (15, 18, 19, 23, 44)

A comment from a trade association of garment manufacturers favoring the proposal expressed the view that issuance of final amendments might encourage suppliers to issue guaranties to the association's member firms. (37)

A comment from another trade association favored the proposed

amendments as long as they would not lead to an increase in the importation of noncomplying foreign-made goods. This comment expressed uncertainty about the effect of the proposal on compliance with the Standard by imported items. (22)

In the notice of proposal the Commission solicited information about the extent of savings which might result each year if the amendments were issued on a final basis,. expressed in terms of hours of testing and recordkeeping, as well as in dollar amounts. (12)

Two of the comments favoring the proposal expressed the opinion that issuance of final amendments would eliminate some unnecessary costs imposed by the testing and recordkeeping requirements of the regulations implementing the Standard. (18, 19) Another comment expressed the opinion that issuance of final amendments could result in "significant savings" to manufacturers required to perform testing by the regulations. (41) However, none of these comments provided estimates of anticipated annual savings in terms of hours or dollars.

Opposition to the proposed amendments was expressed in comments from three consumer organizations (17 and 39, 40, 43); two foundations for treatment of accident victims (38, 42); and one trade association (21). A comment from a county consumer affairs office opposed amendment of the regulations if such action "might result in increased hazards for consumers." (35)

The trade association restated its opposition to the rule which allows use of alternate apparatus and procedures by persons and firms performing tests to support guaranties of items subject to the Standard. (As noted above, that rule was issued on a final basis on May 12, 1983 (48 FR 21310), and became effective June 13, 1983.) The association states that the combined effect of the rule allowing use of alternate test apparatus and procedure and the proposal of August 12, 1982, would be to allow guaranties to be issued on the basis of a single test, not necessarily conducted by use of the apparatus and procedures specified in the Standard. Such a result, this comment alleges, would "emasculate and cheapen the meaning of the guaranty." (21)

This comment observes correctly that guaranties supported by tests conducted in accordance with the provisions of the amendments issued below will continue to provide persons and firms receiving and relying on them in good faith immunity from criminal prosecution in the event any item subject to a guaranty does not comply with the Standard. However, this comment contends that consumers who wear garments made from fabrics guaranteed under the terms of amended § 1610.37 will suffer a reduction in the degree of protection afforded by that guaranty. (21)

The comment from the three consumer groups and the two foundations also expressed concern that the proposed amendments would be detrimental to public safety. Comments from one of these groups state that a reduction in burden to the regulated industry can result only if persons and firms issuing guaranties reduce the amount of testing performed to support guaranties (17, 39). Comments from this association contended that such a reduction in testing will have an adverse effect on quality control programs of manufacturers and on the safety of consumers. (17) Comments from two other consumer organizations (40, 43) and two foundations to assist accident victims (38, 42) endorse this position. Comments from one consumer group also express the view that the Commission has no documentation to suggest any "technical justification" for reducing the frequency of testing required to support guaranties. (17)

While the Commission anticipates that some persons and firms issuing initial guaranties will reduce the amount of testing they conduct to support those guaranties as a result of the amendments issued below, the Commission expects that such a reduction in testing will have little, if any, impact on the overall extent of compliance with the Standard. As noted in the proposal of August 12, 1982, most fabrics and garments which are subject to the Standard consistently meet its requirements. (12) The high degree of compliance with the Standard is documented in TAB E of the briefing package considered by the Commission before it proposed the amendments, and is primarily a function of the minimal requirements of the Standard and the flammability characteristics of most fabrics used for the production of clothing, rather than of the frequency with which those fabrics are tested. (6)

With regard to the comment expressing uncertainty about the impact of the amendment of § 1610.37 on compliance with the Standard by imported goods, the Commission observes that during the period from 1978 through 1982, it learned of six imported garments which failed to comply with the Standard, as opposed to two noncomplying garments of domestic manufacture during the same period. (6) However, the larger number of noncomplying garments of foreign manufacture appears to have resulted from incorrect testing, or the total absence of testing, by foreign suppliers, rather than from the frequency of testing. (26) For this reason, the Commission concludes that the amendment of § 1610.37 issued below will have little if any affect on the extent of compliance with the Standard by imported goods.

In response to the contention that the Commission lacked documentation to justify the proposed amendment of § 1610.37, the Commission observes that the staff briefing package recommending revision of the guaranty rules included not only the memorandum from the Directorate for Compliance and Administrative Litigation describing the extent of compliance with the Standard, discussed above, but also two memoranda from the Directorate of Engineering Sciences, addressing, among other topics, the feasibility of reducing the amount of testing required to support initial guaranties of items subject to the Standard. (4, 6, 9)

Comments from a consumer group and one foundation (17 and 39,38) also oppose amendment of § 1610.37 on the grounds that such an action would hamper the ability of the Commission to bring legal actions to enforce the clothing textiles standard. This position is endorsed in the comments of another consumer group and another foundation. (40,42)

The Commission's ability to bring actions for violation of the FFA and the FTCA by the manufacture, importation, or sale of fabrics for garments which are subject to, but fail to comply with, the requirements of the Standard is not altered in any way by the amendment of § 1610.37, issued below. The only enforcement actions which are affected by the amendment are those which may arise from the issuance of a "false guaranty" of items subject to the Standard, in violation of section 8(b) of the FFA (15 U.S.C. 1197(b)).

In its enforcement of the FFA, the Commission usually has not taken legal action in cases involving the alleged issuance of a false guaranty in violation of section 8(b) unless the product involved also fails to comply with the applicable standard. In such instances, the failure to comply with the applicable standard has been the principal charge, and the issuance of a false guaranty has been treated as a secondary matter. (6)

Impact on Small Businesses

Finally, comments from a consumer group object to the proposed amendment of § 1610.37 on the grounds

that such action may have a negative economic impact on small businesses. In a comment submitted in response to the notice of August 12, 1982, the consumer group stated that in the absence of a minimum schedule of tests established by regulation to define a program of "reasonable and representative tests" to support guaranties, the meaning of that term will evolve through a number of enforcement actions brought by the Commission. This comment argues that such a development will force fabric manufacturers, including small businesses, to consult with legal counsel to determine the significance of the enforcement actions brought by the Commission, and to incur the costs of those consultations. (17)

When the Commission published the proposal of August 12, 1982, it certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed amendments, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities, including small businesses. (12) In support of this certification, the Commission stated that the proposed amendments would not add any new requirements for the issuance of guaranties. The Commission also stated that while the proposed amendments were intended to reduce any burden on the textiles industry which may be imposed by regulations implementing the Standard, the reduction of burden, if any, which may result from the amendments is not expected to be significant for small businesses. (12)

After consideration of the comment regarding the impact of the proposed amendment of § 1610.37 on small businesses and a memorandum from the Directorate of Economics which discusses this topic, the Commission concludes that larger firms, rather than smaller ones, are most likely to derive advantage from the amendment of § 1610.37, issued below. (25)

If any firm issuing initial guaranties of items subject to the clothing textiles standard concludes that § 1610.37, prior to the amendments issued below, sets forth a program of reasonable and representative tests to support such guaranties, no provision of the amendment issued below would prohibit the continued use of the schedule for testing specified by former § 1610.37. Information available to the Commission indicates that most small firms either will continue to use the schedule of testing specified by former § 1610.37, or will not make significant changes to their testing programs. For this reason, the Commission concludes that small firms will not require extensive consultation with legal counsel as a result of the amendments issued below. (25)

In a separate comment dated October 6, 1983, the same group suggested that issuance of final amendments based on the proposal might place small manufacturers at a competitive disadvantage with large firms if large firms will be the only ones to derive any significant cost savings from the change in guaranty testing requirements. (30)

While large firms will likely derive greater benefit from the amendments issued below than small firms, the Commission finds that testing to support guaranties accounts for only a small part of the total cost of production of goods which are subject to the clothing textiles standard for any firm regardless of size. (46) Consequently, the reduction in testing costs which may result for larger firms from the amendments issued below will not have a significant effect on the competitive position of large and small firms within the clothing textiles industry. (46)

The Commission affirms the certification made in the notice of proposal that the amendments issued below will not have a significant economic impact on a substantial number of small entities, including small businesses.

Exemptions From Testing

As noted above, proposed § 1610.37(d) contained provisions to exempt certain types of fabrics from any requirements from "further testing to support guaranties of those fabrics." The Commission proposed these provisions because experience gained by the Commission and industry from years of testing demonstrates that certain fabrics consistently yield acceptable results when tested in accordance with the Standard. The types of fabrics for which the exemption was proposed included all plain-surface fabrics weighing 2.6 ounces or more per square yard, and all fabrics made entirely from acrylic, modacrylic, nylon, olefin, or polyester fibers, or entirely from combinations of those fibers.

A comment from one trade association opposes any provision to exempt any fabric from requirements for testing to support guaranties. This comment observes that many manufacturers performed more testing to support guaranties than was required by former § 1610.37. For this reason, the comment anticipates that if the Commission exempts certain types of fabrics from requirements for testing to support guaranties, some firms will continue testing exempted fabrics. The comment contends that the proposal to exempt certain fabrics from requirements for testing will give a cost-advantage to any firm which relies upon the amendment of § 1610.37 to discontinue testing the exempted fabrics. This comment expresses the view that such a result is unfair. (21)

The Commission does not agree that unfairness will result if some firms voluntarily continue to test fabrics which have been exempted from requirements for testing to support guaranties on the basis of their performance for many years in tests conducted in accordance with the Standard. As noted by the comment under consideration, some firms elected to perform more testing than was required by former § 1610.37 to support guaranties. The Commission observes that many business decisions are based on considerations beyond compliance with applicable laws and regulations. When businesses decide to do more than is required by law, they usually do so because they perceive that such a course of action will result in benefits which equal or exceed the additional costs incurred.

A comment from another trade association urges clarification of the language of proposed § 1610.37(d). This comment observes that the proposal stated that certain fabrics would be exempted from "further testing" to support guaranties. The comment states that this language could be interpreted to mean that after the effective date of the amendment, no testing of any fabric listed in § 1610.37(d) is required to support a guaranty, whether or not a person or firm has ever issued a guaranty of the fabric. However, the comment notes that the phrase "further testing" could suggest that any firm relying on provisions of proposed § 1610.37(d) must have results of at least one test of any of the fabrics listed in that section to support a guaranty of such a fabric. (22)

This comment expresses the view that the Commission appears to have intended the former interpretation. The comment suggests that the ambiguity could be resolved by rewording the final amendment to state that the fabrics listed in § 1610.37(d) "are exempted from any requirement for testing to support guaranties." (22)

When the Commission proposed § 1610.37(d), it intended to totally exempt the fabrics listed in that section of the proposal from testing because of the results of years of testing of those fabrics by the government and industry. (27) The wording change suggested by the comment has been made in

§ 1610.37(d) of the amendments issued below.

Requests for Exemptions for Other Fabrics

Two comments urge the Commission to expand the list of fabrics exempted from requirements for testing by proposed § 1610.37(d) to include fabrics made entirely from wool, and fabric made entirely from blends of wool and the other fibers listed in proposed § 1610.37(d). (22, 23) One of these comments was accompanied by test results to support the requested addition to the list of fabrics exempted from testing. (23)

After consideration of these comments, an analysis of the test data submitted by one of the commenters, and experience gained from testing under the Standard by the Commission and industry, the Commission has added fabrics made entirely from wool and entirely from blends of wool and other specified fibers to the list of fabrics exempted from requirements for testing to support guaranties by § 1610.37(d) of the amendments issued below. (27)

Comments from one firm urged the addition of raised-fiber surface fabrics made from blends of 80 percent polyester and 20 percent cotton, and from blends of 50 percent acrylic and 50 percent cotton to the list of fabrics exempted from requirements for testing by proposed § 1610.37(d) and submitted supporting test data. (13, 41) After consideration of these comments and the accompanying test data, the Commission declines to make the requested addition to the list of exempted fabrics. The Commission's laboratory has tested raised-fiber surface fabrics with blends of man-made fibers and cotton similar to those of the fabrics which are the subject of this comment. This testing has yielded some results indicating "intermediate flammability, class 2" and in one case, failing results ("rapid and intense burning, class-3"). (27)

One other comment requested addition of all hosiery fabrics and garments to the list of fabrics exempted from requirements for testing to support guaranties by proposed § 1610.37(d). (16) This comment states that hosiery fabrics and garments consistently yield acceptable results when tested in accordance with the Standard. This comment also states that the requested exemption should be made because hosiery is usually covered by another garment, and for that reason not ordinarily exposed to flame; hosiery products are produced from small denier yarn which provides for less bulk material to be exposed to ignition sources; and hosiery is generally form fitting and ordinarily has no loose folds of fabric which could be exposed to flame. (16) However, this comment did not submit any results of testing to support the requested exemption.

After consideration of this comment, the Commission declines to make a blanket exemption in § 1610.37(d) for all fabrics used for hosiery, because it lacks sufficient test data to justify such an exemption. (27) The Commission observes, however, that as issued below, § 1610.37(d) exempts from requirements for testing all fabrics made entirely of acrylic, modacrylic, nylon, olefin, polyester, and wool, and all fabrics made entirely from blends of those fibers. Those are the fabrics from which most hosiery products are manufactured.

Requirements for Recordkeeping

The notice of August 12, 1982, also proposed amendment of § 1610.38, which establishes requirements for maintenance of records of testing to support guaranties.

The Commission proposed to modify § 1610.38(a) so that its provisions concerning the content of test records supporting guaranties would be applicable to any person of firm "issuing an initial guaranty," rather than to any person "who has made the tests" required by the FFA and implementing regulations to support guaranties. The Commission proposed this amendment to make the language of § 1610.38 consistent with provisions of proposed § 1610.37(c), which allow persons or firms issuing initial guaranties to rely on tests conducted by others to support those guaranties.

The Commission received no comment specifically addressed to this aspect of the proposal, and has included a revision of § 1610.38(a) as proposed, in the amendment issued below.

The Commission also proposed a revision of § 1610.38(d) to reduce the period required for retention of records of testing to support guaranties from three years to one year.

As noted above, several comments expressed general agreement with and support for the proposal of August 12, 1982. However, none of these comments specifically addressed amendment of the record retention requirements of § 1610.38(d), and none made any estimate of the saving, if any, which might result from issuance of proposed § 1610.38(d) on a final basis.

Comments from two consumer groups, one foundation, and a trade association urged the Commission not to reduce the three-year period now required by § 1610.38 for retention of records of testing to support guaranties. (17, 43, 38, 21) That position was endorsed in comments from another consumer group and another foundation. (40, 42)

Comments opposed to amendment of § 1610.38 express the view that a reduction of the required period for retention of test records to one year could hamper the Commission's enforcement efforts. These comments argue that six months to a year may elapse from the time a fabric is tested for purposes of supporting an initial guaranty until the time that garments made from that fabric are purchased by consumers. For this reason, these comments content that in many cases, test records may not be available for inspection by Commission personnel if a question should arise about the basis for issuance of a guaranty. (17, 38, 21)

The comment from the trade association also states that the proposal to reduce the required period for record retention could create a similar problem for any garment manufacturer relying on a guaranty of a fabric in the defense of a product liability suit involving a garment made from the guaranteed fabric. If records of testing to support guaranties are required to be maintained for only one year, this comment argues that in many cases the records may not be available if needed to demonstrate that a particular fabric had been tested for compliance with the Standard. (21)

The comment from the trade association also observes that the major cost imposed by the guaranty rules is associated with development of the test data supporting the guaranty. (21) Both the trade association and the consumer group state that reduction of the period for retention of records will result in no significant cost saving to firms issuing guaranties of items subject to the Standard. (17, 21)

After consideration of all comments received in response to the proposal, the Commission concludes that any savings which may result from the proposed amendment of § 1610.38(d) would be negligible. Although enforcement of the Standard would not be hindered by the proposed amendment of § 1610.38(d), the Commission acknowledges that the proposed amendment could create potential problems in enforcement of the guaranty rules. Therefore, after consideration of the proposed amendment of § 1610.38(d) and all relevant comments, the Commission withdraws that part of the proposal of August 21, 1982. Section 1610.38(d) is unchanged by the amendments issued below.

Other Issues

One comment expressing agreement with the proposal suggested that similar changes should be made to regulations implementing the Standard for the Flammability of Vinyl Film (16 CFR Part 1611). (14) The notice of August 12, 1982, was limited to proposed amendments of particular sections of 16 CFR Part 1610. The suggestion for similar modification of requirements of 16 CFR Part 1611 is beyond the scope of the proposal. If the Commission acts on the suggestion made in this comment, it will do so in a separate rulemaking proceeding addressed to specific provisions of Part 1611.

Comments from two consumer groups (39, 43) and one foundation (42) suggest that the requirements of the clothing textiles standard should be made more stringent to improve the level of safety provided by the standard.

The Commission observes that this proceeding does not involve any proposal to change the requirements of the clothing textiles standard. The proposal of August 12, 1982, is limited to regulations implementing the standard which specify the frequency of testing required to support guaranties of compliance with the standard, and the period of time of retention of records of guaranty testing.

If the Commission finds that a new or amended standard for clothing textiles and articles of wearing apparel may be needed to adequately protect the public, it will begin a separate proceeding for issuing a new standard or amending the current one in accordance with provisions of section 4 of the FFA (15 U.S.C. 1193).

Environmental Considerations

As stated in the notice of proposal, the Commission's environmental review procedures provide at 16 CFR 1021.5(c)(2) that issuance, amendment or revocation of rules relating to product certification normally has little or no potential for affecting the human environment.

The Commission does not foresee any special or unusual circumstances surrounding the amendments issued below. For this reason, neither an environmental assessment or an environmental impact statement is required.

List of Subjects in 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Textiles, Warranties, Records.

Conclusion and Promulgation

After consideration of written comments on the proposed amendments, analysis of those comments by the Commission staff, and other relevant information, the Commission concludes that the proposed amendment of 16 CFR 1610.38(d) should not be adopted, and that the proposed amendments of 16 CFR 1610.31, 1610.37, and 1610.38(a) should be issued on a final basis, with the modifications discussed above, to become effective on January 14, 1985.

Therefore, in accordance with the provisions of the Flammable Fabrics Act (sec. 5, Pub.L. 90–189, 81 Stat. 569 (15 U.S.C. 1194)) and the Consumer Product Safety Act (sec. 30, Pub. L. 92–573, 86 Stat. 1231 (15 U.S.C. 2079)), the Commission hereby amends the Code of Federal Regulations, Title 16, Chapter II, Subchapter B, as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Part 1610, Subpart B is amended by revising § 1610.37 to read as follows:

§ 1610.37 Reasonable and representative tests to support guaranties.

(a) *Purpose.* The purpose of this § 1610.37 is to establish requirements for reasonable and representative tests to support initial guaranties of products, fabrics, and related materials which are subject to the Standard for the Flammability of Clothing Textiles (the Standard, 16 CFR Part 1610).

(b) *Statutory provisions.* (1) Section 8(a) of the Flammable Fabrics Act (FFA, 15 U.S.C. 1197(a)) provides that no person shall be subject to criminal prosecution under section 7 of the FFA (15 U.S.C. 1196) for a violation of section 3 of the FFA (15 U.S.C. 1192) if such person establishes a guaranty received in good faith to the effect that the product, fabric, or related material complies with the applicable flammability standard. A guaranty does not provide the holder any defense to an administrative action for an order to cease and desist from violation of the applicable standard, the FFA, and the Federal Trade Commission Act (15 U.S.C. 45), nor to any civil action for injunction or seizure brought under section 6 of the FFA (15 U.S.C. 1195).

(2) Section 8 of the FFA provides for two types of guaranties:

(i) An initial guaranty based on "reasonable and representative tests" made in accordance with the applicable standard issued under the FFA; and

(ii) A guaranty based on a previous guaranty, received in good faith, to the effect that reasonable and representative tests show conformance with the applicable standard.

(c) *Requirements.* (1) Each person or firm issuing an initial guaranty of a product, fabric, or related material subject to the Standard shall devise and implement a program of reasonable and representative tests to support such a guaranty.

(2) The term "program of reasonable and representative tests" as used in this § 1610.37 means at least one test with results demonstrating conformance with the Standard for the product, fabric or related material which is the subject of an initial guaranty. The program of reasonable and representative tests required by this § 1610.37 may include tests performed before the effective date of this section, and may include tests performed by persons or fims other than the one issuing the initial guaranty. The number of tests and the frequency of testing shall be left to the discretion of the person or firm issuing the initial guaranty.

(3) In the case of an initial guaranty of a fabric or related material, a program of reasonable and representative tests may consist of one or more tests of the particular fabric or related material which is the subject of the guaranty, or of a fabric or related material of the same "class" of fabrics for related materials as the one which is the subject of the guaranty. For purposes of this § 1610.37, the term "class" means a category of fabrics for related materials having general constructional or finished characteristics, sometimes in association with a particular fiber, and covered by a class or type description generally recognized by the trade.

(d) *Exemptions.* Experience gained from years of testing in accordance with the Standard demonstrates that certain fabrics consistently yield acceptable results when tested in accordance with the Standard. Therefore, persons and firms issuing an initial guaranty of any of the following types of fabrics, or of products made entirely from one or more of these fabrics, are exempt from any requirement for testing to support guaranties of those fabrics:

(1) Plain surface fabrics, regardless of fiber content, weighing 2.6 ounces per square yard or more; and

(2) All fabrics, both plain surface and raised-fiber surface, regardless of weight, made entirely from any of the following fibers or entirely from combination of the following fibers: acrylic, modacrylic, nylon, olefin, polyester, wool.

3. Section 1610.38 is amended by revising paragraph (a) to read as follows:

§ 1610.38 Maintenance of records by those furnishing guaranties.

(a) Any person or firm issuing an initial guaranty of a product, fabric, or related material which is subject to the Standard for the Flammability of Clothing Textiles (the Standard, 16 CFR Part 1610) shall keep and maintain a record of the test or tests relied upon to support that guaranty. The records to be maintained shall show:

(1) The style or range number, fiber composition, construction and finish type of each textile fabric or related material covered by an initial guaranty; or the identification, fiber composition, construction and finish type of each textile fabric (including those with a nitrocellulose fiber, finish or coating), and of each related material, used or contained in a product of wearing apparel covered by an initial guaranty.

(2) The results of the actual test or tests made of the textile fabric or related material covered by an initial guaranty; or of any fabric or related material used in the product of wearing apparel covered by an initial guaranty.

(3) When the person or firm issuing an initial guaranty has conducted the test or tests relied upon to support that guaranty, that person or firm shall also include with the information required by paragraphs (a) (1) and (2) of this section, a sample of each fabric or related material which has been tested.

(Sec. 5, Pub.L. 90–189, 81 Stat. 569, 15 U.S.C. 1194; sec. 30, Pub.L. 92–573, 86 Stat. 1231, 15 U.S.C. 2079)

Dated: December 7, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Bibliography

1. Memorandum from Allen F. Brauninger, OGC, to the Commission describing staff review of the Standard for Clothing Textiles and implementing regulations and recommending amendment of regulations; 15 pages; March 24, 1982. The TABS to this memorandum are listed separately.

2. TAB A, Letter from James C. Miller, III, Administrator for Information and Regulatory Affairs to Chairman Nancy Harvey Steorts, CPSC; 1 page; September 14, 1981.

3. TAB B, letter from Richard A. Gross, Executive Director, CPSC, to Mahesh Podar, Office of Management and Budget; 1 page; September 28, 1981.

4. TAB C, Memorandum from Elaine A. Tyrrell, ESMT, to Margaret Neilly, ESMT, concerning rule review of the Standard for Clothing Textiles, with attachments; 30 pages; December 10, 1981.

5. TAB D, Memorandum from Bea Harwood, HIEA, to James Sharman, OPM, concerning review of the Standard for Clothing Textiles, with attachments; 4 pages; November 30, 1981.

6. TAB E, Memorandum from Liz Gomilla, CARM, to James Sharman, OPM, concerning review of the Standard for Clothing Textiles, with attachments; 17 pages November 24, 1981.

7. TAB F, Memorandum from Liz Gomilla, CARM, to James Sharman, OPM, supplementing memorandum of November 24, 1981, with attachments; 7 pages January 26, 1982.

8. TAB G, Memoranda of telephone conversations between Liz Gomilla and Stephen Wood, Miliken Research Corporation, on November 5, 1981; and between Liz Gomilla and O.P. Beckwith of the William Carter Company, on November 20, 1981; 2 pages; undated.

9. TAB H, Memorandum from Elaine A. Tyrrell, ESMT, to Margaret Neily, ESMT, supplementing memorandum of December 10, 1981; 2 pages; February 26, 1982.

10. Vote sheet concerning review of Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) from Allen F. Brauninger, OGC, to Commission; 2 pages; March 24, 1982.

11. Staff briefing package prepared by L.J. Sharman, Office of Program Management, concerning amendment of rules establishing requirements for testing and recordkeeping to support guaranties under the clothing textiles standard; pages; ————, 1983. The tabs to this package are listed separately.

12. TAB A, **Federal Register** notice proposing amendment of rules establishing requirements for testing and recordkeeping to support guaranties of items subject to the clothing textiles standard; 6 pages; August 12, 1982. TAB B, comments on the proposed rule.

13. Comment from Bassett-Walker, Inc., with enclosures; 6 pages; September 13, 1982.

14. Comment from The Proctor & Gamble Company; 1 page; September 14, 1982.

15. Comment from Kimberly-Clark Corp.; 1 page; September 30, 1983.

16. Comment from the National Association of Hosiery Manufacturers; 3 pages; October 11, 1982.

17. Comment from Citizens' Committee for Fire Protection; 3 pages; undated.

18. Comment from National Knitware Manufacturers Association; 1 page; October 8, 1982.

19. Comment from National Retail Merchants Association; 3 pages October 12, 1982.

20. Comment from Textile Distributors Association, Inc.; 1 page; October 5, 1982.

21. Comment from American Apparel Manufacturers Association; 4 pages October 22, 1982.

22. Comment from American Textile Manufacturers Institute; 2 pages; October 26, 1982.

23. Comment from The Wool Bureau, Inc., with enclosures; 13 pages; October 26, 1982.

24. TAB C, chart summarizing comments; 4 pages; undated. TAB D, staff analysis of comments.

25. Memorandum from Dale Ray, ECCP, to L. James Sharman, EX–P, analyzing comments on proposed revision of testing and recordkeeping rules; 2 pages; December 16, 1982.

26. Memorandum from Liz Gomilla, CARM, to L.J. Sharman, OPM, analyzing comments on proposed revision of testing and recordkeeping requirements; 5 pages; December 14, 1982.

27. Memorandum from Patricia A. Fairall, ESMT, to Margaret Neily, ESMT, analyzing comments on proposed revision of testing and recordkeeping requirements; 4 pages; January 14, 1983.

28. TAB E, draft **Federal Register** notice to issue final amendments; 30 pages; undated.

29. Vote sheet concerning issuance of final amendments of guaranty testing and recordkeeping rules; 2 pages, July 26, 1983.

30. Comment from Citizens Committee for Fire Protection concerning economic consequences to small businesses of proposed amendments; 1 page; October 6, 1983.

31. Executive summary and ballot vote sheet concerning draft **Federal Register** notice to reopen comment period; 11 pages; November 9, 1983.

32. Staff briefing package prepared by L.J. Sharman, Office of Program Management, concerning additional comments on proposed amendment of guaranty testing and recordkeeping rules; 5 pages; July 13, 1984. The tabs to this package are listed separately.

33. TAB A, **Federal Register** notice reopening comment period; 2 pages; December 14, 1983.

34. TAB B, correspondence from L.J. Sharman to consumer organizations and small business association, with enclosures; 29 pages; December 23, 1983. Tab C, comments received in response to notice of December 14, 1983.

35. Comment from Office of Consumer Affairs, Montgomery County, Maryland; 2 pages; January 17, 1984.

36. Comment from American Association of Retired Persons; 1 page; January 20, 1984.

37. Comment from Clothing Manufacturers Association; 1 page; February 9, 1984.

38. Comment from Burn Foundation; 3 pages; February 10, 1984.

39. Comment from Citizens Committee for Fire Protection, with enclosures; 5 pages; February 13, 1984.

40. Comment from National Consumers League; 1 page; February 13, 1984.

41. Comment from Bassett-Walker, Inc.; 1 page; January 25, 1984.

42. Comment from Trauma Center Foundation; 1 page; February 27, 1984.

43. Comment from Consumer Federation of America; 2 pages; February 13, 1984.

44. Comment from INDA, Association of the Nonwoven Fabrics Industry; 3 pages; March 31, 1984.

45. TAB D, Summary of comments in response to notice of December 14, 1983; 2 pages; undated.

46. TAB E, Memorandum from Dale Ray, ECCP, to Jim Sharman, OPM, concerning a comment dated October 6, 1983, from Citizens Committee for Fire Protection commenting on the economic impact on small businesses of proposed amendments; 1 page; June 25, 1984.

47. TAB F, Draft **Federal Register** notice to issue amendments of 16 CFR 1610.37 and 1610.38; 35 pages; undated.

[FR Doc. 84–32480 Filed 12–13–84; 8:45 am]

BILLING CODE 6355–01–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulations on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning January 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after January 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Apendix B of the regulation is again amended.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006, 202–254–6476, (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. In July, August, October, and September of 1984, the PBGC published new rates and factors for plans terminating during the months of August through December of 1984 (49 FR 28551, 49 FR 32573, 49 FR 40161 and 49 FR 45129).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after January 1, 1985, which set reflects a decrease of ¼ percent in the interest rate to 9¾ percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after January 1, 1985, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment to the final regulation effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, Febuary 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, and 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, and 1029, as amended by secs. 403(1), 403(d), and 402(a)(7), Pub. L 96–364, 94 Stat. 1302, 1301, and 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 52 of Appendix B is revised and Rate Set 53 of Appendix B is added to read as follows:

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2, are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	Before		k_1	k_2	k_3	n_1	n_2
* * * * *								
52	12–1–84	1–1–85	10.00	1.0925	1.0800	1.0400	7	8
53	1–1–85		9.75	1.0900	1.0775	1.0400	7	8

Royal S. Dellinger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84–32573 Filed 12–13–84; 8:45 am]

BILLING CODE 7708–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Dependents' Educational Assistance; Entitlement

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: These regulations address an eligible person's entitlement to dependents' educational assistance. They update terminology and cross references. There are no policy changes.

EFFECTIVE DATE: November 21, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202–389–2092).

SUPPLEMENTARY INFORMATION: On pages 26609 and 26610 of the Federal Register of June 28, 1984, there was published a notice of intent to amend part 21 in order to update terminology and cross references.

Interested people were given 30 days in which to submit comments, suggestions or objections. The VA received no comments, suggestions or objections. Accordingly, the agency is making the proposal final.

The VA has determined that these regulations are not major rules as that term is defined by Executive Order 12291, entitled "Federal Regulation". The regulations will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because entitlement affects only payments made directly to individuals. These regulations address calculation of entitlement. Furthermore, the changes are technical in nature, and should have a small impact.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.117.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: November 21, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending 38 CFR Part 21 to read as set forth below:

1. Section 21.3044 is revised as follows:

§ 21.3044 Entitlement.

(a) *Limitations on entitlement.* Each eligible person in entitled to educational assistance not in excess of 45 months, or the equivalent thereof in part-time training. The Veterans Administration will not authorize an extension of entitlement except as provided in paragraph (c) of this section. The period of entitlement when added to education or training received under any or all of the laws cited in § 21.4020 will not exceed 48 months of full-time educational assistance. The period of entitlement will not be reduced by any period during which employment adjustment allowance was paid after the eligible person completes a period of rehabilitation and reaches a point of employability. (38 U.S.C. 1711(a))

(b) *Continuous pursuit is not required.* The 45-month period of entitlement is any 45 months within the period of eligibility. The eligible person is not required to pursue his or her program for 45 consecutive months. (38 U.S.C. 1711(a))

(c) *Exceeding the 45 months limitation.* The 45 months limitation may be exceeded only in the following cases:

(1) Where no charge against the entitlement is made based on a course or courses pursued by a spouse or surviving spouse under the special assistance for the educationally disadvantaged program (See § 21.4237(d); or

(2) Where special restorative training authorized under § 21.3300 exceeds 45 months. (38 U.S.C. 1741(b), 1733(b))

2. Section 21.3045 is revised as follows:

§ 21.3045 Entitlement charges.

Charges against the period of entitlement of an eligible person pursuing a program of education will be made in accordance with § 21.1045 (a) through (d) and (f) through (k). (38 U.S.C. 1661, 1677(b), 1682(e), 1691, 1712, 1733, 1786(a), 1787)

[FR Doc. 84–32620 Filed 12–13–84; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[EPA Docket Nos. AM701WV and 702WV; A–3–FRL–2712–41]

Performance Standards for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of West Virginia

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice Amends 40 CFR 60.4 and 40 CFR 61.04 to reflect delegation to the State of West Virginia for authority to implement and enforce New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) respectively, under the Clean Air Act.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Michael Giuranna, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106 (215) 597–9189.

SUPPLEMENTARY INFORMATION: .

I. Background

On June 13, 1984, Don R. Richardson, Chairman, West Virginia Air Pollution Control Commission, requested delegation on authority to implement and enforce existing regulations for New Source Performance Standards (NSPS), under section 111(c) of the Clean Air Act (CAA), and National Emission Standards for Hazardous Air Pollutants (NESHAPS) under section 112(d) of the Clean Air Act.

The request was reviewed and, on July 24, 1984 a letter was sent to Don R. Richardson stating that delegation of

authority for the NSPS and NESHAPS in West Virginia is approved subject to the conditions set forth in that letter as follows:

Certified mail

Return Receipt Requested

Mr. Don R. Richardson, Chairman,
West Virginia Air Pollution Control Commission, 1558 Washington Street, East Charleston, West Virginia 25311

Re: Delegation of authority for New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants pursuant to Sections 111(c) and 112(d) of the Clean Air Act, as amended.

Dear Mr. Richardson: This is in response to a letter of June 13, 1984, to Thomas P. Eichler, Regional Administrator, requesting delegation of authority for implementation and enforcement of existing New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) in West Virginia.

We have reviewed the pertinent laws and regulations governing the control of air pollution in West Virginia and have determined that they provide an adequate and effective procedure for implementation and enforcement of the NSPS and NESHAPS regulations by the Air Pollution Control Commission (the Commission).

Therefore, we hereby delegate authority to the Commission, as follows:

The Commission is delegated and shall have authority for all sources located in the State of West Virginia subject to the Standards of Performance for New Stationary Sources, with the exception of Glass Manufacturing Plants (subpart CC), and all categories of National Emission Standards for Hazardous Air Pollutants, presently promulgated, or subject to any standards promulgated in the future in 40 CFR Parts 60 and 61.

This delegation is based upon the following conditions:

1. Quarterly reports will be submitted to EPA by the Commission and should include the following:

A. For New Source Performance Standards:

(i) Sources determined to be applicable during that quarter;

(ii) applicable sources which started operation during that quarter or which started operation prior to that quarter which have not been previously reported;

(iii) the compliance status of the above; including the summary sheet from compliance test(s); and

(iv) any legal actions which pertain to these sources.

B. For National Emission Standards for Hazardous Air Pollutants:

(i) NESHAPS sources granted a permit to construct;

(ii) NESHAPS sources inspected during that quarter and their compliance status [except under § 61.22 (d) and (e)];

(iii) the requirements of A.i), A.ii), and A.iv) above.

2. Enforcement of the NSPS and NESHAPS regulations in the State of West Virginia will be the primary responsibility of the Commission. Where the Commission determines that such enforcement is not feasible and so notifies EPA, or where the Commission acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority, pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the State of West Virginia subject to NSPS and NESHAPS regulations.

3. Acceptance of these delegations does not commit the State of West Virginia to request or accept delegation of future standards and requirements. A new request for delegation will be required for any additional standards not included in the State's request of June 13, 1984.

4. The West Virginia Air Pollution Control Commission will at no time grant a waiver of compliance under the NESHAPS regulations.

5. The Commission will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (Part 60). Should the Commission grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of such variances by the Commission shall also constitute grounds for revocation of delegation by EPA.

6. The Commission and EPA will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a Commission interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the Commission.

7. If at any time there is a conflict between a Commission regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the Commission. If the Commission does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

8. The Commission will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

9. If the Director of the Air Management Division determines that a Commission program for enforcing or implementing the NSPS or NESHAPS regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Commission.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAPS regulations by sources located in the State of West Virginia should be submitted to the Commission in addition to EPA Region III. Any original reports which have been or may be received by EPA Region III will be promptly transmitted to the Commission.

Since this delegation is effective immediately, there is no requirement that the Commission notify EPA of its acceptance. Unless EPA receives from the Commission written notice of objections within ten (10) days of receipt of this letter, the Air Pollution Control Commission will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

Therefore, pursuant to the authority delegated by the Administrator, the Air Management Division Director notified Don R. Richardson that authority to implement and enforce New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants was delegated to the West Virginia Air Pollution Control Commission. Part 60, Performance Standards for New Stationary Sources, is delegated with the condition that the WVAPCC submit to EPA any excess emission reports, as defined in 40 CFR 60.7(c).

II. Regulations Affected by This Action

EPA is today amending 40 CFR 60.4 and 61.04 to reflect the delegation discussed above. The amended § 60.4 and § 61.04 which state the address of the West Virginia Air Pollution Control Commission (to which all reports, requests, applications, and communications to the Administrator regarding this subpart must be addressed) is set forth below.

The Administrator finds good cause to make this rulemaking effective immediately without prior public notice since it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected.

This rulemaking is effective immediately, and is issued under the authority of sections 110 and 301 of the Clean Air Act, as amended.

The Office of Management and Budget has exempted this action from Executive Order 12291.

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

(42 U.S.C. 7401 *et seq.*)

Dated: October 17, 1984.

Thomas P. Eichler,

Regional Administrator.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Part 61 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

In § 61.04, Paragraph (b) is amended by adding subparagraph (XX) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(XX) State of West Virginia: Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

[FR Doc. 84-29399 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-4-FRL-2737-8]

North Carolina; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on North Carolina's application for final authorization.

SUMMARY: North Carolina has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Carolina's application and has reached a final determination that North Carolina's Hazardous Waste Program satisfies all of the requirements necessary 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 North Carolina, for purposes of judicial review, shall be effective at 1:00 p.m. Eastern time on December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Allan E. Antley, Chief, Waste Planning Section, Residuals Management Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 881-4727.

SUPPLEMENTARY INFORMATION: Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize state hazardous waste managment programs to operate in the state in lieu of the Federal 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 RCRA, 42 U.S.C. 6226(b)).

On July 10, 1984, North Carolina submitted a complete application to obtain Final Authorization to administer a RCRA program. On September 28, 1984, EPA published a tentative decision announcing its intent to grant North Carolina Final Authorization. Further background on the tentative decision appears at 49 FR 38302, September 28, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application. The public hearing was not held as scheduled on November 13, 1984, since neither EPA nor the North Carolina Department of Human Resources received significant interest in holding the hearing.

To date, all RCRA hazardous waste management permits in North Carolina have been issued by the State under the authority granted to the State during interim authorization. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this rule.

North Carolina is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Decision

It is my conclusion that North Carolina's application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, North Carolina is granted final authorization to operate its hazardous waste management program. This means that North Carolina 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. North Carolina 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 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 entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. 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 recordkeeping 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, 6974(b), and EPA delegation 8-7.

Dated: November 26, 1984.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 84-32728 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 15, 21, 22, 23, 74, 81, 83, 87, 90, 95, 97, and 99

[Gen. Docket No. 80-739; FCC 84-510]

Provision for New System of Emission Designators Described in Article 4 of the International Telecommunication Union Radio Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action provides for the use of new emission designators described in Article 4 of the International Telecommunication Union Radio Regulations. The present emission designators have been converted to the new emission designators, thereby causing our present system to become obsolete. The intended effect of this action is to provide for a single system

of emission designators as opposed to a dual system.

EFFECTIVE DATE: January 3, 1985.

FOR FURTHER INFORMATION CONTACT: Dan Yates, Office of Science and Technology, (202) 653-8117.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 15

Communications equipment, Radio.

47 CFR Part 21

Communications equipment.

47 CFR Part 22

Communications equipment.

47 CFR Part 23

Radio.

47 CFR Part 74

Communications equipment, Radio.

47 CFR Part 81

Communications equipment, Radio.

47 CFR Part 83

Communications equipment, Radio.

47 CFR Part 87

Communications equipment, Radio.

47 CFR Part 90

Administrative practice and procedure.

47 CFR Part 95

Communications equipment, Radio.

47 CFR Part 97

Radio.

47 CFR Part 99

Radio.

Third Report and Order

In the matter of amendment of Part 2 [1] of the Commission's Rules regarding implementation of the final acts of the World Administrative Radio Conference, Geneva, 1979 (General Docket No. 80-739).

Adopted: October 26, 1984.
Released: November 27, 1984.

By the Commission.

Purpose

1. The purpose of this proceeding is to implement into Part 2 of the Commission's Rules and Regulations the Final Acts of the 1979 World Administrative Radio Conference (1979 WARC). This is necessary because the Final Acts of the 1979 WARC, which comprise an international treaty, became effective internationally on January 1, 1982 for administrations which ratified the treaty prior to that date and for other nations on deposit with the ITU of their instrument of ratification. The United States Senate gave its advice and consent to ratify the treaty in December 1982 and submitted it to the President who signed it on September 6, 1983. The treaty now has the force of law in the United States and we are obligated to adhere to its provisions.

2. During the period prior to ratification, the Commission prepared for national implementation by issuing five *Notices of Inquiry* (NOI's). [2] These *Inquiries* solicited public comment on proposed modifications to Part 2 of the Rules that we felt were necessary and appropriate to make it compatible with the Final Acts and to satisfy our domestic allocation needs. This Order is limited in scope to the issue of emission designators discussed in the *Fourth* and *Fifth NOI's*. The remaining issues of the Fifth NOI will be covered in appropriate rulemakings relative to specific services.

3. Rockwell International Corporation (Rockwell), American Telephone and Telegraph Company (AT&T), GTE Service Corporation (GTE), and Communications Satellite Corporation (Comsat) filed comments on the proposed emission designators in the *Fourth NOI*. M/A-COM Laboratories and Harris Corporation filed comments on the *Fifth NOI*. Neither Harris nor M/A-Com filed comments on the use of the new emission designators.

Intentions

4. The international treaty, now ratified by the United States, has the force of law in the United States, and we are obligated to adhere to its provisions. In our domestic implementation actions, we must take full account of the international provisions even though in some instances they do not fully agree with those that the United States had proposed. The treaty does provide some flexibility, however, through Radio Regulation 342 that states:

> Administrations of the Members shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations given in this Chapter or the other provisions of these Regulations, except on the express condition that harmful interference shall not be caused to services carried on by stations operating in accordance with the provisions of the Convention and these Regulations

This enables the enactment of domestic provisions different from international provisions in cases where the physical characteristics of the radio spectrum and of the domestic uses permit operations within the stated interference constraint.

5. This Order specifies appropriate modifications to Part 2, Subpart C of the FCC Rules and Regulations and other Parts of the Rules containing emission designators to implement the Final Acts of the 1979 WARC. The new emission designators proposed in the *Fourth NOI* use three symbols. The first symbol indicates the type of modulation of the main carrier, the second symbol indicates the nature of signal(s) modulating the main carrier, and the third symbol indicates the type of information to be transmitted. An optional fourth and fifth symbol are also described in Appendix 6 of the ITU Radio Regulations. The fourth and fifth symbols provide detailed information concerning the baseband frequencies rather than the radio frequencies (RF) which the first three symbols address. The fourth symbol provides such information as the type of code, error-correction, quality of sound, and the type of picture for video broadcast. The fifth symbol indicates the type of multiplexing, e.g., code-division, frequency-division, time-division, or combinations of the above.

6. Under the present system of emission designators, two symbols are normally used to identify the class of emission. In some cases, a third supplementary symbol is used. The first symbol indicates the type of modulation, and the second symbol indicates the type of transmission such as telephony.

7. In the *Fifth NOI*, it was indicated that each Bureau or Office having primary responsibility for certain parts of the Rules would propose actual changes in future proceedings for the Rules. A number of proceedings addressing the technical requirements addressed in the *Fifth NOI* have been

[1] The proposed amendments to Part 2, Subpart C, Emissions also requires amendment to the other Rule sections as shown herein.

[2] The *First Notices of Inquiry* was adopted by the Commission on November 25, 1980 (FCC 80-695, 46 FR 3060) and released on December 30, 1980. It proposed modifications to §§ 2.100 through 2.105, § 2.106 (Table of Frequency Allocations) up through 28 MHz, and the addition of § 2.107. The *Second Notice of Inquiry* was adopted by the Commission on May 21, 1981 (FCC 81.247, 46 FR 31693) and released on June 15, 1981. It proposed modifications to § 2.106 from 28 MHz through 1215 MHz. The Third *Notices of Inquiry* was adopted by the Commission on July 16, 1981 (FCC 81-323, 46 FR 40536) and released on August 7, 1981. It proposed modifications to § 2.1 (Definitions) and to § 2.106 from 1215 MHz through 40.5 GHz. The *Fourth Notice of Inquiry* was adopted by the Commission on October 1, 1981. It proposed modifications to § 2.106, from 40.5 GHz through 400 GHz, and to Subpart C of Part 2, the Emission Designators. The *Fifth Notice of Inquiry* was adopted by the Commission on May 12, 1982 (FCC 82-213), and released on June 7, 1982.

adopted.[3] Additional proceedings will be developed to address these technical requirements on a case-by-case basis. After considering the differences between the new and present system of emission designators, it was determined that the Rule parts involving emission designators would best be changed by a single action. Therefore, this proceeding changes the emission designators in all applicable parts of the Rules.

Discussion

8. We are presenting, as Appendix A, a revision of Part 2, Subpart C and other parts of the Rules that have emission designators. The revisions to Part 2, Subpart C, are essentially the same as presented and discussed in the *Fourth NOI* with several appropriate changes arising from the comments received in response to the *Fourth NOI*. These are indicated below. The revisions to the other Rule parts should provide the appropriate new emission designators for the various emissions required.

9. All of the parties supported the proposed new emission designators. GTE summarized the issue by stating, "There appears to be no reason for maintaining a system of designation in the United States which is contrary to international practice." Rockwell, AT&T, and Comsat supported the Commission's proposal of not requiring the optional fourth and fifth symbol provided in the ITU Radio Regulations. As indicated in Rockwell's comments the world-wide replacement of the basic emission designators will be a major undertaking in itself. In light of this we have not included the fourth and fifth optional symbols. A note has been added to § 2.201 to indicate that the optional fourth and fifth symbol are provided for in the ITU Radio Regulations, but they are not required by the Commission.

10. Rockwell expressed concern over the possibility of different interpretations for specifying the emission designator for single-sideband transmitters. The Radio Regulations, as amended by the Final Acts, 1979 WARC, specify the use of A1A and F1B emissions in certain instances. A common technique for generating signals conforming to the A1A emission is to use a single-sideband transmitter operated in the suppressed carrier mode modulated with a sinusoidal frequency that is manually keyed on-off to produce an emitted radio frequency signal after translation to the operating frequency. If frequency shift keying is used to deviate the modulating frequency to a mark or space position, the emitted radio frequency signal produced at the operating frequency conforms to an F1B emission. In that interpretation under the old system of designators the suppressed carrier was not considered as the main carrier. However, under the new system of designation, the suppressed carrier is considered as the main carrier, and the two emissions are expressed as J2A and J2B respectively.

11. We agree with Rockwell that confusion could arise in specifying certain emission designators. However, we intend to provide for maximum flexibility in the emission designators used in the Rule parts that use single-sideband transmissions. Therefore, we intend to permit the use of A1A, F1B, J2A and J2B designators to accommodate single-sideband transmitters which are widely used in the maritime mobile service (Parts 81 and 83) and the land mobile service (Part 90).

12. In § 2.202, the new system for specifying the necessary bandwidth and a table showing the calculations of necessary bandwidth for various types of emissions is shown. AT&T pointed out that the tables in Appendix 6 of the ITU Radio Regulations do not contain examples of wideband, high bit rate, digital microwave emission for telephony as currently exist in § 2.202 of the Commission's Rules. In General Docket Number 81-743 (FCC 83-110, 32846), the Commission adopted three new examples of necessary bandwidth calculations for multi-channel radio telephony transmissions. These three examples have been added to the new table in § 2.202, paragraph (g).

13. Comsat does not believe that the tables in Appendix 6 provide sufficient information to allow the determination of the peak deviation for multi-channel radio-relay carrier transmissions. Comsat suggested that the introductory material for the tables include the basic equation for deriving the peak deviation. We do not believe that it is necessary to add the basic equation for deriving the peak deviation. Docket No. 81-743 discussed the development of the multiplying factors for determining the peak deviation in detail, and a table was added to § 2.202(f) showing the multiplying factors used to derive the peak deviation for radio-relay carriers having from 12 to more than 240 circuits. The information shown in § 2.202(f) should be sufficient to determine the peak deviation.

14. Rockwell was concerned that the proposed revision to § 2.202 did not include a table for the determination of necessary bandwidth and examples of the designation of emissions using the new symbols. This would require users of the Commission's Rules to obtain a copy of ITU Radio Regulations, and obtain copies of the International Frequency List if reference to examples of supplementary calculations published by the International Frequency Radio Board should be needed. Rockwell urged the Commission to reconsider this matter and provide all of the applicable information within Part 2 of its Rules so that it will be readily available to the many who require access to this information. The revisions shown in § 2.202, paragraph (g) should be responsive to this matter.

15. Rockwell pointed out an apparent error in Appendix 6 of the 1979 WARC Final Acts. In Appendix 6, the emission designator for a continuous wave emission with no modulating signal is given as "NONE". This is contrary to Article 4 of the Final Acts which indicates that the emission classification should be "N0N" (0 used here indicates zero). The difference between Article 4 and Appendix 6 apparently come about as a result of translating the original Article 4 to French where it appears as "NON" (the letter 0), and Spanish where it appears as "ninguna" (translated as NONE in English). The Commission agrees with Rockwell that the emission designator for a continuous wave with no modulation should be "N0N" (zero) as it appears in Article 4 of the 1979 Final Acts.

16. The new emission designators also distinguished between phase (G), and frequency (F) modulation. Under the Commission's present system both phase and frequency modulated emissions are indicated by "F". Although there are differences in the methods of obtaining phase and frequency modulation the RF emission generally appears the same. Therefore, the Commission's Rules and earlier ITU emission designators did not distinguish between them. However, the ITU Radio Regulations specify phase modulation for some operations, and the new designators provide for a separate indication for such emissions. Therefore, manufacturers should begin to specify emission designators for either phase modulation (G) or frequency modulation (F) for their equipment. In the Rules we have indicated either frequency or phase modulation where the current emission designator is shown as F3. Either F3E or G3E is acceptable, except for Parts 81 and 83 where phase modulation is required and only G3E is shown. Equipment that is type accepted for Parts 81 and 83 with the F3 emission designator may continue to be used.

[3] PR FCC 84-220, 49 FR 21737 amended the frequency tolerances in Part 87.

17. The emission designators F9, A9, and F9Y in the present system are the most difficult to convert to the new system. With an A9 emission designator, the A stands for amplitude modulation and the 9 stands for any type of emission not covered by other symbols. Not all A9's will be the same when they are converted to the new system. For example, the emission designator for emergency locator transmitters (ELTs) is A9 in the present system. The new emission designator for ELTs is A3X.

18. Some paging systems now use F9, F9Y, F1 or F2 as an emission designator in the present system. The new system should reduce the number of emission designators used to identify paging systems. The new emission designators F1D, F2D and F3D will identify the emissions used for paging systems. The first symbol "F" indicates frequency modulation; the second symbol indicates a single channel containing quantized or digital information without the use of a modulating subcarrier when a "1" is used, a single channel containing quantized or digital information with the use of a modulating subcarrier when a "2" is used, and a single channel containing analogue information when a "3" is used; the third symbol "D" indicates a data transmission, telemetry, or telecommand. In Part 22, there has been some confusion over the emission designators used to describe paging systems. The new emission designators should resolve this problem since the "1" and "2" both provide for quantized or digital information.

19. In General Docket No. 82-625 (See 48 FR 32991, July 20, 1983), the Commission adopted a *Report and Order* providing for the use of high frequency spectrum by the Special Industrial, Petroleum, Telephone Maintenance and Power Radio Services. The emission designator F1 (present system) was inadvertently left out of § 90.237 paragraph (g). In the body of the *Order*, F1 was listed as one of the emission types permitted. The new emission designators specified in § 90.237(g) should permit the type of emissions presently used.

20. The new system for emission designators will not require modification to equipment. It changes only the system used to identify emissions. Therefore, we are specifying only those changes necessary to conform with the new system. After April 1, 1985, all applications for new equipment authorizations (such as: Type acceptance, type approval, certification, etc.) will be expected to specify the new emission designators, and the equipment authorization grants issued by the Commission will reflect the new emission designators. We do not propose that the grantees for existing equipment file a modification for existing equipment authorizations to change the emission designators. We realize there may be some concern since equipments in the Commission's Radio Equipment List will have the present emission designators and in the future new equipments will be identified by the new emission designators. We would like to make the transition to the new emission designators without creating a burden for the manufacturers and users of equipments approved by the Commission. We believe that any difficulties will be minimal and can be addressed on a case-by-case basis.

21. The data automation systems used in license processing are much more complicated than the one used to enter the emission designators on the equipment authorization grant, and the Commission's Radio Equipment List. The licensing divisions will be issuing Public Notices to notify licensees when license applications should be submitted with the new emission designators. Until this time, licensees should continue to use the present emission designators on license applications.

22. There are also some questions on the Amateur Radio Operator License Examinations that will have to be changed. These examination questions are revised periodically through a series of bulletins (Bulletin 1035 series). As these bulletins are periodically updated, the questions with the new emission designators may be inserted.

23. The rules modified herein do not alter the authorization of or substantive requirements imposed upon equipment manufacturers. They simply modify the Commission's nomenclature for specifying emission designators from the currrent method to another method specified under the International Radio Regulations. Such procedural rule changes are exempt from the notice and comment requirements of the administrative procedures act. *See* 5 U.S.C. 553(b)(A). Thus, a notice of proposed rulemaking was unnecessary.

24. Regarding questions on matters covered in this document contact Dan Yates (202) 653-6288.

25. Accordingly, it is ordered, That effective January 3, 1985, Parts 2, 15, 21, 22, 23, 74, 81, 83, 87, 90, 95, 97, and 99 of the Commission's Rules and Regulations are amended as set forth in the attached Appendix.

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

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 2—[AMENDED]

A. Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 2.201 is revised to read as follows:

§ 2.201 Emission, modulation, and transmission characteristics.

The following system of designating emission, modulation, and transmission characteristics shall be employed.

(a) Emissions are designated according to their classification and their necessary bandwidth.

(b) A minimum of three symbols are used to describe the basic characteristics of radio waves. Emissions are classified and symbolized according to the following characteristics:

(1) First symbol—type of modulation of the main character;

(2) Second symbol—nature of signal(s) modulating the main carrier;

(3) Third symbol—type of information to be transmitted.

Note.—A fourth and fifth symbol are provided for additional information and are shown in Appendix 6, Part A of the ITU Radio Regulations. Use of the fourth and fifth symbol is optional. Therefore, the symbols may be used as described in Appendix 6, but are not required by the Commission.

(c) First Symbol—types of modulation of the main carrier:

(1) Emission of an unmodulated carrier	N
(2) Emission in which the main carrier is amplitude-modulated (including cases where sub-carriers are angle-modulated):	
—Double-sideband	A
—Single-sideband, full carrier	H
—Single-sideband, reduced or variable level carrier	R
—Single-sideband, suppressed carrier	J
—Independent sidebands	B
—Vestigial sideband	C
(3) Emission in which the main carrier is angle-modulated:	
—Frequency modulation	F
—Phase modulation	G
NOTE.—Whenever frequency modulation "F" is indicated, Phase modulation "G" is also acceptable.	
(4) Emission in which the main carrier is amplitude and angle-modulated either simultaneously or in a pre-established sequence	D
(5) Emission of pulses:[1]	
—Sequence of unmodulated pulses	P
—A sequence of pulses:	
—Modulated in amplitude	K
—Modulated in width/duration	L
—Modulated in position/phase	M
—In which the carrier is angle-modulated during the period of the pulse	Q
—Which is a combination of the foregoing or is produced by other means	V
(6) Cases not covered above, in which an emission consists of the main carrier modulated, either simultaneously or in a pre-established sequence, in a combination of two or more of the following modes: amplitude, angle, pulse	W

(7) Cases not otherwise covered	X

[1] Emissions where the main carrier is directly modulated by a signal which has been coded into quantized form (e.g. pulse code modulation) should be designated under (2) or (3).

(d) Second Symbol—nature of signal(s) modulating the main carrier:

(1) No modulating signal	0
(2) A single channel containing quantized or digital information without the use of a modulating sub-carrier, excluding time-division muliplex	1
(3) A single channel containing quantized or digital information with the use of a modulating sub-carrier, excluding time-division multiplex	2
(4) A single channel containing analogue information	3
(5) Two or more channels containing quantized or digital information	7
(6) Two or more channels containing analogue information	8
(7) Composite system with one or more channels containing quantized or digital information, together with one or more channels containing analogue information	9
(8) Cases not otherwise covered	X

(e) Third Symbol—type of information to be transmitted:[2]

(1) No information transmitted	N
(2) Telegraphy—for aural reception	A
(3) Telegraphy—for automatic reception	B
(4) Facsimile	C
(5) Data transmission, telemetry, telecommand	D
(6) Telephony (including sound broadcasting)	E
(7) Television (video)	F
(8) Combination of the above	W
(9) Cases not otherwise covered	X

(f) Type *B* emission: As an exception to the above principles, damped waves are symbolized in the Commission's rules and regulations as type *B* emission. The use of type B emissions is forbidden.

(g) Whenever the full designation of an emission is necessary, the symbol for that emission, as given above, shall be preceded by the necessary bandwidth of the emission as indicated in §2.202(b)(1).

2. Section 2.202 is amended by adding paragraphs (1), (2), and (3) to paragraph (b), and revising paragraphs (e) and (g) to read as follows:

§ 2.202 Bandwidths.

* * * * *

(b) * * *

(1) The necessary bandwidth shall be expressed by three numerals and one letter. The letter occupies the position of the decimal point and represents the unit of bandwidth. The first character shall be neither zero nor K, M or G.

(2) Necessary bandwidths:

between 0.001 and 999 Hz shall be expressed in Hz (letter H);
between 1.00 and 999 kHz shall be expressed in kHz (letter K);
between 1.00 and 999 MHz shall be expressed in MHz (letter M);
between 1.00 and 999 GHz shall be expressed in GHz (letter G).

(3) Examples:

0.002 Hz—H002
0.1 Hz—H100
25.3 Hz—25H3
400 Hz—400H
2.4 kHz—2K40
6 kHz—6K00
12.5 kHz—12K5
180.4 kHz—180K
180.5 kHz—181K
180.7 kHz—181K
1.25 MHz—1M25
2 MHz—2M00
10 MHz—10M0
202 MHz—202M
5.65 GHz—5G65

* * * * *

(e) In the formulation of the table in paragraph (g) of this section, the following terms are employed:

B_n = Necessary bandwidth in hertz
B = Modulation rate in bauds
N = Maximum possible number of black plus white elements to be transmitted per second, in facsimile
M = Maximum modulation frequency in hertz
C = Sub-carrier frequency in hertz
D = Peak frequency deviation, i.e., half the difference between the maximum and minimum values of the instantaneous frequency. The instantaneous frequency in hertz is the time rate of change in phase in radians divided by 2
t = Pulse duration in seconds at half-amplitude
t_r = Pulse rise time in seconds between 10% and 90% of maximum amplitude
K = An overall numerical factor which varies according to the emission and which depends upon the allowable signal distortion.
N_c = Number of baseband telephone channels in radio systems employing multichannel multiplexing
P = Continuity pilot sub-carrier frequency (Hz) (continuous signal utilized to verify performance of frequency-division multiplex systems).

* * * * *

(g) Table of necessary bandwidths:

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
I. NO MODULATING SIGNAL			
Continuous wave emission			N0N (zero)
II. AMPLITUDE MODULATION			
1. Signal With Quantized or Digital Information			
Continuous wave telegraphy	B_n=BK, K=5 for fading circuits, K=3 for non-fading circuits	25 words per minute; B=20, K=5, Bandwidth: 100 Hz	100HA1A
Telegraphy by on-off keying of a tone modulated carrier	B_n=BK+2M, K=5 for fading circuits, K=3 for non-fading circuits	25 words per minute; B=20, M=1000, K=5, Bandwidth: 2100 Hz=2.1 kHz	2K10A2A
Selective calling signal, single-sideband full carrier	B_n=M	Maximum code frequency is: 2110 Hz, M=2110, Bandwidth: 2110 Hz=2.11 kHz	2K11H2B
Direct-printing telegraphy using a frequency shifted modulating sub-carrier single-sideband suppressed carrier	B_n=2M+2DK, M=B÷2	B=50, D=35 Hz (70 Hz shift), K=1.2, Bandwidth: 134 Hz	134HJ2B
Telegraphy, single sideband reduced carrier	B_n=central frequency+M+DK, M=B÷2	15 channels; highest central frequency is: 2805 Hz, B=100, D=42.5 Hz (85 Hz shift), K=0.7 Bandwidth: 2.885 Hz=2.885 kHz	2K89R7B
2. Telephony (Commercial Quality)			
Telephony double-sideband	B_n=2M	M=3000, Bandwidth=6000 Hz=6 kHz	6K00A3E
Telephony, single-sideband, full carrier	B_n=2M	M=3000, Bandwidth: 3000 Hz=3 kHz	3K00H3E

[2] In this context the word "information" does not include information of a constant, unvarying nature such as is provided by standard frequency emissions, continuous wave and pulse radars, etc.

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
Telephony, single-sideband suppressed carrier	$B_n = M$ – lowest modulation frequency	M = 3000, lowest modulation frequency is 3000 Hz, 2700 Hz Bandwidth: 2700Hz = 2.7 kHz	2K70J3E
Telephony with separate frequency modulated signal to control the level of demodulated speech signal, single-sideband, reduced carrier	$B_n = M$	Maximum control frequency is 2990 Hz, M = 2990, Bandwidth: 2990 Hz = 2.99 kHz	2K99R3E
Telephony with privacy, single-sideband, suppressed carrier (two or more channels)	$B_n = N_c M$ – lowest modulation frequency in the lowest channel	$N_c = 2$, M = 3000 lowest modulation frequency is 250 Hz, Bandwidth: 5750 Hz = 5.75 kHz	5K75J8E
Telephony, independent sideband (two or more channels)	B_n = sum of M for each sideband	2 channels, M = 3000, Bandwidth: 6000 Hz = 6 kHz	6K00B8E
3. Sound Broadcasting			
Sound broadcasting, double-sideband	$B_n = 2M$, M may vary between 4000 and 10000 depending on the quality desired	Speech and music, M = 4000, Bandwidth: 8000 Hz = 8 kHz	8K00A3E
Sound broadcasting, single-sideband reduced carrier (single channel)	$B_n = M$, M may vary between 4000 and 10000 depending on the quality desired	Speech and music, M = 4000, Bandwidth: 4000 Hz = 4 kHz	4K00R3E
Sound broadcasting, single-sideband, suppressed carrier	$B_n = M$ – lowest modulation frequency	Speech and music, M = 4500, lowest modulation frequency = 50 Hz, Bandwidth: 4450 Hz = 4.45 kHz	4K45J3E
4. Television			
Television, vision and sound	Refer to CCIR documents for the bandwidths of the commonly used television systems	Number of lines = 525; Nominal video bandwidth: 4.2 MHz, Sound carrier relative to video carrier = 4.5 MHz	5M75C3F
		Total vision bandwidth: 5.75 MHz; FM aural bandwidth including guardbands: 250,000 Hz	250KF3E
		Total bandwidth: 6 MHz	6M25C3F
5. Facsimile			
Analogue facsimile by sub-carrier frequency modulation of a single-sideband emission with reduced carrier	$B_n = C - N \div 2 + DK$, K = 1.1 (typically)	N = 1100, corresponding to an index of cooperation of 352 and a cycler rotation speed of 60 rpm. Index of cooperation is the product of the drum diameter and number of lines per unit length C = 1900, D = 400 Hz, Bandwidth = 2.890 Hz = 2.89 kHz	2K89R3C
Analogue facsimile; frequency modulation of an audio frequency sub-carrier which modulates the main carrier, single-sideband suppressed carrier	$B_n = 2M + 2DK$, $M = N/\pi$, K = 1.1 (typically)	N = 1100, D = 400 Hz, Bandwidth: 1960 Hz = 1.98 kHz	1K98J3C
6. Composite Emissions			
Double-sideband, television relay	$B_n = 2C + 2M + 2D$	Video limited to 5 MHz, audio on 6.5 MHz frequency modulated subcarrier deviation = 50 kHz: $C = 6.5 \times 10^6$ $D = 50 \times 10^3$ Hz, M = 15,000, Bandwidth: 13.13×10^6 Hz = 13.13 MHz	13M2A8W
Double-sideband radio relay system	$B_n = 2M$	10 voice channels occupying baseband between 1 kHz and 164 kHz; M = 164,000 bandwith = 328,000 Hz = 328 kHz	328KA8E
Double-sideband emission of VOR with voice (VOR = VHF omnidirectional radio range)	$B_n = 2C_{max} + 2M + 2DK$, K = 1 (typically)	The main carrier is modulated by: —a 30 Hz subcarrier—a carrier resulting from a 9960 Hz tone frequency modulated by a 30 Hz tone—a telephone channel—a 1020 Hz keyed tone for continual Morse identification. $C_{max} = 9960$, M = 30, D = 480 Hz, Bandwidth: 20,940 Hz = 20.94 kHz	20K9A9W
Independent sidebands; several telegraph channels together with several telephone channels	B_n = sum of M for each sideband	Normally composite systems are operated in accordance with standardized channel arrangements, (e.g. CCIR Rec. 348-2) 3 telephone channels and 15 telegraphy channels require the bandwidth 12,000 Hz = 12 kHz	12K0B9W
III–A. FREQUENCY MODULATION			
1. Signal With Quantized or Digital Information			
Telegraphy without error-correction (single channel)	$B_n = 2M + 2DK$, $M = B \div 2$, K = 1.2 (typically)	B = 100, D = 85 Hz (170 Hz shift), Bandwidth: 304 Hz	304HF1B
Four-frequency duplex telegraphy	$B_n 2M + 2DK$, B = Modulation rate in bands of the faster channel. If the channels are synchronized: $M = B \div 2$, otherwise M = 2B, K = 1.1 (typically)	Spacing between adjacent frequencies = 400 Hz; Synchronized channels; B = 100, M = 50, D = 600 Hz, Bandwidth: 1420 Hz = 1.42 kHz	1K42F7B
2. Telephony (Commercial Quality)			
Commercial telephony	$B_n = 2M + 2DK$, K = 1 (typically, but under conditions a higher value may be necessary	For an average case of commercial telephony, M = 3,000, Bandwidth: 16,000 Hz = 16 kHz	16K0F3E
3. Sound Broadcasting			
Sound broadcasting	$B_n = 2M + 2DK$, K = 1 (typically)	Monaural, D = 75,000 Hz, M = 15,000, Bandwidth: 18,000 Hz = 180 kHz	180KF3E

Description of emission	Necessary bandwidth		Designation of emission
	Formula	Sample calculation	
4. Facsimile			
Facsimile by direct frequency modulation of the carrier; black and white	$B_n = 2M + 2DK$, $M = N \div 2$, $K = 1.1$ (typically)	N=1100 elements/sec; D=400 Hz, Bandwidth: 1980 Hz=1.98 kHZ	1K98F1C
Analogue facsimile	$B_n = 2M + 2DK$, $M = N \div 2$, $K = 1.1$ (typically)	N=1100 elements/sec; D=400 Hz, Bandwidth: 1980 Hz=1.98 kHz	1K98F3C
5. Composite Emissions (See Table III-B)			
Radio-relay system, frequency division multiplex	$B_n = 2P + 2DK$, $K = 1$	Microwave radio relay system specifications: 60 telephone channels occupying baseband between 60 and 300 kHz; rms per-channel deviation 200 kHz; pilot at 331 kHz produces 200 kHz rms deviation of main carrier. Computation of B_n: D=(200×10³ 3×3.76×1.19), Hz=0.895×10⁶, P=0.331×10⁶ Hz; Bandwidth: 2.452×10⁶ Hz	2M45F8E
Radio-relay system frequency division multiple	$B_n = 2M + 2DK$, $K = 1$	Microwave radio relay relay systems specifications: 1200 telephone channels occupying baseband between 60 and 5564 kHz; rms per channel deviation 200 kHz; continunity pilot at 6199 kHz produces 140 kHz rms deviation of main carrier. Computation of B_n: D=(20⁵×10³× 3.76×3.63)=2.73×10⁶, M=5.64×10⁹Hz; P=6.2×10⁸ Hz; (2M+2DK<2P; Bandwidth 16.59×10⁶ Hz	16M6F8E
Radio-relay system, frequency division multiplex	$B_n = 2P$	Microwave radio relay system specifications: Multiplex 600 telephone channels occupying baseband between 60 and 2540 kHz; continuity pilot at 8500 kHz produces 140 kHz rms deviation of main carrier. Computation of Bn: D=(200×10³× 3.76×2.565)=1.93×10⁶ Hz; M=2.54×10⁶ Hz; 2DK)<2P Bandwidth: 17×10⁶ Hz	17M0F8E
Unmodulated pulse emission	$B_n = 2K \div t$, K depends upon the ratio of pulse rise time. Its value usually falls between 1 and 10 and in many cases it does not need to exceed 6	Primary Radar Range resolution: 150 m, K=1.5 (triangular pulse where $t_r = t_d$, only components down to 27 dB from the strongest are considered) Then t=2×range resolution÷velocity of light=2×150÷3×10⁸=1×10⁻⁶ seconds, Bandwidth: 3×10⁶ Hz=3 MHz	3M00P0N
2. Composite Emissions			
Radio-relay system	$B_n = 2K \div t$, K=1.6	Pulse position modulated by 36 voice channel baseband; pulse width at half amplitude=0.4 us, Bandwidth: 8×10⁶ Hz=8 MHz (Bandwidth independent of the number of voice channels)	8M00M7E

PART 15—[AMENDED]

B. Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 15.116 [Amended]

3. Section 15.116 is amended by changing "(F3 or A3)" to "(F3E, G3E or A3E)" and "(A1)" to "(A1A or A1B)" in paragraph (a) of this section.

PART 21—[AMENDED]

C. Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 21.104 [Amended]

4. Section 21.104 is amended by changing 'F0 and A0' to 'N0N' in paragraph (b) of this section.

5. Section 21.105 is revised as follows:

§ 21.105 Bandwidth.

Each authorization issued pursuant to these rules will show, as the emission designator, a symbol representing the class of emission which shall be prefixed by a number specifying the necessary bandwidth. This figure does not necessarily indicate the bandwidth actually occupied by the emission at any instant. In those cases where Part 2 of this chapter does not provide a formula for the computation of the necessary bandwidth, the occupied bandwidth may be used in the emission designator.

6. Secion 21.121 is amended by revising paragraph (c)(3) to read as follows:

§ 21.121 Replacement of equipment.

* * * * *

(c) * * *

(3) Name of the Manufacturer and the FCC ID number of the transmitter installed.

* * * * *

7. Section 21.703 is amended by revising the table in paragraph (e) as follows:

§ 21.703 Bandwidth and emission limitations.

* * * * *

(e) * * *

Type of emission	50–150 MHz		15–500 MHz	
	Authorized bandwidth (kHz)	Frequency deviation (kHz)	Authorized bandwidth (kHz)	Frequency deviation (kHz)
A1A	1		1	
A2A	3		3	
A3E	8		8	
F1B	3		3	
F2B	15		15	
F3E or G3E	40	15	20	5

* * * * *

§ 21.704 [Amended]

8. Section 21.704 is amended by changing "A3" to, "A3E", and "F3" to "F3E or (G3E)" in paragraph (b) of this section.

§ 21.804 [Amended]

9. Section 21.804 is amended by changing "A3" to "A3E", and "F3" to "F3E or (G3E)" in the table in paragraph (c) of this section.

§ 21.90 [Amended]

10. Section 21.905 is amended by changing "(A5C)" to "(C3F)" and "(F3)"

to "(F3E) or (G3E)" in paragraph (a) of this section.

PART 22—[AMENDED]

D. Part 22 of Chapter I of Title 47 of the Code Federal Regulations is amended as follows:

11. Section 22.104 is amended by revising paragraph (a)(1) and adding a new paragraph (a)(2) and redesignating existing paragraphs (a)(2) as (a)(3), and (a)(3) as (a)(4).

§ 22.104 Emission types.

(a) * * *

(1) Emissions authorized to stations in the public land mobile, rural radio, and offshore radio services include but are not limited to F1D, F1E, F2D, F3C, and F3E.

(2) Emissions for tone signals or signaling devices whose sole functions are to establish and to maintain communications are included under the authorized emissions. These emissions must be within the authorized bandwidth and do not have to be listed separately

* * * * *

12. Section 22.507 is revised to read as follows:

§ 22.507 Bandwidth and emission limitations.

The maximum authorized band-width of emission and, for the cases of frequency or phase modulated emissions, the maximum authorized frequency deviation shall be as follows:

Type of emission	25–50 MHz		50–150 MHz		150–932 MHz	
	Authorized band width (kHz)	Frequency deviation (kHz)	Authorized band width (kHz)	Frequency deviation (kHz)	Authorized band width (kHz)	Frequency deviation (kHz)
A2D	3		3		3	
A3E	8		8		8	
F1D	20		20		20	
F1E	20	5	20	5	20	5
F2D	15		15		15	
F3E	20	5	20	5	20	5

§ 22.508 [Amended]

13. Section 22.508 is amended by changing "A3" to "A3E", and "F3" to "F3E" in paragraph (e), "A3" to "A3E", and "F3" to "F3E" in paragraph (f), and "A3" to "A3E", and "F3" to "F3E" in paragraph (g) of this section.

§ 22.601 [Amended]

14. Section 22.601 is amended by changing "F9Y" to "F1D" in paragraph (f)(4) of this section.

15. Section 22.604 is amended by revising the table in paragraph (a) as follows:

§ 22.604 Emission limitations.

(a) * * *

Type of emission	Authorized bandwidth (kHz)	Frequency deviation (kHz)
A2D	3	
A3C	12	
A3E	8	
F1D	20	5
F1E	20	5
F2D	15	
F3C	20	5
F3E	20	5

* * * * *

§ 22.605 [Amended]

16. Section 22.605 is amended by changing "A3" to "A3E", and "F3" to "F3E", in paragraph (d), and "A3" to "A3E", and "F3" to "F3E" in paragraph (e), and "A3" to "A3E", and "F3" to "F3E" in paragraph (f) of this section.

§ 22.906 [Amended]

17. Section 22. 906 is amended by changing "F3" to "F3E" in paragraph (a) and paragraphs (a)(1), (a)(4) and (a)(5) appears twice; "F9" to "F3D" in paragraph (b); and "F9Y" to "F1D" in paragraph (c) of this section.

§ 22.907 [Amended]

17a. Section 22.907 is amended by changing "F3" to "F3E" in paragraph (a), paragraphs (a)(1) and (a)(2); "F9" to "F3D" (appears twice), and "F9Y" to "F1D" in paragraph (a)(3); "F3" to "F3E" in paragraphs (b), (c) and (c)(3); "F9Y" to "F1D" in paragraph (d); "F9" to "F3D" in paragraphs (g) and (h); "F3" to "F3E" in paragraph (j)(1); "F9Y" to "F1D" and "F9" to "F3D" in paragraph (j)(2) of this section.

§ 22.1003 [Amended]

18. Section 22.1003 is amended by changing, "F3" to "F3E" in paragraphs (a) and (c).

§ 22.1004 [Amended]

19. Section 22.1004 is amended by changing "F3" to "F3E" in paragraphs (c) and (d) of this section.

PART 23—[AMENDED]

E. Part 23 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows·

§ 23.1 [Amended]

20. Section 23.1 is amended by changing the emissions in the definition of radiotelegraph from "A0", A1, A2, A4, F1, F2, and F4" to "N0N, A1A, A2A, A3C, F1B, F2B, and F3C"; and the emissions in the definition of radiotelephone from "(A3), single sideband * * * (A3B) transmission" to "(A3E), single sideband (R3E, H3E, J3E) or independent sideband (B3E) transmission".

21. Section 23.12 is revised as follows:

§ 23.12 Use of radiotelegraph emissions by radiotelephone stations.

The licensee of a point-to-point radiotelephone station may be authorized to use type N0N, A1A, A2A, F1B, or F2B emission for identification, for test purposes or for the exchange of service messages.

22. Section 23.14 is amended by revising paragraph (b) as follows:

§ 23.14 Emission, bandwidth, modulation and transmission characteristics.

* * * * *

(b) *Designation of emissions in authorizations.* The emission designations used in authorizations will indicate only the maximum value of the necessary bandwidth for each type of modulation authorized.

* * * * *

PART 74—[AMENDED]

F. Part 74 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

23. Section 74.462 is amended by revising the table and footnotes 1 and 2 in paragraph (b) as follows:

§ 74.462 Authorized bandwidth and emissions.

* * * * *

(b) * * *

Frequency (MHz)	Authorized bandwidth (kHz)	Maximum frequency deviation [1] (kHz)	Type of emsission [2, 3]
25.87 to 26.03	40	10	A3E, F3E, G3E, F8W, G8W.
26.07 to 26.47	20	5	A3E, F3E, G3E, F8W, G8W.
152.87 to 153.35 [4]	30/60	5/10	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.

Frequency (MHz)	Authorized bandwidth (kHz)	Maximum frequency deviation [1] (kHz)	Type of emsission [2] [3]
160.89 to 161.37	60	10	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.
161.64 to 161.76	30	5	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.
166.25 to 170.15	25	5	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.
450.01 to 455.99 (10 kHz channels)	10	1.5,	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.
450.0875 to 455.6125 (25 kHz channels)	25	5,	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.
450.05 to 455.85 (50 kHz channels)	50	10	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.
450.925 to 455.925 (100 kHz channels)	100	35	A1A, A2A, A3E, F1B, J3E, F2B, F3E, G3E, F8W, G8W.

[1] Applies where class F1B, F2B, F3E, G3E, F8W, or G8W emission is used.
[2] Stations operating above 450 MHz shall show a need for employing A1A, A2A, F1B, or F2B emission.
[3] * * *
[4] * * *

* * * * *

§ 74.736 [Amended]

24. Section 74.736 is amended by changing "(A5)" to "(A8W)" and "(F3)" to "(F3E) or (G3E)" in paragraph (a) of this section.

§ 74.936 [Amended]

25. Section 74.936 is amended by changing "(A5)" to "(C3F)" and "(F3)" to "(F3E) or (G3E)" in paragraph (a) of this section.

26. Section 74.1236 is amended by revising paragraph (a) as follows:

§ 74.1236 Emission and bandwidth

(a) The licensee of a station authorized under this subpart authorizes the transmission of F3E or other types of frequency modulation upon a showing of need as long as the emission complies with the requirements in paragraphs (b), (c) and (d) of this section.

* * * * *

PART 81—[AMENDED]

G. Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

27. Section 81.131 is amended by revising paragraphs (b), (d), and (g) as follows:

§ 81.131 Authorized frequency tolerance.

* * * * *

(b) Authorized frequency tolerances for coast stations operating on frequencies below 30 MHz and for marine utility stations:

Frequency ranges	Tolerance—parts in 10^6 unless shown in Hertz (Hz)
(1) From 14 to 525 kHz:	
(i) For H2B emissions	20 Hz
(ii) For all other emission	200
(2) From 1605 to 4000 kHz:	
(i) For R3E, J3E, J3C, and F3C emissions	20 Hz
(ii) For all other emissions	50
(3) From 4000 to 27,500 kHz:	
(i) For R3E, B3E, J3E, and F3C emissions	15 Hz
(ii) For narrow-band direct printing telegraphy and data transmission systems	20 Hz
(iii) For other than (i) and (ii) above	15 Hz

* * * * *

(d) Authorized frequency tolerances for stations in the maritime fixed services:

Frequency or frequency ranges	Tolerance—parts in 10^6 unless shown in Hertz (Hz)
(1) From 2000 to 2850 kHz: Marine fixed stations and marine receiver-test stations:	
(i) For other than R3E, and J3E emissions	50
(ii) For R3E, and J3E emissions	20 Hz
(2) From 72 to 76 MHz:	
(i) 72.0–73.0 MHz and 75.4–76.0 MHz	5
(ii) 73.00–74.6 MHz	50
(3) From 100–200 MHz: Marine receiver test stations. For stations licensed to operate with a carrier power:	
(i) Below 3 watts	10
(ii) 3 to 100 watts	5
(iii) Above 100 watts	2.5

* * * * *

(g) Authorized frequency tolerances for Alaska-public fixed and Alaska-private station:

Frequency ranges	Tolerance—parts in 10^6 unless shown in Hertz (Hz)
(1) From 50 to 525 kHz	200
(2) From 1605 to 3400 kHz:	
(i) For R3E, H3E, and J3E emissions	20
(ii) For other than R3E, H3E, and J3E emissions	50
(3) From 4000 to 12,000 kHz:	
(i) for R3E, H3E and J3E emissions	20 Hz
(ii) For all other emissions	15

28. Section 81.132 is revised as follows:

§ 81.132 Authorized classes of emissions.

(a) Unless otherwise specified in the station license or in this part, stations are authorized to employ classes of emission as follows:

Frequency band	Classes of emission
(1) Coast stations using telegraphy:	
(i) 14 to 160 kHz	A1A.
(ii) 160 to 490 kHz	A1A, A2A or H2A for distress, urgency and safety signals or any communications preceded by one of these signals.
(iii) 490 to 535 kHz	A1A and A2A, or H2A.
(iv) 2035 to 27,500 kHz	(A1A on frequencies listed in § 81.204(c); and only as authorized by the Commission on frequencies listed in § 81.206; and F3C or J3C on frequencies referred to in § 81.230.
(2) Coast stations using radio telephony:	
(i) For frequencies below 23 MHz in § 81.304(a): 2182 kHz.	J3E as specified in § 81.304(c).
(ii) All other frequencies	A3E, R3E, H3E, or J3E as specified in § 81.304 and § 81.361.
(iii) For frequencies in the band 156 to 162 MHz: 156.850, 161.825, 161.875, 161.925, and 161.975 MHz.	G3E, and when assigned to stations in an automated multistation system, G2B and G3C. The authorized bandwidth for G2B and G3C emissions will be the same as for G3E as specified in § 81.133.
(iv) All other frequencies	G3E.
(3) Marine fixed and Marine receiver-test stations:	
(i) 2000–2350 kHz, except for 2182 kHz.	R3E and J3E.
(ii) 2182 kHz	J3E.
(4) Operational fixed stations: 72–76 MHz.	A1A, A2A, A3E, F1B, F2B, G3E.
(5) Stations using radar transmitters only: Above 2400 MHz.	P0N.
(6) Alaska fixed stations:	
(i) For radiotelegraphy:	
1605 to 12,000 kHz	A1A.
14 to 160 kHz	F1B.
4000 to 12,000 kHz	
(ii) For telephony	R3E, or J3E as specified in § 81.708.
(7) For IWCS Stations:	
(i) radiotelegraphy	G1B, G3C.
(ii) radiotelephony	G3E.

(b) Authorization to use radiotelephone emission is construed to include use of telegraphy (including keying only the modulating audio frequency), tone signals, and signalling devices for the sole purpose of establishing or maintaining voice communications.

(c) In telegraphic communication A2A emission is permissible only by keying a carrier modulated by an audio frequency.

(d) Authorization to use H3E, R3E, or J3E emission is limited to emitting a carrier, for H3E at a power level between 3 and 6 decibels below peak envelope power, for R3E at a power level of 18 decibels, ±2 decibels, below peak envelope power; and, for J3E at a power level at least 40 decibels below peak envelope power.

(e) Emissions other than those listed in paragraph (a) of this section, and emissions for other frequency bands, may be authorized upon a satisfactory showing of need therefor. An application requesting such special authorization shall fully describe the emission desired and state the purpose for which the emission is proposed.

(f) For the purpose of the part, A3E emission is double sideband telephony; R3E emission is single sideband, reduced carrier; H3E is single sideband, full carrier; and J3E emission is single sideband, suppressed carrier.

Note.—For information regarding the classification of emissions and the calculation of the bandwidth, see Part 2 of this chapter.

Equipment employing phase modulation and shown in the Radio Equipment List with an F3 emission designator may be used where a G3E designator is specified in this part.

(g) For the purpose of this part J3C emission means facsimile transmitted by a suppressed carrier single sideband, carrier modulated with a frequency-shifted audio frequency subcarrier.

29. Section 81.133 is amended by revising the table and footnotes in paragraph (a), and paragraph (c) as follows:

§ 81.133 Authorized bandwidth.

(a) * * *

Classes of emission	Emission designator	Authorized bandwidth (kilohertz)
A1A	160HA1A	0.4
A2B	2K66A2B	2.8
A3E	6K00A3E	8.0
F1B	300HF1B [3]	[1] 5.0
F1B	16K0F1B [2]	[2] 20.0
G3E	16K0G3E [5]	[5] 20.0
G3C	16K0G3C [4]	[4] 20.0
F3C	2K80F3C [6]	[6] 3.0
PON	Variable [7]	Variable
R3E	2K80R3E	[6] 3.0
H3E	2K80H3E	[6] 3.0
J3E	2K80J3E	[6] 3.0
J3C	2K80J3C	[6] 3.0

[1] Narrow-band direct-printing telegraph and data transmission systems.
[2] Radioteletypewriter in the band 216–220 MHz.
[3] Applicable when maximum authorized frequency deviation is 5 kHz.
[4] Facsimile in the band 216–220 MHz.
[5] Facsimile in the band 2035 to 27,500 kHz.
[6] Transmitters type accepted prior to December 31, 1969, for emissions A3A, A3H, and A3J and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[7] The letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars.

* * * * *

(c) For G3E emission the maximum authorized frequency deviation is as follows:

* * * * *

30. Section 81.134 is amended by revising paragraphs (a)(1), (a)(2), (a)(3)(i), (c)(1), (d), (e), (f), (g), (h), and (i) as follows:

§ 81.134 Transmitter power.

(a) * * *

(1) For emissions R3E, B3E, H3E, and J3E: Peak envelope power (see § 81.8);

(2) For G3E emission in the band 156–162 MHz: Carrier Power (see § 81.8);

Note.—For the purposes of this section, one half of the rated plate input power is the rated carrier power of those transmitters in the range 156–162 MHz for which the output power is not shown in the Commission's Radio Equipment List.

(3) * * *

(i) Total plate input power to the final radio stage (without modulation present for A3E emission); or

* * * * *

(c) * * *

(1) For carrier frequencies other than 2638 kHz and those frequencies specified in § 81.360(e):

Frequency band (kHz)	Class of station	Class of emission	Transmitter power
2000 to 4000 [1].	Any	R3E, J3E	800 watts by day, 400 watts by night.
4000 to 27500.	Class I	R3E, J3E	50 kilowatts.
	Class II	R3E, J3E	1000 watts.

[1] When using 2182 for purposes other than distress calls and distress traffic, and urgency and safety signals and messages, the carrier power of limited coast stations shall not exceed 50 watts for J3E emission.

* * * * *

(d) Transmitter power for coast and marine utility stations using G3E emission on any frequency within the 156–162 MHz band shall be the minimum necessary for the service to be provided and shall not exceed the indicated values:

Frequency band (megahertz)	Carrier power (watts) [2]	
	Coast stations [3]	Marine utility stations
156.2625 to 157.4375	50	10
161.575 to 162.0125	50	

[2] Higher power may be authorized where a satisfactory showing of need has been made.
[3] Where losses are incurred in the transmission system between transmitter output terminals and input terminals to the antenna, higher power may be used to compensate for the losses in that transmission system. However, power into the input terminals of the antenna shall not exceed 50 W.

(e) For marine fixed and marine receiver-tested stations, transmitter power shall not exceed 150 watts for R3E and J3E emissions and 50 watts for G3E emissions.

(f) For operational fixed stations using frequencies within the band 72 to 76 MHz, and for other classes of stations subject to this part operating on frequencies above 174 MHz, transmitter power shall be as specified in the respective station authorization.

(g) For coast stations in the Alaska area, transmitter power in the bands below 12,000 kHz shall not exceed the indicated values:

Frequency band (kHz)	Class of emission	Transmitter power (watts)
400–525	A1A and A3E or H3E	265
1605–12,000 [1]	A1A R3E and J3E	150

[1] When using 2182 kHz for purposes other than distress calls and distress traffic, and urgency and safety signals and messages, the carrier power of limited coast stations shall not exceed 50 watts for J3E emission.

(h) For Alaska-private fixed stations, unless otherwise specified in this Part, transmitter power shall not exceed the indicated value:

Frequency band (kHz)	Class of emission	Transmitter power (watts)
10–200	A1A	[5] 650
400–525	A1A and A2A, or H2A	265
1605–12,000	A1A, A3E, R3E, H3E, and J3E.	150

[5] Higher power may be authorized where a satisfactory showing of need has been made.

(i) For Alaska-public fixed and coast stations, transmitter power shall not exceed the indicated value:

Frequency band (kHz)	Class of emission	Transmitter power (watts)
400–525	A1A, and A2A, or H2A	1,000
1605–12,000	A3E, R3E, H3E and J3E.	1,000

* * * * *

§ 81.137 [Amended]

31. Section 81.137 is amended by changing "(A3J)" to "(J3E)" and "(A4 emission)" to "(J3C emission)" in paragraph (f).

§ 81.139 [Amended]

32. Section 81.139 is amended by changing "A3" to "A3E", "A3H" to "H3E", and "A3J" to "J3E" in paragraph (b)(5).

§ 81.140 [Amended]

33. Section 81.140 is amended by changing "A3A" to "R3E", "A3H" to "H3E", and "A3J" to "J3E" in paragraphs (a)(1) and (a)(2).

34. Section 81.142 is amended by revising paragraphs (a), (b), (c)(1), (c)(2), (c)(3), and paragraph (f) as follows:

§ 81.142 Modulation requirements.

(a) Transmitters using A3E emission shall be capable of proper technical operation with modulation of 75 percent on peaks but not more than 100 percent on negative peaks. Each such

transmitter shall be so adjusted that the transmission of speech and the international radiotelephone alarm signal, if provision is made for transmission of the signal, normally produce peak modulation percentages within those limits.

(b) Transmitters using G3E emission in the band 156–162 MHz, or emissions G1B, G3E, or G3C in the band 216–220 MHz, shall be capable of proper technical operation with a frequency deviation of ±5 kHz which is defined as 100 percent modulation. In general, transmitters shall be adjusted so that transmission of speech normally produces peak modulation percentages between 75 and 100 percent.

(c)* * *

(1) Suppressed carrier (J3E) mode, with the carrier emitted at a power level at least 40 decibels below peak envelope power;

(2) Full carrier (H3E) mode, with the carrier emitted at a power level between 3 and 6 decibels below peak envelope power; and

(3) Reserved 83–664.

* * * * *

(f) Except as provided in paragraph (g) of this section, each radiotelephone transmitter licensed by the Commission for use of G3E or A3E emission in a station governed by this part shall be provided with a device which automatically prevents modulation in excess of 100 percent.

* * * * *

§ 81.143 [Amended]

35. Section 81.143 is amended by changing "F1" to "F1B or J2B" in paragraph (c)(1).

§ 81.190 [Amended]

36. Section 81.190 is amended by changing "A1, A2, and A2H" to "A1A, A2A, and H2A" in paragraph (a), and "A1" to "A1A" in paragraph (c).

§ 81.304 [Amended]

37. Section 81.304 is amended by changing; "2.8A3J" to "2K80J3E" in paragraphs (b)(7), (b)(8), (b)(13), "2.8A3H and 2.8A3J" to "2K80H3E and 2K80J3E" in paragraph (b)(15), "0.1A1" to "100HA1A" in paragraph (b)(16), "F2 and F4" to "G2B and G3C" two places in paragraph (b)19), "2.8A3H and 2.8A3J" to "2K80H3E and 2K80J3E", and "2.8A3J" to "2K80J3E" in paragraph (c).

§ 81.360 [Amended]

38. Section 81.360 is amended by changing "A3J" to "J3E" in paragraph (c) and "2.8A3J" to "2K80J3E" in paragraph (e)(5).

PART 83—[AMENDED]

H. Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 83.105 [Amended]

39. Section 83.105 is amended by changing; "A2 or A2H" to "A2B or H2B", and "A2 and A2H" to "A2A and H2A" in paragraph (a)(1), "A1 and either A2 or A2H" to "A1A and either A2A or H2A" in paragraph (a)(2), "A1, A2 and A2H" to "A1A, A2A, and H2A" in paragraph (a)(3), and "A1" to "A1A" in paragraphs (b), (c) and (d).

§ 83.106 [Amended]

40. Section 83.106 is amended by changing; "A3J" to "J3E", "A3H" to "H3E", "A3A" to "R3E", and "A3" to "A3E" in paragraph (a).

§ 83.131 [Amended]

41. Section 83.131 is amended by changing; "A2H" to "H2A" in paragraphs (b)(1)(i) and (b)(1)(ii), "A3A, A3H, A3J, A4J, and F4" to "R3E, H3E, J3E, J3C, and F3C" in paragraph (b)(4)(i), "A1" to "A1A" in paragraph (b)(7)(i), "A3A, A3H, A3J, A4J, and F4" to "R3E, H3E, J3E, J3C, and F3C", in paragraph (b)(7)(iii), "F1, F3, or F4" to "F1B, G3E, or F3C" in paragraph (8), and "F9" to "F3N" in paragraph (e).

42. Section 83.132 is amended by revising the table in paragraph (a), and the text of paragraphs (c), (d), (f), and (g).

§ 83.132 Authorized classes of emissions.

(a) * * *

Frequency band	Classes of emission
(1) Stations using radiotelegraphy:	
(i) 100 to 160 kHz	A1A.
160 to 525 kHz	A1A, A2A, or H2A.
2080 to 27,500 kHz	A1A, J3C or F3C: Survival Craft stations may in addition use A2A or H2A.
2070 to 2080 kHz	J3C or F3C; wideband telegraphy, facsimile and special transmission systems. Manual International Morse code and telegraphy are excluded.
1605 to 2080 kHz in Alaska.	A1A.
(ii) For frequencies designated in §§83.320 and 83.321.	J2B, F1B.
(iii) For the frequency 121.5 MHz.	A3N.
(iv) For the frequency 243 MHz.	A3N.
(2) Stations using radiotelephony:	
(i) For frequencies below 23 MHz designated in §83.251(a):	
2182 kHz	J3E.[1]
Other	J3E.[2]
(ii) For the frequencies 121.5 and 123.1 MHz.	A3A.
(iii) For frequencies in the band 156 to 162 MHz:	
161.825, 161.875, 161.925 and 161.975 MHz.	G3E; and when assigned to stations in an automated multistation system, G2B and G3C. The authorized bandwidth for G2B and G3C emissions will be the same as for G3E as specified in §83.133.
All other frequencies	G3E.
(iv) For the frequency band 450–470 MHz.	G3E.
(3) Ship radar stations:	
2400–9500 MHz	P0N.
14.0–14.05 GHz	F3N.
(4) [Reserved]	
(5) Stations not covered by the above:	
(i) For the frequency 121.5 MHz.	A3N.
(ii) For the frequency 243.0 MHz.	A3N.
(iii) For the frequency 156.75 MHz.	F3N Class C EPIRB stations.
(iv) For the frequency 156.8 MHz.	F3N Class C EPIRB stations.
(6) 216 to 220 MHz:	
(i) radiotelegraphy	G1B, G3C.
(ii) radiotelephony	G3E.

[1] Ship stations are, additionally, authorized to receive and transmit using emission H3E for communication with foreign coast stations and with vessels of foreign registry.

[2] Ship stations are, additionally, authorized to receive and transmit using emission R3E when communicating with coastal harbor stations employing R3E emission.

All other frequencies A3E, R3E, H3E or J3E as specified in §83.351 (a) and (b).

* * * * *

(c) In telegraphic communication, A3B emission is permissible only by keying a carrier modulated by an audio frequency.

(d) Authorization to use H3E, R3E or J3E emission is limited to emitting a carrier, for H3E at a power level between 3 and 6 decibels below peak envelope power; for R3E at a power level of 18 decibels, ±2 decibels, below peak envelope power; and, for J3E at a power level at least 40 decibels below peak envelope power.

* * * * *

(f) For the purpose of this part, A3E emission means double sideband full carrier, single sideband means R3E, H3E and J3E emissions.

(g) For the purpose of this part, J3C emission means facsimile transmitted by suppressed carrier single sideband, carrier modulated with a frequency-shifted audio frequency subcarrier.

Note.—For information regarding the classification of emissions and the calculation of the bandwidth, see Part 2 of this chapter.

Equipment employing phase modulation and shown in the Radio Equipment list with an F3 emission designator may be used when a G3E designator is specified in this part.

43. Section 83.133 is amended by revising the table and footnotes in paragraph (a) as follows:

§ 83.133 Authorized bandwidth.

(a) * * *

Classes of emission	Emission designator	Authorized bandwidth (kilohertz)
A1A	160HA1A	0.4
A2B	2K66A2B	2.8
A3N	2K66A3X	2.8
A3E	6K00A3E	8.0
A3N	3K20A3X [1]	[1] 25.0
F1B	300HF1B [2]	[2] 0.5
J2B	300HJ2B [2]	[2] 0.5
F1B	16K0F1B [3]	[3] 20.0
J2B	16K0J2B [3]	[3] 20.0
G3E	16K0G3E [4]	[4] 20.0
G3C	16K0G3C [5]	[5] 20.0
F3C	2K80F3C [6]	[6] 3.0
F3N	14K4F3N [1]	[1] 20.0
F3N	20M0F3N [8]	[8] 20,000
P0N	Variable [8 9]	[8] Variable
R3E	2K80R3E	[7] 3.0
H3E	2K80H3E	[7] 3.0
J3E	2K80J3E	[7] 3.0
J3C	2K80J3C	[7] 3.0

[1] Applicable only to emergency position-indicting radiobeacon stations.
[2] Narrow-band direct-printing telegraph and data transmission systems.
[3] Radioteletypewriter in the band 216–220 MHz.
[4] Applicable when maximum authorized frequency deviation is 5 kHz. See paragraph (c) of this section.
[5] Facsimile in the band 216–220 MHz.
[6] Facsimile within the band 2070 to 27,500 kHz.
[7] Transmitters type accepted prior to December 31, 1969, for emissions A3A, A3H, and A3J and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[8] Applicable to marine hand-held radars.
[9] The letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars.

* * * * *

44. Section 83.134 is amended by revising paragraphs (a)(1), (a)(2), (a)(3)(i), (c), (f), and (g), and the table and footnotes in paragraph (d) as follows:

§ 83.134 Transmitter power.

(a) * * *

(1) For emissions R3E, H3E and J3E: Peak envelope power (see § 83.7);

(2) For G3E emission in the band 156–162 MHz: carrier power (see § 83.7);

Note.—For the purposes of this section, one half the rated plate input power is the rated carrier power of those transmitters in the range 156–162 MHz for which the output power is not shown in the Commission's Radio Equipment List.

* * * * *

(i) Total plate input power to the final radio stage (without modulation present for A3E emission); or

* * * * *

(c) Transmitter power for telephony below 27.5 MHz shall not be less than 15 watts.

(d) * * *

Area	Frequency band (MHz)	Class of emission	Transmitter power
Great Lakes area and Mississippi River north of Baton Rouge, LA, and connecting inland waters.	2–27.5	Any	150
Other than the above	2–4	Ship to shore:	
		A3E–2182 kHz only	[1 2] 400
		H3E, R3E, J3E	[1 2 3] 150
		Ship to ship:	
		A3E–2182 kHz only	150
		H3E, R3E, J3E	150
	4–27.5	Any	1500

[1] Except for distress, urgency, and safety purposes, the maximum power which may be used on 2170.5, 2182, and 2191 kHz is 150 W.
[2] Except for the limitation specified in footnote 1 to this table, for cargo vessels of 300 gross tons and over this value is 500 W.
[3] Except for the limitation specified in footnote 1 to this table, passenger vessels of 5000 gross tons and over this value is 1,000 W.
[4] For passenger vessels of 5,000 gross tons and over this value is 3,000 W.

* * * * *

(f) Ship station transmitters using G3E emission in the band 156–162 MHz shall not exceed a carrier power of 25 watts [1 2 3 4] and, additionally, shall include the capability to reduce, readily, the carriage power to one watt [2 4 5] or less.

* * * * *

(g) Ship radar stations using F3N emission shall not exceed 200 milliwatts mean power (see § 83.7).

* * * * *

§ 83.136 [Amended]

45. Section 83.136 is amended by changing "A3A, A3H, and A3J" to "R3E, H3E, and J3E" in paragraphs (a)(1) and (a)(2).

§ 83.137 [Amended]

46. Section 83.137 is amended by changing "A3" to "A3E" in paragraph (a)(1), "F3" to "F3E" and "F1, F3, F4" to "F1B, G3E, F3C" in paragraph (a)(2), "A3 or F3" to "A3E or G3E" in paragraph (b), "A3J)" to "(J3E)" in paragraph (c)(1), and "(A3H)" to "(A3E)" in paragraph (c)(2).

§ 83.139 [Amended]

47. Section 83.139 is amended by changing "(A3J)" to "(J3E)" and "(A4J emission)" to "(J3C emission)" in paragraph (j).

48. Section 83.141 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and paragraphs (b), and (d) as follows:

§ 83.141 Special requirements for survival craft stations.

(a) * * *

(1) The frequency 500 kHz, be able to use class A2A emission;

(2) The frequency 2182 kHz, be able to use class A3A or H3E emission;

(3) The frequency 8364 kHz, be able to use class A2A emission;

(4) The frequency 121.5 MHz, be able to use A3N or A3E emission and where A3E emission is used the equipment must also be capable of transmitting on 123.1 MHz using A3E emission.

(b) Receivers used in survival craft stations shall be capable of receiving the frequency and types of emission which the transmitter is capable of using: Provided, That where the transmitter frequency is 8364 kHz the receiver shall be capable of receiving A1A and A2A emission through the band 8320–8745 kHz.

* * * * *

(d) When an EPIRB station is contained as a part of a survival craft station, the EPIRB portion shall be limited to the frequencies 121.5 and 243 MHz (transmission only) and to A3N emission only.

§ 83.142 [Amended]

49. Section 83.142 is amended by changing "A3 or A3H" to "A3E or H3E" and "A3J" to "J3E" in paragraph (b)(5).

50. Section 83.143 is amended by revising paragraphs (b) and (c) as follows:

§ 83.143 Narrow-band direct-printing radiotelegraphy equipment.

* * * * *

(b) The modulation rate over the radio path shall not exceed 100 bauds; and

(c) Class F1B or J2B emission shall be used with a total frequency shift of 170 Hertz.

(1) Class F1B or J2B emission shall be used when the transmission is a single-sideband suppressed carrier.

(2) When frequency shift keying is effected by applying audio signals to the input of a single-sideband transmitter, the suppressed (residual) carrier, when it falls outside the authorized bandwidth, shall be suppressed to the level prescribed by § 83.136. Further, the center audio frequency between the ±85 Hz tones shall be 1700 Hz, ±5 Hz, above the suppressed (residual) carrier.

* * * * *

§ 83.144 [Amended]

51. Section 83.144 is amended by changing "A9" to "A3N" in paragraph (a)(1).

§ 83.146 [Amended]

52. Section 83.146 is amended by changing "F9" tp "F3N" in paragraph (a)(1).

§ 83.155 [Amended]

53. Section 83.155 is amended by changing "A3A, A3H and A3J" to "R3E, H3E and J3E" in two places in paragraph (d).

§ 83.156 [Amended]

54. Section 83.156 is amended by changing "A3A, A3H, and A3J" to "R3E, H3E and J3E" in two places in paragraph (b)(3).

55. Section 83.233 is amended by revising the table as follows:

§ 83.233 Frequencies for use in distress.

* * * * *

Frequency band	Emission	Carrier frequency
405–535 kHz	A2A	500 kHz.[1]
1605–3500 kHz	J3E	2182 kHz.
118–136 MHz	A2B, A3E, A3N	121.5 MHz.
156–162 MHz	G3E	156.8 MHz.
225–399.9 MHz	A3N	243 MHz.

[1] The maximum transmitter power obtainable shall be used.

§ 83.315 [Amended]

56. Section 83.315 is amended by changing "A1" to "A1A" in paragraphs (b)(2), (b)(4), (d)(4), (d)(6), and (d)(7).

§ 83.317 [Amended]

57. Section 83.317 is amended by changing "A1" to "A1A" in the title, paragraph (b), and paragraph (h).

§ 83.319 [Amended]

58. Section 83.318 is amended by changing "A1" to "A1A" in the title and in paragraph (c).

59. Section 83.322 is amended by revising paragraph (a), (c) , and (d) as follows:

§ 83.322 Frequencies for use in distress.

(a) The international distress frequency is 500 kHz; it is used as an assigned frequency for this purpose by ship, survival craft, or aircraft stations using frequencies in the band 405–535 kHz, when requesting assistance from the maritime services. It is used, preferably with A2A emission, for the distress call, distress traffic and for the transmission of urgent and safety messages.

* * * * *

(c) The frequency 121.5 MHz (using class A2A emission) is available for assignment to survival craft stations for radiobeacon purposes. The frequency 121.5 MHz (using class A3N emission) are available for assignment to ship stations for scene of action search and rescue operations between ship and aircraft. The frequency 121.5 MHz will be assigned to ship stations for search and rescue operations only if the frequency 123.1 MHz is also authorized. Communication in support of search and rescue operations is permitted on frequency 121.5 MHz only when communications on the frequency 123.1 MHz or other VHF frequencies is not practicable. Ships and aircraft engaged in such communications on 121.5 MHz should shift to 123.1 as soon as possible.

(d) The frequency 243 MHz (class A3N emission only) is available to EPIRB stations for facilitating search and rescue operations.

§ 83.328 [Amended]

60. Section 83.328 is amended by changing "A1" to "A1A" is the title.

61. Section 83.351 is amended by revising paragraphs (b)(6), (b)(9), (b)(11), (b)(41), (b)(45), (c)(1), (c)(2), (c)(3), and paragraph (d) as follows:

§ 83.351 Frequencies available.

* * * * *

(b) * * *

(6) The frequencies 121.5 MHz and 123.1 MHz (class A3E emission) are available for assignment to ship stations for scene of action search and rescue operations between ships and aircraft.

* * * * *

(9) Use of this frequency is limited to emission 2K80J3E only.

* * * * *

(11) Limited to a maximum output power of 150 watts (PEP) and to emissions 2K80R3E and 2K80J3E.

* * * * *

(41) Limited to emissions 2K80R3E and 2K80J3E, this frequency is available for assignment on a simplex basis in the Mississippi river System.

* * * * *

(45) The frequencies 3023 and 5680 kHz may be used by aircraft and ship stations for search and rescue scene-of-action coordination purposes, including communications between these stations and participating land stations. Ship stations communicating with aircraft stations shall employ 2K80J3E emission.

(c) * * *

(1) New installations of transmitters employing A3E emission will not be authorized.

(2) Transmitters, except portable survival craft equipment, employing A3E emission which were authorized (see § 83.139(c)] prior to January 1, 1972, may continue to be used by the same licensee on the frequency 2182 kHz for testing, distress and safety purposes when the ship station is equipped for use of G3E emission on frequencies in the band 156–162 MHz.

(3) All installations of transmitters employing SSB emissions (2K80R3E, 2K80H3E, and 2K80J3E) on frequencies in the band 2000–2850 kHz will be authorized only when the ship station is equipped for use of G3E emission on frequencies in the band 156–162 MHz.

(d) Ship stations in international waters or waters controlled by foreign countries may communicate with ship and coast stations operating under authority granted by other administrations using H3E emissions in the band 1600–4000 kHz until January 1, 1982.

§ 83.352 [Amended]

62. Section 83.352 is amended by changing "A2" to "A2A", "A9" to "A3N" and "A3" to "A3E" in paragraph (b), and "A9" to "A3X" in paragraph (c).

§ 83.360 [Amended]

63. Section 83.360 is amended by changing "2.8A3J" to "2K80J3E" in paragraph (b)(6).

§ 83.365 [Amended]

64. Section 83.365 is amended by changing "A3J" to "J3E" in paragraph (a)(4).

§ 83.444 [Amended]

65. Section 83.444 is amended by changing "A1 and A2" to "A1A and A2A" in paragraph (c).

§ 83.445 [Amended]

66. Section 83.445 is amended by changing "A3H" to "H3E" in paragraph (a)(2), "A3J" to "J3E" in paragraph (a)(5), "A3 and A3H" to "A3E and H3E" in paragraph (b)(1), and "A3J to J3E" in paragraph (b)(3).

§ 83.446 [Amended]

67. Section 83.446 is amended by changing "A1 and A2" to "A1A and A2A" in paragraph (a)(4).

§ 83.459 [Amended]

68. Section 83.459 is amended by changing "A1, A2" to "A1A, A2A" in paragraph (a)(1).

§ 83.464 [Amended]

69. Section 83.464 is amended by changing "A1, A2, A2H, A3 and A3H" to "A1A, A2A, H2A, A3E and H3E" in paragraph (a)(1).

§ 83.483 [Amended]

70. Section 83.483 is amended by removing the footnote in paragraph (c).

71. Section 83.484 is amended by revising paragraph (a) and paragraph (d)(2) as follows:

§ 83.484 Radiotelephone transmitter.

(a) The transmitter shall be capable of effective transmission of H3E and J3E emission on 2182 kHz, and J3E emission on 2638 kHz and at least two other frequencies within the band 1605 to 3500 kHz available for ship-to-shore or ship-to-ship communication.

* * * * *

(d) * * *

(2) The transmitter has been demonstrated, or is of a type which has been demonstrated, to the satisfaction of the Commission as capable with normal operating voltages applied of delivering not less than 60 watts peak envelope power for H3E and J3E emission on the frequency 2182 kHz and for J3E emission on the frequency 2638 kHz into either an artificial antenna consisting of a series network of 10 ohms effective resistance and 200 picofarads capacitance, or an artificial antenna of 50 ohms nominal impedance. An individual demonstration of the power output capability of the transmitter, with the radiotelephone installation normally installed on board ship, may be required whenever in the judgment of the Commission this is deemed necessary.

* * * * *

72. Section 83.488 is amended by revising paragraphs (a) and (b) as follows:

§ 83.488 Radiotelephone receivers.

(a) The receiver required by § 83.483(b) of this part shall be capable of effective reception of H3E and J3E emissions on the radiotelephone distress frequency. The receiver shall be capable of effective reception of J3E emission on 2638 kHz and the receiving frequencies associated with the transmitting frequencies provided pursuant to § 83.484(a).

(b) In addition to the receiver required by paragraph (a) of this section a radiotelephone distress frequency watch receiver approved by the Commission for maintaining the watch required by §§ 83.202 and 83.203 and complying with the technical standards set out in § 83.559 shall be provided.

* * * * *

73. Section 83.514 is amended by revising paragraphs (a)(1) and (a)(2) as follows:

§ 83.514 Radiotelephone installation.

(a)(1) The radiotelephone installation shall include a transmitter capable of effective transmission of J3E emission and a receiver capable of effective reception of J3E emission within the band 1605 to 2850 kHz; or alternatively, if the vessel is within communication range of a public coast station or U.S. Coast Guard station operating in the band 156 to 162 MHz which maintains an efficient watch for the reception of F3E or G3E emission on 156.8 MHz at all times while the vessel is navigated in waters specified in § 83.511, and the vessel while so navigated is never more than 20 nautical miles from a 156.800 MHz receiving location of such station, the radiotelephone installation may, in lieu of medium frequency equipment, include a transmitter and receiver capable of effective transmission and reception of F3E or G3E emission within the band 156 to 162 MHz.

(2) An exemption from the band 1605 to 2850 kHz installation requirements may be granted for a vessel that is navigated within the communication range of a VHF public coast or Coast Guard station, but beyond the 20-nautical-mile limitation specified in paragraph (a)(1) of this section: *Provided,* The vessel is equipped with a transmitter and receiver capable of effective transmission and reception of F3E or G3E emission within the band 156 to 162 MHz. An application for exemption must include a chart showing the route of the voyage or the area of operation of the vessel, and the receiving service area of the VHF public coast or Coast Guard station. The coverage area of the Coast Guard station shall be based on written information from the District Commander, U.S. Coast Guard, a copy of which must be furnished with the application. The coverage area of a public coast station shall be computed by the method specified in Subpart R of Part 81 of this chapter.

* * * * *

§ 83.517 [Amended]

74. Section 83.517 is amended by removing the footnote in paragraph (a), and changing "A3J" to "J3E" in paragraph (a) and paragraph (c)(2).

§ 83.518 [Amended]

75. Section 83.518 is amended by changing "F3" to "G3E" in paragraph (a).

§ 83.519 [Amended]

75a. Section 83.519 is amended by changing "A3J" to "J3E" in paragraph (a) and "F3" to "J3E" in paragraph (b).

§ 83.539 [Amended]

76. Section 83.539 is amended by changing "F3" to "G3E" in paragraph (c).

§ 83.542 [Amended]

77. Section 83.542 is amended by changing "F3" to "G3E" in paragraph (a).

§ 83.543 [Amended]

78. Section 83.543 is amended by changing "F3" to "G3E" in paragraph (a).

79. Section 83.552 is amended by revising the table in paragraph (b) as follows:

§ 83.552 Requirements for main transmitter.

* * * * *

(b) * * *

Operating carrier frequency	Frequency tolerance (parts in 10^9)	Class of emission	Percentage modulation (for amplitude modulation)	Modulation frequency (for amplitude modulation)	Antenna power
500 kHz	1,000	A2A or H2A	Not less than 70, not more than 100.	At least 1 frequency between 300 and 1250 Hertz; except for transmitters installed after 07-01-51, at frequency between 450 and 1250 Hertz.	Not less than 200 watts into an average ship station antenna.
500 kHz	1,000	A1A			Not less than 160 watts into an average ship station antenna.
410 kHz and 2 authorized working frequencies in the band 415 to 525 kHz.	1,000	A2A or H2A	Not less than 70,not more than 100.	At least 1 frequency between 300 and 1250 Hertz; except for transmitters installed after 07-01-51, at frequency between 450 and 1250 Hertz.	Not less than 200 watts into an average ship station antenna.
410 kHz and 2 authorized working frequencies in the band 415 to 525 kHz.	1,000	A1A			Not less than 160 watts into an average ship station antenna.

80. Section 83.553 is amended by revising the table in paragraph (b) as follows:

§ 83.553 Requirements for reserve transmitter.

* * * * * * *

(b) * * *

Operating carrier frequency	Frequency tolerance (parts in 10^6)	Class of emission	Percentage modulation (for amplitude modulation)	Modulation frequency (for amplitude modulation)	Antenna power
500 kHz	1,000 except for reserve transmitters whose use is confined solely to safety communications as defined in § 83.6(a). Such transmitters shall maintain a frequency tolerance of 3000 parts in 10^6.	A2A or H2A	Not less 70; not more than 100.	At least 1 frequency between 300 and 1250 Hertz except for transmitters installed after 07-01-51, at least 1 frequency between 450 and 1250 Hertz.	Not less than 25 watts into an average ship station antenna.
410 kHz and 1 automated working frequency in the band 415 to 525 kHz.	do	A2A or H2A	do	do	Do.

* * * * *

§ 83.555 [Amended]

81. Section 83.555 is amended by changing "A1" to "A1A" in paragraph (b)(1), "A2" to "A2A" in paragraph (b)(2), and "A2H" to "H2A" in paragraph (b)(3).

§ 83.556 [Amended]

82. Section 83.556 is amended by changing "A1, A2 and A2H" to "A1A, A2A and H2A" in paragraph (a)(1).

§ 83.713 [Amended]

83. Section 83. 713 is amended by changing "F3" to "G3E" in paragraph (a).

§ 83.715 [Amended]

84. Section 83.715 is amended by changing "F3" to "G3E" in paragraph (a).

85. Section 83.835 is amended by revising paragraph (d) as follows:

§ 83.835 Remote control for maneuvering or navigation.

* * * * *

(d) The emission employed shall be G2D. The provisions in this part applicable to the use of G3E emission are also applicable to the use of G2D emission. The transmitter must be adjusted and operated so that the instantaneous frequency deviation for G2D emission does not exceed the maximum value allowed for G3E emission.

* * * * *

§ 83.853 [Amended]

86. Section 83.853 is amended by changing "F3" to "G3E" in paragraph (a).

§ 83.854 [Amended]

87. Section 83.854 is amended by changing "F3" to "G3E" in paragraph (a).

PART 87—[AMENDED]

I. Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

88. Section 87.67 is amended by revising paragraph (c) and the table and footnotes in paragraph (b) as follows:

§ 87.67 Types of emission.

* * * * *

(b) * * *

Class of emission	Emission designator	Authorized bandwidth (kilohertz) Below 50 MHz	Above 50 MHz	Frequency deviation
A1A [10]	100HA1A	0.25		
A2A	2K10A2A	2.74	50	
H2B [9] [11]	2K80H2B	3.0		
A3E [12]	6K00A3E		[5] 50	
R3E [2] [11]	2K80R3E [2]	3.0		
H3E [2] [11]	2K80H3E [2]	3.0		
J3E [2] [11]	2K80J3E [11]	3.0		
J7B [11]	2K80J7B [11]	3.0		
A9W	13K0A9W [6]		[6] 25	
A3N	3K20A3N [7]		[7] 25	
XXA	1K12XXA [13]	2.74		
J9W	2K80J9W [11]	3.0		
F1B [10]	1K70F1B	1.7		
F1B [10]	2K40F1B	2.5		
F3E [3]	36K0F3E		40	15
F3E [4]	16K0F3E		20	5
G3E [4]	16K0F3E		20	5
F7D [8]	[1]		[1]	
P0N [14]	[1]	[1]		

[1] To be specified on authorization.

[2] Each aeronautical enroute station authorized to use R3E and/or J3E emission shall render service to those aircraft stations which are equipped for single sideband (SSB). Aircraft equipped for SSB operation shall use full carrier except when it is known that the receiving station is capable of receiving reduced or suppressed carrier emission and shall use full carrier upon receipt of request of any station using the same frequency. R3E, H3E, and J3E emissions will be authorized only below 25000 kHz. After February 1, 1983, only the classes of emission H2B, J3E, J7B, and J9W will be authorized. Except that after February 1, 1982, the emissions A3E and H3E are to be used only on 3023 and 5680 kHz for Search and Rescue operations.

* * * * *

[9] The emission designator H2B shall be used by stations employing selective calling (SELCAL).

[10] A1A and F1B emissions are permitted provided they do not cause harmful interference to classes of emission H2B, J3E, J7B and J9W. The assigned frequency shall be at a value of 1400 Hz above the carrier frequency.

[11] For single sideband emissions, except the class of emission H2B, the assigned frequency shall be at a value of 1400 Hz above the carrier frequency.

[12] For use with an authorized bandwidth of 8.0 kilohertz at radiobeacon stations. The A3E emission will not be authorized.

[13] Authorized for use at radiobeacon stations.

[14] The letters "K, L, M, Q, V, W, and X" may also be used in place of the letter "P" for pulsed radars.

(c) For other emissions, the emission designator may be determined from Part 2 of this chapter and the authorized bandwidth may be specified on the authorization. The authorization of 50 kHz bandwidth for A3E emission on frequencies above 50 MHz is temporary and this fact should be considered in the design of VHF radio equipment for future use.

* * * * *

§ 87.71 [Amended]

89. Section 87.71 is amended by changing "(A3A, A3H, A3J)" to "(R3E, H3E, J3E)" in paragraph (a), "A2H, A3H, A3J, A7J or A9J" to "H2B, H3E, J3E, J7B or J9W" in paragraph (c).

90. Section 87.73 is amended by revising paragraphs (e) and (h) and the table in paragraph (d) as follows:

§ 87.73 Modulation requirements.

* * * * *

(d) * * *

Carrier mode	Level N(dB) of the carrier with respect to peak envelope power
Full carrier (for example H2B).	0>N>−6.
Suppressed carrier (for example J3E).	Aircraft stations N<−26; Aeronautical Stations N<−40.

(e) For single sideband emissions, except for H2B emission, the assigned frequency should be at a value 1400 Hz above the carrier (reference) frequency.

* * * * *

(h) The sweeping signal applied to the carrier shall be in accordance with that specified in the Radio Technical Commission for Aeronautics (RTCA) Document No. DO–183 (available from RTCA, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005).

§ 87.136 [Amended]

91. Section 87.136 is amended by changing "(emission A3)" to "(emission A3E)", and "(emission A3A, A3H, A3J)" to "(emission R3E, H3E, J3E)" in paragraph (a).

92. Section 87.183 is amended by revising the introductory text of paragraph (f), paragraph (f)(5), paragraph (g)(3), and paragraph (l).

§ 87.183 Frequencies available.

* * * * *

(f) 121.5 Megahertz: This is a universal simplex clear channel frequency for use by aircraft in distress or condition of emergency. Except for transmissions of signals by an aircraft station operated with only an emergency locator transmitter using A3X emission, it will not be assigned to aircraft unless other frequencies are assigned and available for normal communications. The channel is available, as follows:

* * * * *

(5) To provide a common frequency for survival communications and for survival radio beacons (Emission A2A).

* * * * *

(g) * * *

(3) [Reserved]

* * * * *

(l) 243 MHz: This is an emergency and distress frequency available for use by survival craft stations, emergency locator transmitters and equipment used for survival purposes which are also equipped to transmit on the frequency 121.5 MHz. Use of 243 MHz shall be limited to transmission of signals and communications for survival purposes. Types A2A, A3E, or A3N emissions may be employed, except in the case of emergency locator transmitters where only A3N is permitted.

* * * * *

§ 87.271 [Amended]

93. Section 87.271 is amended by changing "6A3" to "6K00A3E" in paragraph (a).

§ 87.331 [Amended]

94. Section 87.331 is amended by changing "A3A, A3H or A3J" to "R3E, H3E or J3E" in footnote 1 in paragraph (b), and "A2H, A3J, A7J and A9J" to "H2B, J3E, J7B and J9W" and "A3H" to "H3E" in paragraph (c).

§ 87.411 [Amended]

95. Section 87.411 is amended by changing "A3" to "A3E" in paragraph (a).

96. Section 87.441 is amended by revising paragraph (d) as follows:

§ 87.441 Frequencies available.

* * * * *

(d) The frequencies 3023 kHz and 5680 kHz may be used by aircraft and ship stations for search and rescue scene-of-action coordination purposes, including communication between these stations and participating land stations. Ship stations communicating with aircraft stations shall employ 2K80J3E emission.

97. Section 87.513 is revised as follows:

§ 87.513 Frequencies available.

The following frequencies are available for assignment to Civil Air Patrol land and mobile stations within the United States, its territories and possessions, except as otherwise provided in this section:

(a)(1) 2374 kHz, A1A, A2A, A3E emission, 400 watts maximum power.

(2) 2375.5 kHz (2374.0 kHz carrier frequency), R3E, H3E, J3E emission 1,600 watts maximum power.

(3) 2372.5 kHz, (2371 kHz carrier frequency), R3E, J3E emission 1,600 watts maximum power.

(4) 2372.5 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(b)(1) 4467.5 kHz, A1A, A2A, A3E emission, 400 watts maximum power.

(2) 4469 kHz, (4467.5 kHz carrier frequency), A3E, H3E, J3E emission 1,600 watts maximum power.

(3) 4469 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(4) 4466 kHz, (4467.5 kHz carrier frequency), R3E, J3E emission 1,600 watts maximum power.

(5) 4466 kHz, 1K70F1B emission [1] 400 watts maximum power.

(6) Assignment of the frequencies 4467.5 kHz, 4469 kHz, and 4466 kHz is limited to stations in the District of Columbia, Puerto Rico, and the following states:

Alabama, Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia.

(c)(1) 4507.5 kHz, A1A, A2A, A3E emission, 400 watts maximum power.

(2) 4509 kHz, (4507.5 kHz carrier frequency), R3E, H3E, J3E emission, 1,600 watts maximum power.

(3) 4509 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(4) 4506 kHz, (4504.5 kHz carrier frequency), R3E, J3E emission 1,600 watts maximum power.

(5) 4506 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(6) Assignment of the frequencies 4507.5 kHz, 4509 kHz, and 4506 kHz is limited to stations in the following states:

Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming.

(d)(1) 4585 kHz, A1A, A2A, A3E emission 400 watts maximum power.

(2) 4586.5 kHz, (4585 kHz carrier frequency), R3E, H3E, J3E emission 1,600 watts maximum power.

(3) 4586.5 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(4) 4583.5. kHz, (4582 kHz carrier frequency), R3E J3E emission, 1,600 watts maximum power.

(5) 4583.5 kHz, 1K70F1B emission[1] 400 watts maximum power.

(e)(1) 4602.5 kHz, A1A, A3E emission 400 watts maximum power.

(2) 4604 kHz, (4602.5 kHz carrier frequency), R3E, H3E, J3E emission, 1,600 watts maximum power.

(3) 4604 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(4) 4601 kHz, (4599.5 kHz carrier frequency), R3E, J3E emission, 1,600 watts maximum power.

(5) 4601 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(6) Assignment of the frequencies 4602.5 kHz, 4604.0 kHz, and 4601.0 kHz, is limited to stations in the following States: Colorado, Idaho, Illinois, Indiana, Kentucky, Michigan, Montana, Ohio Utah, Wisconsin, Wyoming.

(f)(1) 4630 kHz, A1A, A3E emission, 400 watts maximum power.

(2) 4631.5 kHz, (4630 kHz carrier frequency) R3E, H3E, J3E emission, 1,600 watts maximum power.

(3) 4631.5 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(4) 4628.5 kHz, (4627 kHz carrier frequency) R3E, J3E emission, 1,600 watts maximum power.

(5) 4628.5 kHz, 1K70F1B emission,[1] 400 watts maximum power.

(6) Assignment of the frequencies 4630 kHz, 4631.5 kHz, and 4628.5 kHz is limited to stations in the following States: Arizona, Arkansas, Louisiana, New Mexico, Oklahoma and Texas.

(g) 26.62 MHz, A3E emission, 5 watts maximum power. In the State of Hawaii, A1A, A2A, A3E emission and 250 watts maximum power is permissible.

(h) 143.9 MHz, A1A, A2A, A3E, F2B, F3E, G3E emission, 30 watts maximum power.

(i) 148.15 MHz, A2B, A3E, F2B, F3E, G3E emission, 50 watts maximum power.

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[1] When using a direct-printing telegraph system other than 60 words per minute, 5 unit (Start-stop) code, station identification shall be made by means of A1A, R3E, or J3E emission.

PART 90—[AMENDED]

J. Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 90.17 [Amended]

98. Section 90.17 is amended by changing "A1, A2, A9, F1, F2, or F9" to "A1A, A1D, A2B, A2D, F1B, F1D, F2D, G1B, G1D, G2B, or G2D" in paragraph (c)(7).

§ 90.19 [Amended]

99. Section 90.19 is amended by changing "A3" to "A3E" in paragraphs (e)(5), and (e)(8).

100. Section 90.53 is amended by revising paragraph (b)(19), (b)(20), (b)(27), (b)(28), and (b)(29) as follows:

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(19) This frequency is primarily authorized for use under § 90.35(a) for operations in bio-medical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E emissions may be authorized. On a secondary basis, this frequency may be utilized for any other permissible communications consistent with § 90.35.

(20) This frequency is primarily authorized for use under § 90.35(a), for communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E, and G3E emissions are authorized. On a secondary basis, this frequency may be utilized for any other permissible communications consistent with § 90.35, including bio-medical telemetry transmissions.

* * * * *

(27) This frequency is available in this service only to persons eligible under the provisions of § 90.38(a) for operation of transmitters having a maximum power output of three watts using A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D emission. This frequency is also available in the Business Radio Service on a co-equal basis with the Special Emergency Radio Service users.

(28) No new licenses will be granted for one-way paging under § 90.487 for use on this frequency after August 1, 1980. This frequency is available to persons eligible for station licenses under the provisions of § 90.38(a) on a co-equal basis with one-way paging users under § 90.487 prior to August 1, 1985, and on a primary basis after August 1, 1985. Only A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D emissions and power not exceeding 10 watts will be authorized. Antennas having gain greater than 0 dBd will not be authorized. Transmissions shall not exceed two seconds duration.

(29) In addition to other authorized uses, the use of F1B, F1D, F2B, or F2D emission is permitted on this frequency for the operation of bio-medical telemetry systems subject to the following limitations:

* * * * *

§ 90.63 [Amended]

101. Section 90.63 is amended by changing "A1, A2, A9, F1, F2, or F9" to "A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D" in paragraph (d)(6) and (d)(11).

§ 90.65 [Amended]

102. Section 90.65 is amended by changing "A1, A2, A9, F1, F2, or F9" to "A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D" in paragraph (c)(35).

§ 90.67 [Amended]

103Section 90.67 is amended by changing "A2 or F2" to "A2B, A2D, F2B or F2D" and "A3 or F3" to "A3E, F3E or G3E" in paragraph (c)(9), and "A1, A2, A9, F1, F2, or F9" to "A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D" in paragraph (c)(24).

§ 90.73 [Amended]

104. Section 90.73 is amended by changing "A1, A2, A9, F1, F2, or F9" to "A1A, A1D A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D" in paragraph (d)(27).

105 Section 90.75 is amended by revising paragraphs (c)(10), (13), (14), (35), (38), and (39)(viii) as follows:

§ 90.75 Business radio service.

* * * * *

(c) * * *

(10) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E, or G3E emissions may be authorized.

* * * * *

(13) This frequency may be used for mobile operation for radio remote control and telemetering functions. A1D, A2D, F1D, or F2D emission may be authorized and mobile stations used to control remote objects or devices may be operated on the continuous carrier transmit mode.

(14) This frequency may be used for mobile operation for remote control and telemetering functions. A1D, A2D, F1D, or F2D emission may be authorized. The use of the continuous carrier transmit mode for these purposes is permitted only for stations authorized and continuously licensed since before May 21, 1971.

* * * * *

(35) The maximum output power of the transmitter may not exceed 1 watt. A1D, A2D, F1D, or F2D emission may be authorized.

* * * * *

(38) This frequency may be used, with the transmitter carrier centered on the designated frequency or 5 kHz above or below the designated frequency, with P0N, F2B, or F2D emission, using a bandwidth of 5 kHz and a power not to exceed 1 watt peak power output.

(39) * * *

(viii) A1D, A2D, F1D, or F2D emission may be authorized.

* * * * *

§ 90.79 [Amended]

106. Section 90.79 is amended by changing "A1, A2, F1, or F2" to "A1B, A2D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B or G2D" in paragraph (d)(7).

§ 90.103 [Amended]

107. Section 90.103 is amended by changing "A0" to "N0N" in paragraph (c)(20).

108. Section 90.205 is amended by revising the table and footnotes 1 and 10 in paragraph (b) as follows:

§ 90.205 Power.

* * * * *

(b) * * *

Frequency range (megahertz)	Maximum output power	Maximum effective radiated power (watts)
1.3 to 3	[1] [9] 1,500	
3 to 25	[1] [2] [9] 750	
25 to 100	300	
100 to 216	[3] 350	
216 to 220	([3] [4])	([4])
220 to 470	[3] [8] 350	
470 to 512		1,000
806 to 821	([5])	([5])
851 to 866	([7])	([6])
929 to 930	([7])	([7] [10])
1427 to 1435	([2])	
2450 to 2500	5	
2500 to 10,550	([4])	([4])
10,550 to 10,680	[4] 3	
Above 10,680	([4])	([4])

[1] For single sideband operations (J3E emission) below 10 MHz, the authorized power shall be stated in terms of peak envelope power, which is the average power supplied to the antenna transmission line by a transmitter during 1 radio frequency cycle at the highest crest of the modulation envelope taken under conditions of normal operation. The maximum peak envelope power permitted is 1kW.

* * * * *

[10] As specified in § 90.494(f).

* * * * *

109. Section 90.207 is revised as follows:

§ 90.207 Types of emissions.

Normally operations authorized in the services governed by this part are intended to provide voice communications between stations. Accordingly, except as otherwise provided for in the following paragraphs, stations in these services will be authorized to use only A3E, F3E, or G3E emission.

(a) Authorizations to use A3E, F3E, or G3E emission also include the use of emissions for tone signals or signaling devices whose sole functions are to establish and to maintain communications, to provide automatic station identification, and for operations in the Public Safety and Special Emergency Radio Services, to activate emergency warning devices used solely for the purpose of advising the general public or emergency personnel of an impending emergency situation.

(b) The use of F3E or G3E emission in these services will be authorized only on frequencies above 25 MHz.

(c) Except for Travelers' Information stations in the Local Government Radio Service authorizd in accordance with § 90.242, only J3E emission will be authorized for telephony systems on frequencies below 25 MHz.

(d) For non-voice paging operations, only A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, or G2D emissions will be authorized.

(e) For radioteleprinter operations that may be authorized in accordance with § 90.237, only F1B, F2B, G1B or G2B emissions will be authorize above 25 MHz, and A1B or A2B emissions below 25 MHz.

(f) For radiofacsimile operations that may be authorized in accordance with § 90.237, only F3C or G3C emissions will be authorized above 25 MHz, and A3C emissions below 25 MHz.

(g) For AVM systems that may be authorized in accordance with § 90.239, only F1D, F2D, F3E, G3E, or P0N emissions will be authorized. For pulsed radars, the letters "K, L, M, Q, V, W, and X" may be used in place of the letter "P".

(h) For telemetry operations, when specifically authorized under this part, only A1D, A2D, F1D, or F2D emissions will be authorized.

(i) For call box operations that may be authorized in accordance with § 90.241, only A1A, A1D, A2B, A2D, F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E or G3E emissions will be authorized.

(j) For radiolocation operations as may be authorized in accordance with Subpart F, unless otherwise provided for any type of emission may be authorized upon a satisfactory showing of need.

(k) F1E or G1E emissions may be employed on any frequency which is subject to coordination requirements set forth in § 90.175. The use of F1E or G1E emission must be specifically requested and approved by the Commission. Authorization to use F1E or G1E shall include authorization to use F1D, F2D, G1D or G2D emission.

110. Section 90.209 is amended by revising paragraph (a), paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and the introductory text of paragraph (d) as follows:

§ 90.209 Bandwidth limitations.

(a) Each authorization issued to a station licensed under this part will show an emission designator representing the class of emission authorized. The designator shall be prefixed by the specified necessary bandwidth. This figure does not necessarily indicate the bandwidth occupied by the emission at any instant. In those cases where Part 2 of this chapter does not provide a formula for the computation of necessary bandwidth, the occupied bandwidth as defined in Part 2 may be used in lieu of the necessary bandwidth. The maximum authorized bandwidth contains those frequencies upon which 99 percent of the radiated power appears, extended to include any discrete frequency upon which the power is at least 0.25 percent of the total radiated power.

(b) * * *

(1) For A1A or A1B emissions, the maximum authorized bandwidth shall be 0.25 kHz.

(2) Except as noted in subparagraph 3, the maximum authorized bandwidth for type A3E emission shall be 8 kHz.

(3) For type J3E operations below 10 MHz, the bandwidth occupied by the emission shall not exceed 3000 Hz for equipment manufactured after November 1, 1983, and 3500 Hz for equipment manufactured before November 1, 1983. The assigned frequency will be specified in the authorization. The authorized carrier frequency shall be 1400 Hz lower in frequency than the assigned frequency. Only upper sideband emission shall be used. In the case of regularly available double sideband radiotelephone channels, an assigned frequency for J3E emissions is available either 1600 Hz below or 1400 Hz above the double sideband radiotelephone assigned frequency. The 3000 Hz occupied bandwidth is applicable to all types of transmitters for J3E operation below 10 MHz that are first accepted after November 1, 1982.

(4) For all F3E or G3E emissions, on frequencies below 947 MHz, the maximum authorized bandwidth shall be 20 kHz and the maximum authorized frequency deviation shall be 5 kHz. However, stations authorized for operation on or before December 1, 1961, in the frequency band 73.0–74.6 MHz may continue to operate with a bandwidth of 40 kHz and a deviation of 15 kHz. For stations operating on frequencies above 947 MHz, except as provided in subparagraph (5) of this section, the maximum authorized bandwidth and frequency deviation will be specified in the station authorization.

* * * * *

(d) For single sideband operations (J3E) below 10 MHz, the carrier frequency power shall be at least 40 dB below the peak envelope power and the mean power of emissions shall be attenuated below the mean output power of the transmitter in accordance with the following schedule:

* * * * *

111. Section 90.212 is amended by revising paragraphs (a), (b), and (c) as follows:

§ 90.212 Provisions relating to the use of scrambling devices and digital voice modulation.

(a) Analog scrambling techniques may be employed at any station authorized the use of A3E, F3E, or G3E emission, subject to the provision of paragraph (d) of this section.

(b) The use of digital scrambling techniques or digital voice modulation requires the specific authorization of F1E or G1E emission, and these emissions will only be authorized subject to the provisions of paragraph (d) of this section.

(c) The transmission of any non-voice information or data under the authorization of F1E or G1E emission is prohibited. However, stations authorized the use of F1E or G1E emission may also be authorized F1D, F2D, G1D or G2D emission for non-voice communication purposes, pursuant to paragraph (k) of § 90.207.

* * * * *

§ 90.233 [Amended]

112. Section 90.233 is amended by changing "A2, A9, F2, F9, or F9Y" to "A1D, A2D, F1D, F2D, G1D, or G2D" in the first paragraph.

§ 90.235 [Amended]

113. Section 90.235 is amended by changing "A1, A2, A9, F1, F2, and F9" to "A1A, A2B, F1B, F2B, G1B, and G2B" and "A3, F3 or F3Y" to "A3E, F1E, F2E, F3E, G1E, G2E, or G3E" in paragraph (c)(3).

114. Section 90.237 is amended by revising paragraphs (a), (c), (d), (e) and (g) as follows:

§ 90.237 Interim provisions for operations of radioteleprinter and radiofacsimile devices.

* * * * *

(a) Information must be submitted with an application to establish that the minimum separation between a proposed radioteleprinter or radiofacsimile base station and the nearest co-channel base station of another licensee operating a voice system is 120 km. (75 mi.) for a single frequency mode of operation, or 56 km. (35 mi.) two frequency mode of operation. Where this minimum mileage separation cannot be achieved, either agreement to the use of F1B, F2B, F3C, G1B, G2B or G3C emission must be received from all existing co-channel licensees using voice emission within the applicable mileage limits, or if agreement was not received, the licensee of the radioteleprinter or radiofacsimile system is responsible for eliminating any interference with preexisting voice operations. New licenses of voice operations will be expected to share equally any frequency occupied by established radioteleprinter or radiofacsimile operations.

* * * * *

(c) Transmitters type-accepted under this part for use of G3E or F3E emission may also be used for F1B, F2B, F3C, G1B, G2B or G3C emission for radioteleprinter or radiofacsimile, provided the keying signal is passed through the low pass audio frequency filter required for G3E or F3E emission. The transmitter must be so adjusted and operated that the instantaneous frequency deviation does not exceed the maximum value allowed for G3E or F3E.

(d) Frequencies will not be assigned exclusively for F1B, F2B, F3C, G1B, G2B or G3C emission for radioteleprinter or radiofacsimile (except where specifically provided for in the frequency limitations).

(e) The requirements in this part applicable to the use of G3E or F3E emission are also applicable to the use of F1B, F2B, F3C, G1B, G2B or G3C emission for radioteleprinter and radiofacsimile transmissions.

* * * * *

(g) For single sideband operations in accordance with § 90.266, transmitters type-accepted under this part for use of J3E emissions may also be used for A2B and F2B emission for radioteleprinter transmissions. Transmitters type-accepted under this part for use of J3E emissions in accordance with §§ 90.63(d)(1), 90.65(c)(1), 90.73(d)(1) and 90.81(d)(13) may also be used for A1B, A2B, F1B, F2B, J2B, and A3C emissions to provide standby backup circuits for operational telecommunications circuits which have been disrupted, where so authorized in other sections of this part.

§ 90.239 [Amended]

115. Section 90.239 is amended by changing "F1, F2, F3, F9, or P9" to "F1D, F2D, F3E, G1D, G2D, G3E, or P0N" in paragraph (b), and "F1, F2, F9, or P9" to "F1D, F2D, G1D, G2D or P0N" in paragraph (c)(3)(ii).

116. Section 90.241 is amended by revising paragraphs (a)(5), (c)(4), and (c)(12) as follows:

§ 90.241 Radio call box operations.

(a) * * *

(5) Only A1D, A2D, F1D, F2D, G1D, or G2D emission shall be authorized.

* * * * *

(c) * * *

(4) Only F1D, F2D, F3E, G1D, G2D, or G3E, emission may be authorized for nonvoice signaling, radiotelephony, and multiplexed voice and nonvoice use. The provisions in this part applicable to the use of F3E or G3E emission are also applicable to the use of F1D, F2D, G1D or G2D emission for call box transmitters.

* * * * *

(12) Transmitters type accepted under this part for use of F3E or G3E emission may be used for F1D, F2B, G2B or G2D emission provided that the audio tones or digital data bits are passed through the low pass audio filter required to be provided in the transmitter for F3E or G3E emission. The transmitter must be adjusted and operated so that the instantaneous frequency deviation does not exceed the maximum value allowed for F3E or G3E emission.

* * * * *

§ 90.242 [Amended]

117. Section 90.242 is amended by changing "6A3" to "6K00A3E" and "A0" to "N0N" in paragraph (b)(1).

§ 90.250 [Amended]

118. Section 90.250 is amended by changing "F9Y" to "F1E, F7W, G1E or G7W" in paragraphs (e) and (f).

§ 90.264 [Amended]

119. Section 90.264 is amended by changing "2.8A3J, 0.1A1" to "2K80J3E, 100HA1A" in paragraph (f).

§ 90.266 [Amended]

120. Section 90.266 is amended by changing "2.8A3J, 0.1A1" to "2K80J3E, 100HA1A, 100HA1B" in paragraph (f).

§ 90.267 [Amended]

121. Section 90.267 is amended by changing "A1, A2, A3, A9, F1, F2, F3, and F9" to "A1A, A1D, A2B, A2D, A3E, F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2D, and G3E" in paragraph (a)(1).

§ 90.315 [Amended]

122. Section 90.315 is amended by changing "F2, F3, F4, F9, and A2, A3, A4, and A9" to "A2B, A2D, A3C, A3E, F2B, F2D, F3C, F3E, G2B, G2D, G3C, and G3E" in paragraph (c).

§ 90.425 [Amended]

123. Section 90.425 is amended by changing "A3 or F3" "A3E, F3E or G3E" in paragraph (a), and "F3Y" to "F1E or G1E" in paragraph (d)(2).

PART 95—[AMENDED]

K. Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 95.211 [Amended]

124. Section 95.211 is amended by changing "A9" to "A1D" in paragraphs (c)(1) and (c)(2), and "(F9)" to "(F1D)" in paragraph (c)(3).

125. Section 95.617 is amended by revising the introductory text of paragraph (b) as follows:

§ 95.617 Emission limitations.

(a) * * *

(b) The authorized bandwidth of the emission of any transmitter employing amplitude modulation shall be 8 kHz for double sideband and 4 kHz for single sideband. The authorized bandwidth of the emission of any transmitter employing frequency or phase modulation (Classes F2B and F3E or G2B and G3E) shall be 20 kHz. The use of F2B, F3E, G2B, and G3E emissions in the frequency band 26.96 MHz–27.41 MHz is not authorized.

* * * * *

PART 97—[AMENDED]

L. Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 97.7 [Amended]

126. Section 97.7 is amended by changing "A1" to "A1A" in paragraph (e).

§ 97.69 [Amended]

127. Section 97.69 is amended by changing "F1" to "F1B" in the introductory text of paragraph (a), and "A2, F1, or F2" to "A2B, F1B, F2B" in paragraph (a)(2).

128. Section 97.61 is amended by revising the table in paragraph (a), and

revising paragraph (b)(11), and adding new paragraphs (b) (14) and (15) to read as follows:

§ 97.61 Authorized frequencies and emissions.

(a) * * *

Frequency band	Emissions	Limitations (see para. (b))
Kilohertz		
1800 to 2000	A1A, A3E	15
3500 to 4000	A1A	
3500 to 3750	F1B	
3750 to 4000	A3E, F3E, G3E, A3C, A3F, F3C, F3F.	4, 15
5167.5	R3E, J3E	13
7000 to 7300	A1A	3, 4
7000 to 7150	F1B	3, 4
7075 to 7100	A3E, F3E, G3E	11, 15
7150 to 7300	A3E, F3E, G3E, A3C, F3C, A3F, F3F.	3, 4, 15
14,000 to 14,350	A1A	
14,000 to 14,150	F1B	
14,150 to 14,350	A3E, F3E, A3C, F3C, A3F, F3F.	15
21,000 to 21,450	A1A	
21,000 to 21,200	F1B	
21,200 to 21,450	A3E, F3E, A3C, F3C, A3F, F3F.	15
28,000 to 29,700	A1A	
28,000 to 28,300	F1B	
28,300 to 29,700	A3E, F3E, G3E, A3C, F3C, A3F, F3F.	15
Megahertz		
50.0 to 54.0	A1A	
50.1 to 54.0	A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F.	15
51.0 to 54.0	N0N	
144.0 to 148.0	A1A	
144.1 to 148.0	N0N, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F.	15
220 to 225	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F.	5, 15
420 to 450	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F.	5, 7, 15
1215 to 1300	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F.	5, 15
2300 to 2310	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	5, 8, 14, 15
2390 to 2450	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	5, 8, 14, 15
Gigahertz		
3.300 to 3.500	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	5, 12, 14, 15
5.650 to 5.925	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	5, 9, 14, 15
10.000 to 10.500	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F.	5, 15
24.000 to 24.250	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, G3E, F3C, F3F, P0N.	5, 10, 14, 15
48.000 to 50.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	14, 15
71.000 to 76.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	14, 15
165.000 to 170.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	14, 15
240.000 to 250.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	14, 15
Above 300.000	N0N, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2B, F3E, G3E, F3C, F3F, P0N.	14, 15

(b) * * *

(11) The use of A3E, F3E, and G3E in this band is limited to amateur radio stations located outside Region 2.

* * * * *

(14) The letters "K, L, M, Q, V, W and X" may also be used in place of the letter "P" for pulsed radars.

(15) The use of J3E, R3E, and H3E may also be used.

* * * * *

129. Section 97.65 is revised to read as follows:

§ 97.65 Emission limitations.

(a) Type N0N emission, where not specifically designated in the bands listed in § 97.61 may be used for short periods of time when required for authorized remote control purposes or for experimental purposes. However, these limitations do not apply where type N0N emission is specifically designated.

(b) Whenever code practice, in accordance with § 97.91(d), is conducted in bands authorized for A3E emission, tone modulation of the radiotelephone transmitter may be utilized when interspersed with appropriate voice instructions.

(c) On frequencies below 29.0 MHz, the bandwidth of an F3E or G3E emission (frequency or phase modulation) shall not exceed that of an A3E emission having the same audio characteristics.

(d) On frequencies below 50 MHz, the bandwidth of A3C, A3F, F3C, and F3F emissions shall not exceed that of J3E single sideband emission.

(e) On frequencies between 50 MHz and 225 MHz;

(1) The bandwidth of A3C and A3F single sideband emissions shall not exceed the bandwidth of an J3E single sideband emission.

(2) The bandwidth of A3C and A3F double sideband emissions shall not exceed the bandwidth of an A3E double sideband emission.

(3) F3C and F3F emissions shall utilize a peak carrier deviation no greater than 5 kHz and a maximum modulating frequency no greater than 3 kHz or, alternatively, shall occupy a bandwidth no greater than 20 kHz. (For this purpose, the bandwidth is defined as the width of the frequency band, outside of which the mean power of any emission is attenuated by at least 26 decibels below the mean power level of the total emission. A 3 kHz sampling bandwidth is used by FCC in making this determination.)

(f) Below 225 MHz, an A3C or A3F emission may be used simultaneously with an A3E emission on the same carrier frequency, provided that the total bandwidth does not exceed that of an A3E double sideband emission.

130. Appendix 3 in Part 97 is revised as follows:

Appendix 3—Classification of Emissions

For convenient reference, the tabulation below is extracted from the classification of typical emissions in Part 2 of the Commission's Rules and Regulations. It includes only those general classifications which appear most applicable to the Amateur Radio Service.

Type of modulation	Type of transmission	Symbol
Amplitude	With no modulation	N0N.
	Telegraphy without the use of a modulating audio frequency (by on-off keying).	A1A.
	Telegraphy by the on-off keying of an amplitude modulating audio frequency or audio frequencies or by the on-off keying of the modulated emission (special case: an unkeyed emission amplitude modulated).	A2A, A2B.
	Telephony	
	Double Sideband	A3E.
	Single Sideband	
	Suppressed Carrier	J3E.
	Reduced Carrier	R3E.
	Full Carrier	H3E.
	Facsimile	A3C.
	Television	A3F.
Frequency (or phase).	Telegraphy by frequency shift keying without the use of a modulating audio frequency.	F1B (G1B).
	Telegraphy by the on-off keying of a frequency modulating audio frequency or by the on-off keying of frequency modulated emission (special case: an unkeyed emission frequency modulated).	F2B (G2B).
	Telephony	F3E (G3E).
	Facsimile	F3C (G3C).
	Television	F3F (G3F).

Type of modulation	Type of transmission	Symbol
Pulse		P0N.[1]

[1] The letters "K, L, M, Q, V, W and X" may also be used in place of the letter "P" for pulse radar.

PART 99—[AMENDED]

M. Part 99 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 99.37 [AMENDED]

131. Section 99.37 is amended by changing "Type A1 or Type A3 emission" to "Type A1A, J2A, J3E, R3E, H3E, or A3E emission" in paragraph (d).

[FR Doc. 84-31752 Filed 12-13-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 68

[CC Docket No. 81-216; RM Nos. 2845, 3195, et al.; FCC 84-522]

Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; and Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: As part of CC Docket No. 81-216 the Commission has amended Part 68 of its rules to create technical interconnection standards for connection of network channel terminating equipment to digital services. The rules are designed to ensure that terminal equipment attached to digital services will not cause harm to the telephone network.

DATES: The rule changes become effective January 14, 1985.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Common Carrier Bureau, Federal Communications Commission, Washington, D.C., 20554, (202) 634-1832.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 68

Communications equipment, Communications common carriers.

Second Report and Order

In the matter of petitions seeking amendment of Part 68 of the Commission's Rules concerning connection of telephone equipment, systems and protective apparatus to the telephone network and notice of inquiry into standards for inclusion of one and two-line business and residential service in Part 68 of the Commission's Rules (CC Docket No. 81-216; RM-2845, RM-3195, RM-3206, RM-3227, RM-3283, RM-3316, RM-3329, RM-3348, RM-3501, RM-3526, RM-3530, RM-4054, RM-4087).

Adopted: November 8, 1984.

Released : November 26, 1984.

By the Commission: Commissioner Quello dissenting in part and issuing a statement.

1. In *Amendment of Part 68 of the Commission's Rules Concerning Connection of Equipment, Systems and Protective Apparatus to the Telephone Network (Interconnection Order)* CC Docket No. 81-216, 94 F.C.C. 2d 5 (1983), *stay denied, Order,* Mimeo No. 1503, (Common Carrier Bureau), released December 23, 1983, *recon. denied,* FCC 84-145, released April 27, 1984, the Commission issued a notice of proposed rulemaking to amend Part 68 of the Rules, 47 CFR Part 68, to adopt interconnection standards for terminal equipment used in connection with digital transmission services. This terminal equipment is referred to generically as network channel terminating equipment or "NCTE".[1] In response to this notice the Bell System Operating Companies (BOCs) submitted comprehensive proposed amendments to Part 68.[2] Other comments and/or responsive comments were filed by the Independent Data Communications Manufacturers Association (IDCMA), GTE Service Corporation (GTE), the Department of Defense (DOD), Northern Telecom, Inc. (Northern Telecom), the North American Telephone Association (NATA), Utilities Telecommunications Council (UTC), International Business Machines Corporation (IBM), ROLM Corporation, Kentrox Corporation (Kentrox) and Verilink Corporation (Verilink). In this decision we review the proposed rules and comments submitted in response to the notice of proposed rulemaking and adopt final rules under Part 68 to establish equipment registration standards for certain digital services.

Background

2. In the *Interconnection Order* the Commission determined that the American Telephone and Telegraph Co. (AT&T) [3] had failed to justify restrictive tariffs prohibiting customer provision of NCTE, and that this equipment would be treated as customer premises equipment for purposes of the structural separation requirements of *Computer II.*[4] As indicated, the Commission issued a notice of proposed rulemaking to amend Part 68 of the rules to adopt technical standards for this equipment to ensure that complying terminal equipment would not cause harm to the network. *See* § 68.3(g) of the rules, 47 CFR 68.3(g). In order to implement its decision immediately, the Commission directed AT&T to file tariff revisions containing adequate technical standards to permit customer provision of NCTE. These revisions constituted an interim interconnection program pending the Commission's resolution of final interconnection standards issues under Part 68. AT&T's tariff establishing the interim program became effective November 18, 1983. Pursuant to the interim program, manufacturers may certify that their equipment complies with the technical standards referenced in the tariff and customers of digital services specified in the tariff may provide and interconnect NCTE. The technical standards that are referenced as part of the interim program are essentially identical to the technical proposals now before the Commission filed by the BOCs for incorporation into Part 68.

3. At the present time the primary digital services offered by telephone common carriers—and the services which are the subject of this proceeding—are Dataphone Digital Service (DDS) and Terrestrial Digital Circuits (TDC). DDS is offered at rates (speeds) of 2.4, 4.8, 9.6, and 56 thousand bits per second (kbps). TDC operates at a speed of 1.544 million bits per second (Mbps). This latter service is also

[1] Part 68 of the rules, 47 CFR Part 68, provides the technical and procedural standards under which direct electrical connection of customer provided telephone equipment, systems and protective apparatus may be made to the nationwide network without causing harm and without a requirement for the interposition of telephone company provided protective circuit arrangements (PCAs). Potential network harms recognized in Part 68 are, *inter alia,* hazardous voltages, excessive signal power, longitudinal imbalance, improper on-hook impedances, and interference with telephone company billing systems and equipment.

[2] The BOCs' comments were filed jointly by the Mountain States Telephone and Telegraph Company, Pacific Telephone and Telegraph Company, Bell Telephone Company of Nevada, Southwestern Bell Telephone Company, New York Telephone Company, New England Telephone and Telegraph Company, Bell Telephone Company of Pennsylvania, Diamond State Telephone Company, the Chesapeake and Potomac Telephone Companies, New Jersey Bell Telephone Company, Southern Bell Telephone and Telegraph Company, and South Central Bell Telephone Company.

[3] The BOC/AT&T relationship was dissolved in Modification of Final Judgment (MFJ) entered on August 24, 1982 in United States v. American Telephone and Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S.Ct. 1210 (1983). NCTE will be connected to BOC facilities.

[4] Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 F.C.C. 2d 384, 439 (1980) (Final Decision), *reconsideration,* 84 FCC 2d 50 (1980), *further reconsideration,* 88 F.C.C. 2d 512 (1981), *aff'd sub nom.* CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied* 103 S. Ct. 2109 (1983).

referred to as DS–1 or High Capacity Circuits (HCC).[5]

Comments and Discussion

4. In the *Interconnection Order* the Commission initially identified excessive signal power and longitudinal imbalances as potential network harms requiring Part 68 rulemaking to permit customer provision and direct connection of terminal equipment to digital services. *Interconnection Order*, Appendix. The BOCs have proposed amendments to govern these matters and also the matters of billing system protection, loopback protocols and line oscillation protection. IDCMA and GTE have submitted specific proposed alternatives to some aspects of the BOC proposals concerning signal power limitations and line oscillation protection.[6] We will discuss in turn these proposed areas of network protection.[7]

5. *Signal Power Limitations.* The proposals before the Commission regarding signal power limitations concern primarily limitations on maximum signal strengths expressed in voltages that are intended to protect against crosstalk interference into analog carriers in adjacent binder groups, and unacceptable noise, and interferences caused by excessive voltages in the network. The BOCs' proposal would impose specific restrictions on maximum output pulses, average power and, depending on the particular service involved, pulse amplitudes. IDCMA has submitted a proposal which would require that transmitted energy be contained within spectral templates set forth by IDCMA. These templates are essentially graphs expressing acceptable signal strength in terms of the Nyquist frequency, which is equal to one-half the maximum transmitted data rate.

6. The BOC and IDCMA proposals on maximum signal strengths reveal substantial similarities.[8] Thus, these proposals before the Commission reflect that the currently tariffed digital data rates of 2.4, 4.8, 9.6, 56 kbps and 1.544 Mbps utilize bipolar, return to zero, fifty per cent duty cycle, and alternate mark inversion signal formats. Both propose for bit rates below ten kbps creation of a reference template by passing a standard signal through identical low pass filters having a cutoff frequency of 1.3 times the bit rate. Either of these proposals would be appropriate to address the issue of potential interference. Significantly, no party has suggested that these proposals would be incorrect, would interfere with existing services, or would be difficult or burdensome for equipment manufacturers. Our analysis reveals that the primary difference between the proposals with respect to signal levels is the mode of expression. Thus, the BOCs have expressed signal strength limitations in a tabular form with specific levels proposed for each service, whereas IDCMA has expressed levels in terms of a spectral template, or graph. We believe that the tabular approach will be clearer and provide a more definitive basis for determining acceptable signal levels. It also appears that with respect to minor differences in the level of signal strengths proposed by IDCMA and the BOCs that the BOC proposal would be less restrictive. Thus, the maximum amplitude for 2.4, 4.8, and 56 kbps under the BOC proposal would be 1.66 Volts, whereas IDCMA would apparently require a peak of 1.4 Volts. Similarly, the BOC rule would allow between 2.4 to 3.3 Volts for 1.544 Mbps, whereas the IDCMA level would be 3.0 Volts. We will therefore adopt the BOC proposal concerning signal strength limitations.

7. In addition to limitations on signal strength, the BOCs have proposed limitations on "encoded analog content". Encoded analog content is essentially a digitally encoded representation of an analog signal. These limitations would apply where digital terminal equipment for connection to digital services contains an analog-to-digital converter, or where signals in digital form are converted into voiceband analog signals in the network. These limitations would be applied by means of a zero level decoder testing function that would decode the digital signal and test its analog signal against acceptable levels. IDCMA claims that while the zero level decoder is appropriate for pulse code modulation techniques it cannot be applied to linear encoding techniques. IDCMA also states that the concept of encoded analog content is too broad in that it would potentially apply to video, telemetry or facsimile signals. They claim that the appropriate limitation would be "encoded voiceband analog content." IDCMA claims generally that the BOCs' proposal on encoded analog content would apply to the internal characteristics of the CPE, whereas limitations should be imposed only on the output signals of the CPE at the digital interface. IDCMA argues that further questions need to be answered such as whether current carrier-provided NCTE contains limitations on encoded analog content, and whether the alleged problem could be addressed by specifications that would be less constraining on equipment manufacturers.

8. The BOCs' proposals on encoded analog content appear to identify a legitimate area of potential network harm. In the present Part 68 rules, limits are placed on permissible power levels of analog signals and a decoded digital representation of the power level of the analog signal could result in excessive signal power if introduced into the network. The decoding of the analog signal could take place either in the network, i.e. at the telephone company central office, or on customer premises for retransmission into the network. Compliance with the proposed limitations on encoded analog content could be achieved by software in terminal equipment containing processing capabilities, or as a simple hardware feature in the form of a signal power limiter (or limited signal generator) in less sophisticated terminal equipment. No showing has been made, nor has it been alleged, that it would be difficult or burdensome for equipment manufacturers to comply with the proposals offered by the BOCs concerning encoded analog content.

[5] IDCMA and GTE have objected to references in the BOC's proposed rules to "DDS", which is a registered trademark of AT&T, and to service offerings of AT&T. They claim that these references limit the application of the Part 68 rules to only these services. We find this concern meritorious and will revise the rules to eliminate any reference to trade names or specific, tariffed service offerings. Thus, while for convenience we have used "DDS" and "DS–1" in this order, the rules themselves use "subrate" and "1.544 Mbps". *See* Appendix.

[6] A majority of the comments before the Commission are devoted to a revisitation of the Commission's decision to treat NCTE as CPE and do not address or suggest technical standards for implementing the Interconnection Order. Thus, the BOCs and GTE, echoing their earlier views in this docket, contend generally that the Commission's decision was erroneous and should be reversed. Northern Telecom suggests that the Commission convene industry meetings to determine, *inter alia*, the appropriate regulatory treatment of this equipment. DOD and ROLM argue that NCTE should be afforded a hybrid regulatory treatment, with the carriers continuing to provide it without structural separation. For its part, UTC states only that it is in support of the Interconnection Order. NATA's comments address only the matter of whether NCTE standards should be implemented through tariffs or by rule. All of these arguments have already been thoroughly considered and resolved and therefore need not be considered further. Interconnection Order, 94 F.C.C.2d 5 (1983), *recon. denied*, FCC 84–145, released April 27, 1984.

[7] The Commission does not address at this time the BOCs' proposals on loop simulator circuitry. These are not substantively related to appropriate interconnection standards for NCTE. The loop simulator circuitry proposals will be the subject of further decisions in this docket.

[8] For digital services operating within the range of bit rates offered for DDS service, the BOC proposal is substantively identical to the initial IDCMA proposal made in this docket. *See Interconnection Order, Appendix.*

While these proposals will require internal equipment design characteristics in order to comply with encoded analog content limitations, it has not been shown that these limitations would unreasonably constrain the design of the internal characteristics of CPE. It is clear that the BOC proposal would apply at the output of the CPE at the digital interface and equipment manufacturers will be free to design CPE in any way that meets these standards. Also, we are not persuaded by the fact that these limitations are based on pulse code modulation techniques and are unsuitable for linear encoding techniques. At the present time, pulse code modulation is the nearly exclusive digital encoding technique for terminal equipment designed for connection to digital services. No need has been shown to require limitations based on linear encoding techniques. Furthermore, we do not find that the proposed rule is too broad. The encoded analog content limitations will apply where digital signals are intended for eventual conversion into voiceband analog signals. The rule will not have any unreasonably restrictive effect on terminal equipment employed in exclusively non-voiceband applications. We do not believe that under these circumstances IDCMA's arguments warrant revision or rejection of the BOC's proposals. Accordingly, we will accept the BOCs' proposals on encoded analog content.

9. As part of signal power limitations the BOCs have also suggested requirements regarding adjustment of signal voltage output of terminal equipment to be connected to DS–1 channels. They propose that adjustment of signal voltage be made either as modifications in registered equipment and circuitry pursuant to § 68.214 of the rules, or by following certain specified "institutional procedures." These procedures would require that the operator/maintainer responsible for adjustment of signal voltage possess any one of several qualifications, *viz.*, training provided or approved by the manufacturer of the terminal equipment, or work under the direct supervision of a person who has completed such training. (*Cf.* § 68.215(c) of the rules, 47 CFR 68.215(c), for system wiring.) The BOCs also propose that notice be given to the telephone company prior to the connection of terminal equipment to DS–1 facilities. They would require a notarized affidavit containing the name of the person responsible for the equipment, the lines to which it will be attached and a statement that adherence to Part 68 will be maintained. Certain extraordinary procedures are also suggested, which would entitle the telephone company to require the customer to provide protective apparatus or to disconnect service when any information in the required affidavit reveals that a violation of Part 68 is likely or where actual network harm has occurred. The BOCs further propose a rule to impose a service charge when it is necessary for the telephone company to send a repairperson and it is discovered that there has been a violation of Part 68. The BOCs claim that these provisions are necessary to ensure that the voltage level of the terminal equipment connected to DS–1 will be properly adjusted. IDCMA expresses concern that these requirements may be unnecessarily burdensome. IDCMA also suggests that the problem of proper adjustment of terminal equipment could be handled by a programmable data jack of the sort currently employed with respect to analog data services.

10. An amendment of Part 68 is justifiable where there is identified a potential network harm. *See* § 68.3(g), 47 CFR 68.3(g). The BOCs' proposal regarding adjustment of signal voltages through institutional safeguards embodied in Part 68 is simply not necessary. As indicated, see paras. 5–8 *supra*, the BOCs have proposed rules that will ensure that registered terminal equipment for connection to digital terminal equipment will not exceed acceptable signal power limitations. These rules will be sufficient to protect against the possibility of excessive signal voltages without imposing additional administrative requirements on consumers.

11. *Longitudinal Imbalance Limitations.* No comments have been received on the BOCs' proposed Part 68 amendments concerning protection against longitudinal imbalance, and the BOCs' proposal is essentially identical to the Commission's initial longitudinal imbalance limitation proposal. *See Interconnection Order,* Appendix, para. 7. We find that no substantial questions are raised on this issue and we will therefore accept the BOCs' proposal.

12. *Billing System Protection.* Section 68.314 of the rules sets forth limitations to ensure that registered terminal equipment will not improperly discharge or create signals in the telephone network similar or identical to those used by carriers to control system billing. In the proposed rules before the Commission, the BOCs have expanded the scope of § 68.314, applying the existing limitations for billing system protection to terminal equipment to be attached to DDS and 1.544 Mbps channels. IDCMA, the only party commenting on the BOC proposal, questions the necessity for applying these standards because DDS and DS–1 channels are private line, flat rate services.

13. According to the BOCs, digital data on DDS and DS–1 channels have the potential of being decoded or converted into analog signals and transmitted on public, switched telephone network facilities. DS–1 channels, for example, can be channelized on a subrate basis to provide several voice channels and may ultimately be connected to the telephone network. There is, then, a potential for signals emanating from digital terminal equipment connected to digital services to interfere with telephone system billing integrity even though these digital services may themselves be private line and billed on a flat rate basis. Against these facts, no showing has been made that billing system protection standards should not be made applicable to digital terminal equipment connected to DDS and DS–1. However, the billing system protection standards proposed by the BOCs would in practical effect apply to virtually all NCTE even where it would be employed in digital networks not connected to the telephone network,[9] and some aspects of the proposed billing system protection standards could significantly restrict the usefulness of digital services especially at higher bit rates. Thus, the proposed call duration requirements provide that terminal equipment could not receive or transmit data signals for at least two-seconds after the answering terminal equipment transfers to the off-hook condition. While this does not represent a significant limitation for voice services, for higher speed digital services such as DS–1 a mandatory two second period of inactivity can result in loss of efficiency and potential data transmission. Moreover, as digital transmission techniques become employed to a greater degree, or even come to encompass a majority of all communications, this restriction would become more burdensome. No showing has been made why this call duration requirement should be imposed on equipment which will be employed in digital networks not connected to the switched telephone network. As a practical matter, we would anticipate

[9] The BOCs call duration requirements would be applicable to NCTE "capable" of transmitting encoded analog content into the telephone network. This would encompass virtually all NCTE.

that necessary off-hook limitations could be contained in separate demultiplexing equipment rather than as routine features of NCTE which would otherwise be required to contain this potentially inefficient feature. We have therefore deleted the BOCs' proposal on call duration requirements applicable to all digital terminal equpment. Instead, we have made a notation to the current call duration rquirements of § 68.314(a) applicable to other services to indicate that that section will be applicable to NCTE connected to digital services where such digital services are connected to the analog telephone network.[10]

14. *Loopback Testing Functions.* The BOCs have proposed to require that terminal equipment connected to DDS and 1.544 Mbps facilities have a "loopback state", i.e. an operational mode in which the equipment would receive and retransmit signals received from the telephone carrier central office in particular sequences or protocols, enabling the carrier to test end-to-end the transmission system. The BOCs specify protocols for both DDS and DS–1 channels. For DS–1 the customer would be provided by the carrier with information as to which of two protocols would be required to function with the network loopback system. The BOCs claim that this equipment feature requirement is essential to prevent interference with carrier maintainance operations.

15. Kentrox states that the loopback protocols specified by the BOCs for DS–1 are those that have been developed and used by a single manufacturer, Verilink. They claim that Verilink will try to patent these protocols and that the Commission should not codify a proprietary code. In response to these contentions, Verilink states that in its opinion its code is not patentable, but that if a patent should be granted, Verilink would license it at reasonable royalties.

16. The BOCs claim that loopback capabilities must be a required feature of terminal equipment connected to DDS and DS–1 has already been considered. In the *Interconnection Order*, the Commission stated that in all likelihood independent manufacturers of NCTE would be eager to offer prospective customers of NCTE features that enhance system reliability and performance—such as the loopback testing capability. 94 F.C.C.2d 20, para. 38. The Commission further stated that due to competition independent manufacturers will provide loopback testing capability so that customers will secure optimal service from telephone carriers. *Id.* Other than a brief description of the functions performed by loopback features, the BOCs' have failed to show or identify the particular harms that would arise if customers were to employ NCTE without loopback capabilities. We continue to believe that the approach set forth in the *Interconnection Order* will prove adequate to allay the BCOs' concerns regarding loopback features. Of course, carriers should publish technical standards for loopback testing capabilities to promote the availability and compatibility of loopback testing features.

17. *Line Oscillation Protection Limitations.* The BOCs have also proposed to create a new Section 68.316 concerning minimum pulse density and "keep alive" signals for terminal equipment connected to DS–1 channels. They propose to require that NCTE contain identifiable components powered by the line that would assure a continuity of output signal. The BOCs state that these requirements are necessary to prevent self-oscillation of line repeaters should the digital information stream from the customer's CPE fall below minimum density requirements. For the same reasons, the BOCs have proposed amendments to § 68.218(b), which sets forth general obligations of the grantee of equipment registration, requiring that the grantee or its agent instruct the user of terminal equipment connected to DDS or DS–1 circuits that the terminal equipment (or the portions thereof maintaining minimum pulse density and keep alive signals) may not be disconnected without prior notification and concurrence of the telephone company. IDCMA states that, while it agrees with the thrust of the BOCs' position, the BOCs' proposal on minimum pulse density does not accurately represent the line code characteristics acceptable by transmission facilities of the DS–1 rate. Concerning keep-alive signals, GTE proposes that the rules should provide for a type of keep-alive signal consisting essentially of the received signal connected to the transmit contacts of the CPE through a loopback arrangement. With respect to disconnection of terminal equipment by the customer, GTE states that it shares the concern of the BOCs but believes that instructions to customers are inadequate to protect against the possibility of harm. It urges that this problem be handled by means of a shorting jack that would automatically loop the digital line back on itself when the NCTE is disconnected.[11] This would maintain a continuity of the digital information stream and prevent line oscillation. GTE requests changes to the BOCs' proposed rule to permit use of this shorting jack in lieu of instructions to the customer and prior carrier concurrence in disconnection of the CPE.

18. No objections have been raised to the principle underlying the BOCs' proposal to protect against the potential for network harm caused by oscillation of line repeaters. (At the present time NCTE for DS–1 routinely contains minimum pulse density and keep alive features.) IDCMA's claim that the BOC proposal does not in fact represent actual capabilities of DS–1 transmission facilities is unsupported.[12] For its part, GTE has not provided a convincing explanation as to why an additional keep alive signal should be specified. Nor has it indicated how its proposal would be implemented. We will therefore accept the BOCs' new proposed § 68.316 concerning keep-alive signals and mimimum pulse density without the modifications requested by IDCMA and GTE. This will prevent oscillation if equipment is disconnected from the NCTE on the non-network side.

19. However, we are not persuaded that the requested prohibition on disconnection of CPE without prior notification to the telephone company should be placed in Part 68. First, this requirement would impinge on the consumers' use of the NCTE itself even where circumstances indicate that the equipment should be disconnected. Second, the parties' comments suggest a relatively simple alternative to the potentially burdensome, or alternatively unenforceable, administrative sanctions requested by the BOCs. In other words, the shorting jack suggested by GTE and others would be a low cost method of protecting against the network harm complained of by the carriers, while at the same time maintaining the

[10] The power limitations and other requirements in the BOCs' proposed call duration requirements applicable to registered terminal equipment are substantially identical to the current provisions of § 68.134(a)(2).

[11] A shorting jack has also been proposed in this docket by Pacific Northwest Bell Telephone Company. *See* petition for reconsideration filed July 26, 1983.

[12] IDCMA requests that a two sentence portion of the BOC proposal be replaced by language drawn from AT&T's PUB 62411. The BOC proposal was: The minimum acceptable average pulse density is 0.125. The maximum acceptable length of a continuous sequence of "zeros" is 80 pulse positions.

IDCMA states that this language should be replaced by: The [equipment] must not transmit more than 15 "zeros" in a row, and in each and every time window of 8 × (n + 1) bits (where n can = 1 through 23) there should be at least n "ones" present.

consumers unencumbered use of CPE. We believe that a shorting jack alternative to a Part 68 prohibition against disconnection is a reasonable means of protecting against the line oscillation problem.[13] The carriers may implement this alternative without further rule amendments if any jack used for this purpose complies with the mechancial and electrical specifications of the rules when the corresponding plug is inserted.

Other Issues

20. *Tariff or Part 68.* In the *Interconnection Order* the Commission requested comments on the option of placing technical interconnection standards for NCTE in carriers' tariffs instead of in Part 68. The comments in response by both carriers and equipment manufacturers unanimously support Part 68 as the more effective means by which to implement network harm standards for NCTE. In view of this consensus, we are including interconnection standards for NCTE in Part 68. It appears that Part 68 network harm standards will constitute an efficient and effective means of ensuring that terminal equipment connected to digital services will not cause network harm. The Part 68 registration program assures uniformity of harm standards, adequate means of public participation through the rulemaking process, and ease of enforcement through the application process and registration procedures. However, this finding is subject to review as we move to streamline Part 68 to minimize unnecessary burdens it may impose. In this vein, the Commission intends to explore whether digital terminal equipment interconnection standards may in whole or in part be established by industry standards setting organizations. The costs and benefits such an alternative approach may have on all affected, including the interconnect industry, carriers, and consumers, will be addressed in a further notice in CC Docket No. 84–885. *See Deregulatory Options and Streamlined Application Processing in Part 68,* CC Docket No. 84–885, released September 26, 1984.

21. *Future Services.* Northern Telecom and IBM have called our attention to the fact that the BOCs' proposed rules would apply only to the current digital service offerings of DDS and DS–1 channels. They urge that the rules be recast to apply to future digital services as well. For its part, IDCMA states that it is reluctant to accept the BOCs' rules unless they are combined with a commitment to permit direct connection of terminal equipment to new digital services and to develop any necessary Part 68 standards.

22. In the *Interconnection Order* the Commission made clear that the determination to permit interconnection of NCTE appplies not only to current digital services, circuits and facilities, but future digital services as well. 94 F.C.C.2d 23, n. 27. This determination establishes the principle that customer provision of terminal equipment employed in connection with digital services will be permitted, and that carrier tariffs seeking to restrict this right will be held unlawful. While particularizing this option by formulating Part 68 criteria that make the *Interconnection Order* applicable to all future digital services would be desirable, none of the parties has submitted particular rule proposals which would meet this objective. Thus, Northern Telecom's proposals which would meet this objective. Thus, Northern Telecom's proposal merely suggests in broad strokes how this theoretically could be achieved with respect to signal power limitations. Similarly, as indicated, see para. 6 *supra,* IDCMA has submitted graphs concerning signal strength limitations. While these graphs would apparently apply to a broader range of services than DDS and DS–1, they would not apply to any digital services between 56 kbps and 1.544 Mbps, or above 1.544 Mbps, and are therefore not generalized in applicability. Apart from signal power limitations, no suggestions have been made even in general terms as to how Part 68 criteria could be achieved for other as yet undefined digital services. In this connection, it is likely that much of the growth in future digital services will occur beyond the 1.544 Mbps rate. These services will employ fiber optic technology which may pose less risk of harm to the telephone network and may not require as stringent, or indeed, any standards. For the present time, we will not delay the introduction of Part 68 criteria for DDS and DS–1 simply because of the speculative need for future Part 68 rulemaking procedings. (We note that some of the rules adopted in this order, such as longitudinal balance requirements and those concerning encoded analog content, will apply to the complete range of bit rates between 2.4 kbps and 1.544 Mbps and that other requirements, such as billing protection, would necessitate minimal changes to apply to other digital services.) With respect to new digital services, carriers will be expected to file appropriate petitions for rulemaking under Part 68 to develop interconnection standards for these services. Pending the resolution of any rulemaking proceedings, carriers can provide new digital services and permit customer provision and interconnection of NCTE pursuant to an interim interconnection program created by tariff. The Commission additionally envisions that voluntary industry organizations such as the Exchange Carriers Standards Association will develop uniform compatibility and network harm standards for new digital services.

23. *Labeling.* The present § 68.300 of the rules requires that registered terminal equipment bear a label showing the FCC registration number and ringer equivalence number, if applicable. The BOCs have proposed that for terminal equipment to be connected to digital services a separate label be required showing the name of the digital service for which the equipment is intended. We do not believe that this separate labeling is necessary. The services to which the terminal equipment can be connected will be provided in information supplied by the manufacturer, and will be contained in the FCC registration number coding. Where no ringer equivalence number is applicable, this space on the label can be left blank, as with currently registered equipment. Accordingly, we will not adopt the BOCs' proposed amendment to § 68.300.

24. *Compatibility.* Several parties have suggested that the Commission should include in Part 68 "digital service campatibility standards", and most of the parties have urged that the Commission convene informal meetings of industry and carrier representatives to achieve a consensus on appropriate standards to be included in Part 68. IDCMA states that some degree of FCC oversight of compatibility standards is essential to ensure that manufacturers are presented with reasonable, uniform, minimum interface specifications. The National Telecommunications Information Administration has made similar comments.

25. In this decision, the Commission is adopting technical rule changes to protect the telephone network from harm due to direct connection of terminal equipment to digital services. This action will essentially achieve the purposes of the *Interconnection Order,* and, while the Commission recognizes the arguments supporting uniform.

[13] However, it will be reasonable to require that the registration grantee provide the user with instructions that the telephone carrier be informed prior to disconnection of NCTE from subrate and 1.544 Mbps digital services. We have amended § 68.218(b) to this effect.

nationwide compatibility standards, various private industry standards-setting organizations studying this question. In a broader context, the Commission has taken note of the changing technology typified by digital service development and has an on-going docket to consider what comprehensive policy determinations should be made by the Commission. See *Integrated Services Digital Networks*, Gen. Docket 83-841, *Notice of Proposed Rulemaking*, FCC 83-373, released August 10, 1983. We are not persuaded that Commission sponsorship of industry meetings is necessary at this time.

26. *RM-4087.* Prior to the adoption of the *Interconnection Order*, AT&T filed a petition for rulemaking, RM-4087, to amend Part 68 of the rules to permit customer provision and direct connection of digital PBXs to DS-1 channels. In view of the Commission's decision in the *Interconnection Order* and the rule amendments adopted today, which will cover connection of digital PBXs to digital services, we will dismiss RM-4087 as moot.

27. Apart from the rule provisions indicated above, we are also adopting other amendments to Part 68 necessary to encompass digital services. These are essentially editorial in nature. *See e.g.* §§ 68.2(a) and (f), 68.3(bb), (cc)-(ii), § 68.100, § 68.200(d).

Regulatory Flexibility Act—Final Analysis

A. Need for and Objective of Rules

28. The Commission has determined that the public interest will be served by the competitive provision and interconnection by the consumer of network channel terminating equipment associated with digital transmission services. *Interconnection Order, supra.* The implementation of this public interest determination requires the creation of technical interconnection standards to prevent network harm by independently manufactured and supplied network channel terminating equipment. The purpose of the rules adopted in this order is to create such technical interconnection standards for network channel terminating equipment.

29. The notice of proposed rulemaking in this proceeding solicited comments on the Initial Regulatory Flexibility Analysis, and specified that such comments be contained under separate headings from comments relating to other issues. No such comments were received. Nevertheless, in order to discharge our duty under the Regulatory Flexibility Act, we will discuss issues concerning costs, if any, arising from the technical interconnection standards we are adopting today.

B. Analysis of Technical Interconnection Standards

30. We are adopting technical interconnection standards concerning signal power limitations, longitudinal balance limitations, billing system protection standards, labeling requirements, and line oscillation protection limitations. These standards impose no costs or burdens on any person because they do not by themselves require any person to manufacture network channel terminating equipment but merely establish specifications for companies that choose to do so. Moreover, these standards to a large extent are similar to specifications already contained in Part 68. There specifications are already being complied with by equipment manufacturers pursuant to the interim interconnection program for network channel terminating equipment.

C. Flexibility Analysis Conclusion

31. We conclude that the action we are taking today complies with the purposes of the Regulatory Flexibility Act. These regulations do not impose any significant costs on any person. No showing has been made that the specifications we have chosen will be more costly than other possible specifications. However, where alternative resolutions were available we have chosen the least costly alternative unless a more costly alternative would clearly be more effective in creating interconnection standards for network channel terminating equipment. In many instances, both large and small carriers and manufacturers will be able to include such expenses as are necessary to meet the specifications contained herein as part of revenue requirements for regulated services or by setting their own price on unregulated products and services.

32. The proposal contained herein has been analyzed with respect to the Paperwork Reducation Act of 1980 and found to impose new or modified requirements or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

33. Accordingly, it is ordered, That the amendments to Part 68 of the Commission's rules and regulations, 47 CFR Part 68 set forth in the attached appendix are adopted.

34. It is further ordered, That the petition for rulemaking, RM-4087, filed by the American Telephone and Telegraph Co. is dismissed.

35. It is further ordered, That the Secretary shall cause a copy of this order with regulatory act final analysis to be printed in the **Federal Register** and shall send a copy to the Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 601, et seq. (1980)).

36. It is further ordered, That the rule amendments adopted herein will become effective January 14, 1985.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 68—[AMENDED]

Part 68 of the Commission's rules is amended as follows:

1. Section 68.2 is amended to revise the introductory text of paragraph (a), to add a paragraph (a)(5), and add a paragraph (f):

§ 68.2 Scope.

(a) *General.* Except as provided for in paragraphs (b), (c), (d), (e), and (f), the rules and regulations in this Part apply to the direct connection:

* * * * *

(5) Of all terminal equipment to subrate and 1.544 Mbps digital services.

* * * * *

(f) Grandfathered Terminal Equipment for Connection to subrate and 1.544 Mbps digital services:

(1) Terminal equipment, including its premises wiring and protective apparatus (if any) directly connected to subrate or to 1.544 Mbps digital services on January 1, 1985 may remain connected and be reconnected to such digital services for life without registration, unless subsequently modified.

(2) New installations of terminal equipments, including premises wiring and protective apparatus (if any) may be installed (including additions to existing systems) up to June 30, 1986, without registration of any terminal equipment involved, provided that these terminal equipments are of a type directly connected to subrate or 1.544 Mbps digital services as of January 1, 1985. These terminal equipments may remain connected and be reconnected to such digital services for life without registration, unless subsequently modified.

2. Section 68.3 is amended to add paragraphs (5) and (6) to paragraph (cc), to add paragraphs (dd)-(ii) and to add figure 68.3(j):

§ 68.3 Definitions.

* * * * *

(cc) Tie Trunk Transmission Interfaces.

* * * * *

(5) Digital PBX–PBX 4-Wire Interface: A 4-wire digital interface between a digital PBX (or similar) system and a digital transmission facility operating at 1.544 Mbps or 56 kbps connecting PBXs that provide tandem connections.

6. Digital PBX–Satellite PBX 4-Wire Interface: A 4-wire digital interface between a digital PBX (or similar) system and a digital transmission facility operating at 1.544 Mbps or 56 kbps connecting a PBX (main) and a PBX that does not provide tandem connections (satellite PBX).

(dd) 1.544 Mbps Digital PBX–CO 4-Wire Interface: A 4-wire digital interface between a digital PBX (or similar) system and a digital transmission facility operating at 1.544 Mbps connecting to a serving central office.

(cc) Digital Milliwatt: A digital signal that is the coded representation of a 0 dBm, 1000 Hertz sine wave.

(ff) Equivalent Power: The power of the analog signal at the output of a zero level decoder, obtained when a digital signal is the input to the decoder.

(gg) Zero Level Decoder: A decoder that yields an analog level of 0 dBm at its output when the input is the digital milliwatt signal. See Figure 68.3(j).

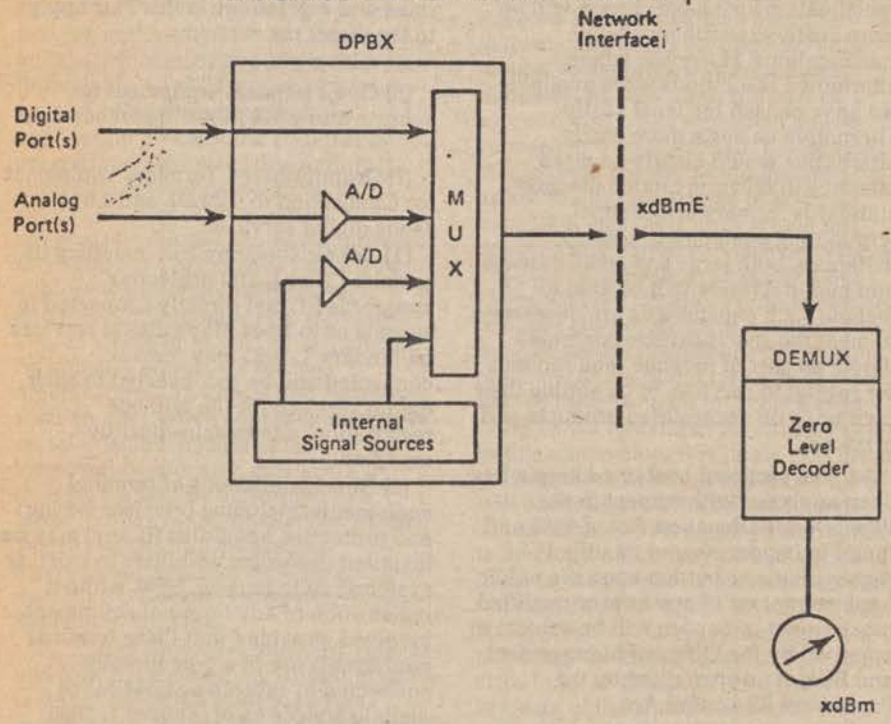
(hh) Encoded Analog Content: The analog signal contained in coded form within a digital signal.

(ii) Subrate Digital Service: A digital service providing for the full-time simultaneous two-way transmission of digital signals at synchronous speeds of 2.4, 4.8, 9.6 or 56 kbps.

(jj) 1.544 Mbps Digital Service: A full-time dedicated private line circuit used for the transmission of digital signals at a speed of 1.544 Mbps.

3. Section 68.100 is revised to read as follows:

ZERO LEVEL DECODER TEST CONFIGURATION FOR DDS/HCC DIGITAL CHANNELS



Note: This Assumes That The Decoder Has A Resistive 600 Ohm Output Impedance And Is Terminated In A Resistance Of 600 Ohms.

Figure 68.3 (j)

§ 68.100 General.

In accordance with the rules and regulations in subpart B of this part, terminal equipment may be directly connected to the public switched telephone network and to those private line services included in § 68.2(a)(2), and digital services included in § 68.2(a)(5). In addition, PBX (or similar) systems may be directly connected to those private line services included in § 68.2(a)(3).

4. Section 68.200 is amended to revise paragraph (d) to read in its entirety as follows:

§ 68.200 Application for equipment registration.

* * * * *

(d) A statement that the terminal equipment or protective circuitry complies with and will continue to comply with the appropriate rules and regulations in subpart D of this part, accompanied by such test results, description of test procedures, analyses, evaluations, quality control standards and quality assurance standards as are necessary to demonstrate that such terminal equipment or protective circuitry complies with and will continue to comply with all the applicable rules and regulations in subpart D of this part. The Office of Science and Technology may issue an OST Bulletin describing acceptable test methods; other test methods may be employed provided they are fully described in the application and are found acceptable by the Commission.

* * * * *

5. Section 68.218 is amended to add a paragraph (6) to paragraph (b):

§ 68.218 Responsibility of grantee of equipment registration.

* * * * *

(b) * * *

(6) For registered devices used in connection with subrate and 1.544 Mbps digital services, instructions that the user must notify the telephone company prior to disconnection of such registered devices.

* * * * *

6. Section 68.308 is amended to substitute a new table for the existing table appearing in paragraph (b) (5) (i), to revise existing paragraph (b) (5) (i) (B), to add paragraphs (b) (5) (i) (F), and (b) (9), and to add a paragraph (g) with figure 68.308(d).

§ 68.308 Signal power limitations.

* * * * *

(b) * * *

(5) * * *

(i) * * *

BILLING CODE 6712-01-M

MAXIMUM ALLOWABLE NET AMPLIFICATION BETWEEN PORTS (A)(D)(E)(F)

From (F) \ To		Tie Trunk Type Ports (C)					OPS Ports (2-Wire) (B)	Public Switched Network Ports (2-Wire)	HCC Digital PBX-CO 4-Wire
		2-Wire	4-Wire Lossless	4-Wire CTS	DDS/HCC Digital PBX-Satellite 4-Wire	DDS/HCC Digital PBX-PBX 4-Wire			
Tie Trunk Type Ports (C)	2-W	0dB avg 1.5dB max	0dB avg 1.5dB max	−4dB nom.	0dB avg 1.5dB max	3dB avg 4.5dB max	−2dB avg −0.5dB max	–	–
	4-W Lossless	0dB avg 1.5dB max	0dB avg 1.5dB max	−4dB nom.	0dB avg 1.5dB max	3dB avg 4.5dB max	−2dB avg −0.5dB max	–	–
	4-W CTS	−4dB nom.	−4dB nom.	−8dB nom.	−4dB nom.	−1dB nom.	−6dB nom.	–	–
	DDS/HCC Digital PBX-Satellite 4-W	0dB avg 1.5dB max	0dB avg 1.5dB max	−4dB nom.	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	–	–
	DDS/HCC Digital PBX-PBX 4-Wire	−3dB avg −1.5dB max	−3dB avg −1.5dB max	−7dB nom.	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	–	–
RTE (B)		−2dB avg −0.5dB max	−2dB avg −0.5dB max	−6dB nom.	−3dB avg −1.5dB max	−3dB avg −1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	−3dB avg −1.5dB max
OPS 2-W (B)		−2dB avg −0.5dB max	−2dB avg −0.5dB max	−6dB nom.	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max	0dB avg 1.5dB max
Public Switch Net 2-W		–	–	–	–	–	0dB avg 1.5dB max	–	–
HCC Digital PBX-CO 4-W		–	–	–	–	–	0dB avg 1.5dB max	–	–

(A) * * *

(B) These ports are for 2-wire on-premises station ports to separately registered terminal equipment.

* * * * *

(F) The indicated gain is in the direction which results when moving from the horizontal entry toward the vertical entry.

* * * * *

(9) For connections to 1.544 Mbps digital services, the permissible code words for unequipped Mu-255 encoded subrate channels are limited to those corresponding to signals of either polarity, of magnitude equal to or less than X48, where code word, XN is derived by:

XN=(255–N) base 2
–XN=(127–N) base 2

* * * * *

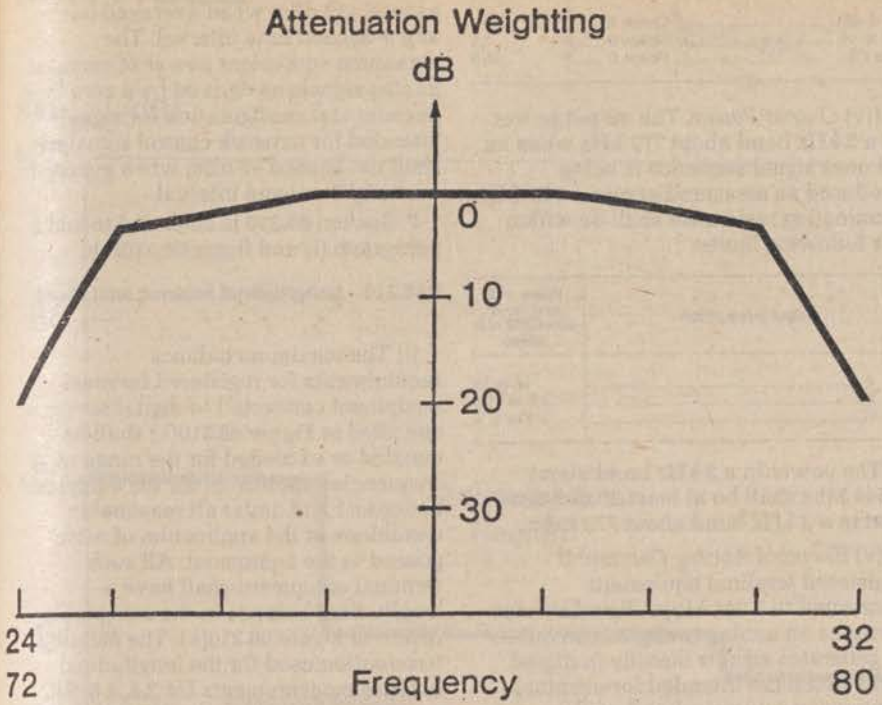
(g) *Interference Limitations for Transmission of Bipolar Signals over Digital Services.*

(1) Limitations on Terminal Equipment Connecting to Subrate Digital Services—

(i) *Pluse Repetition Rate.* The pulse repetition rate shall be synchronous with 2.4, 4.8, 9.6 or 56.0 kilobits per second.

(ii) Template for Maximum Output Pulse. When applied to a 135 ohm resistor, the instantaneous amplitude of the largest isolated output pulse obtainable from the registered terminal equipment shall not exceed by more than 10% the instantaneous voltage defined by a template obtained as follows: The limiting pulse template shall be determined by passing an ideal 50% duty cycle rectangular pulse with the amplitude/pulse rate characteristics defined in Table I through a single real pole low pass filter having a cutoff frequency in Hertz equal to 1.3 times the bit rate. For bit rates of 2.4, 4.8 and 9.6 kbps, the filtered pulses shall also be passed through a filter providing the additional attenuation in Table II.

ATTENUATION WEIGHTING CURVE



24-32 khz Band	72-80 khz Band	Attenuation Factor
24 khz	72 khz	-18 dB
25 khz	73 khz	- 3 dB
26 khz	74 khz	- 1 dB
27 khz	75 khz	0
28 khz	76 khz	0
29 khz	77 khz	0
30 khz	78 khz	- 1 dB
31 khz	79 khz	- 3 dB
32 khz	80 khz	-18 dB

Figure 68.308(d)

TABLE I.—DRIVING PULSE AMPLITUDE

Pulse rate (R) (kbps)	Amplitude (A) (volts)
2.4	1.66
4.8	1.66
9.6	0.83
56.0	1.66

TABLE II.—MINIMUM ADDITIONAL ATTENUATION

Pulse rate (R) (kbps)	Frequency band 24 to 32 kHz (dB)	Frequency band 72 to 80 kHz (dB)
2.4	5	1
4.8	13	9

TABLE II.—MINIMUM ADDITIONAL ATTENUATION—Continued

Pulse rate (R) (kbps)	Frequency band 24 to 32 kHz (dB)	Frequency band 72 to 80 kHz (dB)
9.6	17	8

The attenuation indicated may be reduced at any frequency within the band by the weighting curve of Figure 68.308(d). Minimum rejection is never less than 0 dB; i.e., the weight does not justify gain over the system without added attenuation.

(iii) *Average Power.* The average output power when a random signal sequence, (0) or (1) equiprobable in each pulse interval, is being produced as measured across a 135 ohm resistance shall not exceed 0 dBm for 9.6 kbps or +6 dBm for 2.4 kbps, 4.8 kbps and 56 kbps.

(iv) *Encoded Analog Content.* If registered terminal equipment connecting to subrate services contains an analog-to-digital converter, or generates signals directly in digital form which are intended for eventual conversion into voiceband analog signals, the encoded analog content of the digital signal must be limited. The maximum equivalent power of encoded analog signals for other than live voice as derived by a zero level decoder test configuration shall not exceed −12 dBm when averaged over any 3-second time interval. The maximum equivalent power of encoded analog signals as derived by a zero level decoder test configuration for signals intended for network control signaling shall not exceed −3 dBm when averaged over any 3-second interval.

(2) Limitations on Terminal Equipment Connecting to 1.544 Mbps Digital Services—

(i) *Pulse Repetition Rate.* The pulse repetition rate shall be within ± 75 pulses per second of 1.544×10^6 pulses per second.

(ii) *Output Pulse Templates.* The registered terminal equipment shall be capable of optionally delivering three sizes of output pulses. The output pulse option shall be selectable at the time of installation.

TABLE III

Pulse height (volts)	2.4 to 3.3
Pulse width (half amplitude) (nsec)	324±45
Maximum rise or fall time: from 10% to 90% points (nsec)	100

(A) *Option A Output Pulse.* When applied to a 100 ohm resistor, the instantaneous amplitude of the largest output pulse obtainable from the registered terminal equipment shall fall within the pulse template defined in Table III.

(B) *Option B Output Pulse.* When applied to a 100 ohm resistor, the instantaneous amplitude of the output from the registered terminal equipment obtained when Option B is implemented shall fall within the pulse template obtained by passing the bounding pulses permitted by Table III through the following transfer function.

$$\frac{V_{out}}{V_{in}} = \frac{n_2 S^2 + n_1 S + n_o}{d_3 S^3 + d_2 S^2 + d_1 S + d_o}$$

where:
$n_o = 1.6049 \times 10^6$
$n_1 = 7.9861 \times 10^{-1}$
$n_2 = 9.2404 \times 10^{-8}$
$d_o = 2.1612 \times 10^6$
$d_1 = 1.7223$
$d_2 = 4.575 \times 10^{-7}$
$d_3 = 3.8307 \times 10^{-14}$
$S = j2\pi f$
f = frequency (Hertz)

(C) *Option C Output Pulse.* When applied to a 100 ohm resistor, the instantaneous amplitude of the output from the registered terminal equipment obtained when Option C is implemented shall fall within the pulse template obtained by passing the pulses obtained in Option B through the transfer function in Option B a second time.

(iii) *Adjustment of Signal Voltage.* The signal voltage at the network interface must be limited so that the range of pulse amplitudes received at the first Telephone Company repeater is controlled to ±4dB. This limitation is achieved by implementing the appropriate output pulse option as a function of Telephone Company cable loss as specified at time of installation.

Cable loss at 772 kHz (dB)	Terminal equipment	
	Output pulse	Loss at 772 kHz
15 to 22	Option A	0
7.5 to 15	Option B	7.5
0 to 7.5	Option C	15.0

(iv) *Output Power.* The output power in a 3 kHz band about 772 kHz when an all ones signal sequence is being produced as measured across a 100 Ohm terminating resistance shall be within the following limits:

Output pulse option	Power in 3 kHz band about 772 kHz (dBm)
A	12 to 19
B	4.5 to 11.5
C	−3 to + 4

The power in a 3 kHz band about 1.544 Mhz shall be at least 25dB below that in a 3 kHz band about 772 kHz.

(v) *Encoded Analog Content.* If registered terminal equipment connected to 1.544 Mbps digital service contains an analog-to-digital converter, or generates signals directly in digital form which are intended for eventual conversion into voiceband analog signals, the encoded analog content of the subrate channels within the 1.544 Mbps signal must be limited. The maximum equivalent power of encoded analog signals for other than live voice that are not intended for network control signaling as derived by a zero level decoder test configuration shall not exceed −12 dBm when averaged over any 3–second time interval. The maximum equivalent power of encoded analog signals as derived by a zero level decoder test configuration for signals intended for network control signaling shall not exceed −3 dBm when averaged over any 3–second interval.

7. Section 68.310 is amended to add a paragraph (l) and figure 68.310(k):

§ 68.310 Longitudinal balance limitations.

* * * * *

(l) The maximum balance requirements for registered terminal equipment connected to digital services specified in Figure 68.310(k) shall be equaled or exceeded for the range of frequencies applicable for the equipment under test and under all reasonable conditions of the application of earth ground to the equipment. All such terminal equipment shall have a longitudinal balance in the acceptable region of Figure 68.310(k). The metallic termination used for the longitudinal balance measurements for 2.4, 4.8, 9.6, and 56 Kbps shall be 135 Ohms plus or minus one percent and for 1.544 Mbps shall be 100 Ohms plus or minus one percent. The longitudinal termination for these measurements shall be 500 Ohms in all cases.

LONGITUDINAL BALANCE REQUIREMENT FOR DIGITAL SERVICES

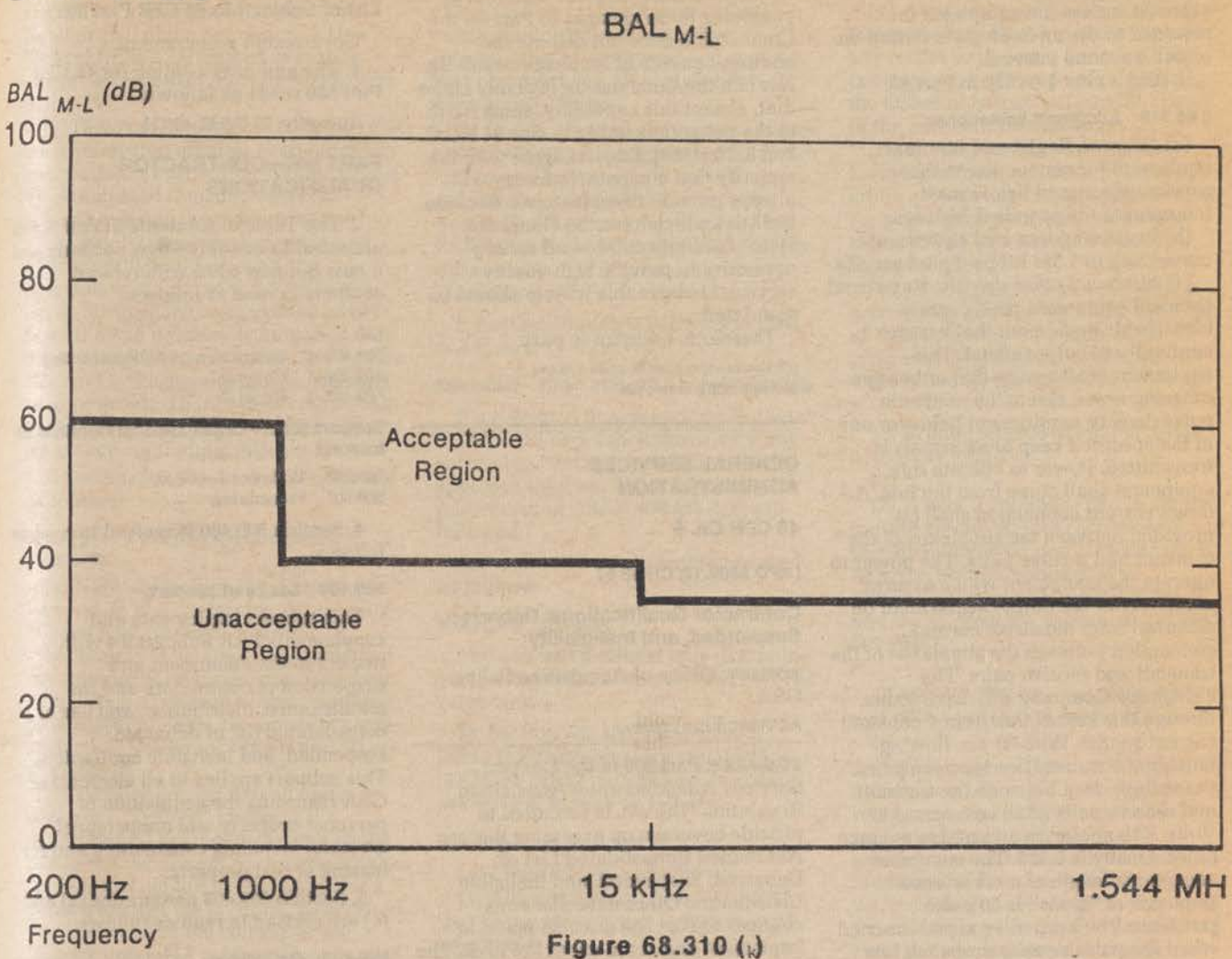


Figure 68.310 (k)

8. Section 68.314 is amended to add a note to paragraph (a), to revise paragraph (d), and to add paragraphs (f) and (g):

§ 68.314 Billing protection.

(a) * * *

Note. This paragraph (a) will be applicable to terminal equipment and registered protective circuitry employed with digital services where such digital services are interconnected with the analog telephone network.

* * * * *

(d) *Signaling interference.* (1) Registered terminal equipment and registered protective circuitry shall not deliver signals into a 2-wire loop simulator circuit or the transmit and receive pairs of a 4-wire loop simulator circuit or a 600 Ohm termination (where appropriate) from sources internal to the registered equipment or circuitry, with energy in the 2450 to 2750 Hertz band unless and at least equal amount of energy is present in the 800 to 2450 Hertz band.

(2) Registered terminal equipment for connection to subrate or 1.544 Mbps digital services shall not deliver digital signals to the telephone network with encoded analog energy in the 2450 to 2750 Hertz band unless at least an equal amount of ecoded analog energy is present in the 800 to 2450 Hertz band.

(e) * * *

(f) On-hook signal requirements for registered terminal equipment for connection to subrate or 1.544 Mbps digital services.

Registered terminal equipment and registered protective circuitry shall comply with the following:

(1) The power delivered to the telephone network in the on-hook state as derived by a zero level decoder shall not exceed −55 dBm equivalent power for digital signals within the frequency band from 200 to 4000 Hertz. Registered protective circuitry shall also assure that for any input level up to 10 dB above the maximum level that is expected under normal operation, the power to a zero level decoder does not exceed the above limits.

(2) The power derived by a zero level decoder, in the on-hook state, by reverse battery equipment shall not exceed −55 dB with respect to one milliwatt, unless the equipment is arranged to inhibit incoming signals.

(g) Off-hook signal requirements for registered terminal equipment connecting to 1.544 Mbps digital services. Upon entering the normal off-hook state, in response to alerting, for analog subrate channels, registered

terminal equipment shall continue to transmit the signaling bit sequence representing the off-hook state for 5 seconds, unless the equipment is returned to the on-hook state during the above 5 second interval.

9. Add a new § 68.318 in Part 68.

§ 68.318 Additional limitations.

(a) *General.* Registered terminal equipment for connection to those services discussed below must incorporate the specified features.

(b) Registered terminal equipment connecting to 1.544 Mbps digital service.

(1) *Minimum pulse density.* Registered terminal equipment shall contain identifiable equipment that assures continuity of output signal. This equipment shall assure that either the outgoing signal meets the minimum pulse density requirement below or one of the specified keep alive signals is transmitted. Power to operate this equipment shall come from the line. A direct current connection shall be provided between the simplexes of the transmit and receive pairs. The power to operate the equipment which assures continuity of the output signal shall be deriuved from the direct current connection between the simplexes of the transmit and receive pairs. The Telephone Company will drive 60 ma. through this connection from a constant current source. With 60 ma. flowing betwen the transmit and receive pairs, the voltage drop between the transmit and receive pairs shall not exceed 67 Volts. The minimum acceptable average pulse density is 0.125. The maximum acceptable length of a continuous sequence of "zeros" is 80 pulse positions. The keep alive signal inserted when the pulse density drops too low shall be one of the following:

(i) *Type 1 Keep Alive Signal.* This signal is a consecutive sequence of all "ones".

(ii) *Type 2 Keep Alive Signal.* This signal is a sequence of 193-bit frames consisting of a framing bit plus 192-bit sequence of consecutive "ones". The framing bit executes the following repetitive pattern every 12 frames:

1 0 0 0 1 1 0 1 1 1 0 0

(iii) *Type 3 Keep Alive Signal.* This signal sequence is the regenerated received signal connected to the transmit port through a loopback circuit.

Statement of Commissioner James H. Quello Dissenting in Part

In re: Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network.

While I generally support this Report and Order, I disagree that mandatory loopback devices are not required. In proposing these changes to Part 68, the Commission does not dispute the obvious benefits of loopback capability. Nor can the Commission logically claim that, absent this capability, some harm to the network is unlikely. *See* 94 F.C.C. 2nd 5, 20 (1983). I do not agree with the majority that competitive forces will always provide these features. Because facilities which have the "loopback state" facilitate end-to-end testing necessary to provide high quality service, I believe this feature should be mandated.

Therefore, I dissent in part.

[FR Doc. 84-31749 Filed 12-13-84; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[APD 2800.12; CHGE 5]

Contractor Qualifications; Debarred, Suspended, and Ineligibility

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: Part 509 of the General Services Administration Acquisition Regulation (GSAR), is amended to provide coverage on accessing the Automated Consolidated List of Debarred, Suspended, and Ineligible Contractors. Other miscellaneous changes to Part 509 are also made to implement and supplement the FAR. The intended effect is to provide procedural guidance to contracting activities under the regulatory process.

EFFECTIVE DATE: December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Office of GSA Acquisition Policy and Regulations, (202) 535-7791.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 15, 1983, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certified in the original document (49 FR 33698, August 23, 1984) that this change 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.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 509

Government procurement.

1. The authority citation for 48 CFR Part 509 reads as follows:

Authority: 40 U.S.C. 486(c).

PART 509—CONTRACTOR QUALIFICATIONS

2. The Table of Contents in Part 509 is amended to add three new sections and a new Subpart 509.5 with related sections to read as follows:

Sec.
509.405-2 Restriction on subcontracting.
509.406-1 General.
509.407-1 General.

Subpart 509.5—Organizational Conflicts of Interest

509.503 Waiver.
509.507 Procedures.

4. Section 509.400 is revised to read as follows:

509.400 Scope of subpart.

This subpart implements and supplements FAR Subpart 9.4 with respect to the debarment and suspension of contractors and the maintenance, distribution, and use of a consolidated list of debarred, suspended, and ineligible contractors. This subpart applies to all elements of GSA regarding the acquisition of personal property and nonpersonal services, including constuction, and the leasing of real property.

5. Section 509.403 paragraphs (a) and (c) are revised to read as follows:

509.403 Definitions.

* * * * *

(a) The "debarring official" and the "suspending official" for GSA is the Assistant Administrator for Acquisition Policy. The authority to act in these capacities may be delegated to the Assistant Administrator's deputy.

* * * * *

(c) The "fact-finding official" for GSA is the Chairman of the General Services Administration Suspension and Debarment Board within the GSA Board of Contract Appeals or the Chairman's designee(s).

6. Section 509.404 is revised to read as follows:

509.404 Consolidated list of debarred, suspended, and ineligible contractors.

(a) The debarring and suspending official is responsible for the compiling and maintaining of the Consolidated List. The List is maintained in an

automated and hard copy format. Access to the Automated List requires a terminal with communications capability, a mailbox Identification Number (ID) and a password. A User's Manual for the automated system is available from the Office of Acquisition Policy (V).

(b) Heads of contracting activities and other interested officials shall notify contracting officers of the availability of the Automated Consolidated List, provide assistance in obtaining the necessary ID numbers and password and/or notify the debarring and suspending official of the distribution needs for the hard copy version of the List. ID's and passwords for use of the automated list may be obtained from the National or Regional Systems Manager, as appropriate. HCA's shall ensure that the Consolidated List is used effectively by agency contracting officers.

7. Section 509.405–1 is revised to read as follows:

509.405–1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time of the debarment or suspension. However, termination of current contracts should be considered under the circumstances set forth in paragraphs (a)(1) and (2) of this section.

(1) Termination for default under a contract's "Default" clause is appropriate if the circumstances giving rise to the debarment or suspension also constitute a default in the contractor's performance of the contract. Debarment or suspension of the contractor for reasons unrelated to the performance of the contract will not support a termination for default.

(2) Termination for convenience or cancellation under appropriate contract provisions should be considered if the contractor presents a significant risk to the Government in completing a current contract, and such action is determined to be in the Government's best interest. In making this determination, the contracting officer should consider such factors as the:

(i) Seriousness of the cause for debarment or suspension;

(ii) Extent of contract performance;

(iii) Potential costs of termination and reprocurement;

(iv) Urgency of the requirement and the impact of the delay of reprocurement;

(v) Availability of other safeguards to protect the Government's interest until completion of the contract.

(b) A decision to terminate an existing contract with a debarred or suspended contractor under a "Default," "Termination for Convenience," or "Cancellation" clause must be concurred in by assigned legal counsel and approved at a level above the contracting officer.

(c) Heads of contracting activities (see GSAR 502.170) may determine that there is a compelling reason to accord debarred or suspended contractors treatment other than that required by FAR 9.405. Such determinations shall be submitted to the debarring and/or suspending official for approval.

8. Section 509.405–2 is added to read as follows:

509.405–2 Restrictions on subcontracting.

If a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to GSA's consent, approval shall not be given unless the procedures in GSAR 509.405–1(c) are followed.

9. Section 509.406–1 is added to read as follows:

509.406–1 General.

The debarring official may determine compelling reasons as provided by FAR 9.406–1(c).

10. Section 509.406–3 paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(iv), (a)(2)(v), (a)(2)(vi), (a)(2)(vii) are revised to read as follows:

509.406–3 Procedures.

(a) *Investigation and referral.*

(1) Any constituent element of GSA that becomes aware of circumstances which may serve as the basis for a debarment shall refer those circumstances to the debarring official through appropriate channels for consideration of debarment action. However, circumstances that involve possible criminal or fraudulent activities shall first be reported to the Office of the Inspector General (OIG) for investigative consideration, in accordance with GSA Standards of Conduct (ADM 7900.9), GSPMR 105.735–216, Reporting Suspected Irregularities. If appropriate, the Office of Inspector General shall make a referral to the debarring official.

(2) At a minimum, referrals by the Office of Inspector General or other GSA organizational components for consideration of debarment action should include:

(i) The recommendation and rationale for the referral (see FAR 9.406);

* * * * *

(iv) A list of all the contractors involved, either as principals or as codes, and DUNS Number);

(v) A statement of GSA's acquisition history with such contractors, including any recent experience under a GSA contract; or, in the case of referrals by the Office of Inspector General, copies of the pertinent contracts.

(vi) A statement concerning any known pertinent active or potential criminal investigation, criminal or civil court proceeding, or administrative claim before The Board of Contract Appeals; and

(vii) A statement from the cognizant contracting activity regarding the impact of the debarment action on GSA programs for debarment referrals not transmitted by the Inspector General.

* * * * *

11. Section 509.406–3(b)(2) is revised to read as follows:

(b) * * *

(2) Where a determination is made to initiate action, affected contractors and any specifically named affiliates shall be given written notice of the information required by FAR 9.406–3 and the information contained in GSAR 509.406–3.

* * * * *

12. Section 509.406–3(c) paragraphs (5) and (7) are revised to read as follows:

(c) * * *

(5) Hearings will be conducted by the fact-finding official in accordance with rules promulgated by that official. The rules shall be as informal as is practicable, consistent with principles of fundamental fairness and FAR Subpart 9.4 and GSAR Subpart 509.4; they shall provide an opportunity for the affected contractor to appear with counsel, submit documentary evidence, present witnesses, and cross-examine any witness GSA presents. The fact-finding official shall make a transcribed record of the hearing and make it available, at cost, to the affected contractor upon request, unless the contractor and GSA, by mutual agreement, waive the requirement for a transcript.

* * * * *

(7) Upon receipt of such a transfer, the fact-finding official shall notify the affected contractor, schedule a hearing date, and provide the contractor an opportunity to present written evidence and oral testimony, and to cross examine opposing witnesses. The fact-finding official shall deliver written findings to the debarring official (together with a transcription of the proceeding, if made) within 10 calendar days after the hearing. The findings shall resolve any facts in dispute based

on a preponderance of the evidence presented and determine whether a cause for debarment exists.

* * * * *

13. Section 509.406–3(d) is revised to read as follows:

* * * * *

(d) *Debarring official's decision.* The debarring official's final decision shall be made, in writing, and notice of the decision given in accordance with FAR 9.406–3. A copy of the notice shall be given to affected agency components.

14. Section 509.407–1 is added to read as follows:

509.407–1 General.

The suspending official may determine compelling reasons as provided by FAR 9.407–1(d).

15. Section 509.407–3(b)(2) is revised to read as follows:

509.407–3 Procedures.

* * * * *

(b) * * *

(2) In cases not based on an indictment, the suspending official shall, in appropriate cases, obtain through OIG the written advice of the Department of Justice, or state prosecutorial authority as to whether substantial interests of the Federal or state government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced by the conduct of a hearing before the agency fact-finding official. If, on the basis of advice received, the suspending official determines that substantial interests of the Federal or a state government would be impaired the suspending official shall advise the contractor in the notice.

* * * * *

16. Subpart 509.5 and Sections 509.503 and 509.507 are added to read as follows:

Subpart 509.5—Organizational Conflicts of Interest

509.503 Waiver.

Within GSA the heads of contracting activities are the approval authority for requests to waive the general rules or procedures of FAR 9.5.

509.507 Procedures.

In the event a potential contractor disagrees with the contracting officer's resolution of a potential organizational conflict of interest, (see FAR 9.507(b)(4)) the matter shall be referred to the Assistant Administrator for Acquisition Policy for a determination.

Dated: December 3, 1984.

William B. Ferguson,

Acting Assistant Administrator for Acquisition Policy.

[FR Doc. 84–32822 Filed 12–13–84; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 49, No. 242
Friday, December 14, 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

Federal Crop Insurance Corporation

7 CFR Part 428

[Docket No. 1434S]

Sunflower Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1985 and succeeding crop years to provide for: (1) Removing the Premium Adjustment Table; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the method of crediting the replanting payment; (5) providing the interest payment on late paid indemnities; and (6) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

COMMENT DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 14, 1985 to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the sunflower policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reduction stayed in the program while those with premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

3. *Section 5.c.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payments is made, the replanting payment will be applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premiums in all cases.

5. *Section 9.d.*—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. *Section 9.*—Delete the requirement that any replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

7. *Section 9.i.*—Provide for interest payment whenever indemnities are not paid timely.

8. *Section 17.1.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

9. In addition to the policy changes FCIC also proposed to eliminate the codification of Appendix A. Federal crop insurance for sunflower has been expanded into almost all sunflower counties. Any FCIC service office will be able to advise a producer if insurance is offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register.** All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List Subjects in 7 CFR Part 428

Crop insurance, Sunflower.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Sunflower Crop Insurance Regulations (7 CFR Part 428), effective for the 1985 and succeeding crop years, to read as follows:

PART 428—SUNFLOWER CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

428.1 Availability of sunflower crop insurance.
428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
428.3 OMB control numbers.
428.4 Creditors.
428.5 Good faith reliance on misrepresentation.
428.6 The contract.
428.7 The application and policy.

Authority: Secs. 506, 516, Pub.L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516)

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 428.1 Availability of sunflower crop insurance.

Insurance shall be offered under the provisions of this subpart on sunflowers in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 428.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sunflowers which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 428.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 428) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 428.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 428.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sunflower insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or given erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 428.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sunflower crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 428.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sunflower crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sunflower contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended

from time to time for subsequent crop years. The provisions of the Sunflower Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sunflower—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good sunflower farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and share insured.

a. The crop insured will be sunflower seed ("sunflowers") which are planted for harvest as sunflowers, which are grown on insured acreage and for which a guanantee and premium rate are provided by the acturial table.

b. The acreage insured for each crop year will be sunflowers planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured sunflowers at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to sunflowers, and such acreage was not replanted;

(4) Initially planted after the final planting date contained by the actuarial table, unless you agree in writing on our form to coverage reduction;

(5) Of volunteer sunflowers;

(6) Planted to a type or variety of sunflowers not established as adapted to the area or excluded by the actuarial table;

(7) Planted with a crop other than sunflowers; or

(8) Which does not meet the rotation requirements designated by the actuarial table.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good sunflower irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good sunflower irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but, if such insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage and not as acreage put to another use.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sunflowers in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sunflowers planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the sunflower policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sunflowers are planted and ends at the earliest of:

a. Total destruction of the sunflowers;

b. Combining, threshing or removal from the field;

c. Final adjustment of a loss; or

d. November 30 of the calendar year in which sunflowers are normally harvested.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sunflowers damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the sunflowers on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sunflowers

and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested sunflowers (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the sunflowers on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sunflowers on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the sunflowers which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sunflowers on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sunflowers on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sunflowers to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production gurantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature sunflower production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 10 percent; or

(b) Which, due to insurable causes, has a test weight below 25 pounds per bushel for oil type sunflowers or below 22 pounds per bushel for non-oil type sunflowers will be adjusted by:

(i) Dividing the value per pound by the price per pound of No. 2 sunflowers; and

(ii) Multiplying the result by the number of pounds of such sunflowers.

The applicable price for No. 2 sunflowers will be the local market price on the earlier of the day the loss is adjusted or the day the sunflowers were sold.

(2) Any mature production from other crops growing in the sunflowers will be counted as sunflowers on a weight basis.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sunflower farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;'

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to anther use before harvest of sunflowers becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) The amount of production of any unharvested sunflowers may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) When you have elected to exclude hail and fire as insured causes of loss and the sunflowers are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to the liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured sunflowers replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed the product obtained by multiplying 175 pounds times the price election times your share.

If the information reported by your results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will pay simple interest, however, computed on the net indemnity ultimately found to be due to you by us or by a final judgment from and including the 61st day after the date the insured signs, dates and submits to us the properly completed claim for indemnity form, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act (41 U.S.C. 611) and published in the **Federal Register**. This rate is referred to as the "Renegotiation Board Interest Rate" and is published semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with the 1985 crop year.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sunflowers are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the

crop year with respect to which such act or omission occurred.

11. Transfer of right to indenmity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. the transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all sunflowers produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set-off are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of sunflower crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sunflower insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sunflowers are normally grown and will be designated by the calendar year in which the sunflowers are normally harvested.

d. "Harvest" means the completion of combining or threshing of sunflowers on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Replanting" means performing the cultural practices necessary to replant insured acreage to sunflowers.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the sunflowers or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of sunflowers in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sunflowers on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share of the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Dated: December 7, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 84-32825 Filed 12-13-84; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 433

[Docket No. 1424S]

Dry Bean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Dry Bean Crop Insurance Regulations (7 CFR Part 433), effective for the 1985 and succeeding crop years to provide for: (1) Removing the Premium Adjustment Table; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underresported; (4) changing the method of crediting the replanting payments; (5) providing for interest payment on late paid

indemnities; and (6) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulations 1512–1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Comment date: Written comments, data, and opinions on this proposed rule must be submitted not later than January 14, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action had been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the dry bean policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.f.(2).

2. *Section 2.g.*—Add a new subsection concerning acreage cultivation and insurability to be consistent with other policies containing similar provisions.

3. *Section 5.a.*—Remove the Premium Adjustment Table. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reduction stayed in the program while those with premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

4. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

5. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. This is a change from the premium practice of applying the replanting payment to the outstanding premium in all cases.

6. *Section 9.e.*—Effective for the 1986 and succeeding crop years allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the idemnities when acres are underreported and will reduce the complexity of calculations.

7. *Section 9.c. and g.*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

8. *Section 9.j.*—Add a provision to pay interest whenever indemnities are not paid timely.

9. *Section 17.g.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

In addition to the policy changes FCIC also proposes to eliminate the codification of Appendix A. The FCIC service offices will be able to advise a producer if dry bean insurance is offered in any county.

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register.** All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 433

Crop insurance, Dry bean.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Dry Bean Crop Insurance Regulations (7 CFR Part 433), and to delete Appendix A, effective for the 1985 and succeeding crop years, to read as follows:

PART 433—DRY BEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

433.1 Availability of dry bean crop insurance.
433.2 Premium rates, production guarantees, levels of coverage, and prices for computing indemnities.
433.3 OMB control numbers.
433.4 Creditors.
433.5 Good faith reliance on misrepresentation.
433.6 The contract.
433.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 433.1 Availability of dry bean crop insurance.

Insurance shall be offered under the provisions of this subpart on dry beans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 433.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for dry beans which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 433.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 433) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 433.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 433.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the dry bean insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith: and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, and such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relielf under this section must be submitted to the Corporation in writing.

§ 433.6 The contract.

The Insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the dry bean crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service offices.

§ 433.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the dry bean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a dry bean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Dry Bean Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Dry Bean—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good bean farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be dry beans ("beans") and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, oif a class designated in the actuarial table; or

(2) Bush varieties of garden seed beans, planted for harvest as seed and grown under a contract executed with a seed company before the acreage reporting date;

which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured beans are grown and which provides for delivery of the beans under certain conditions and at a stipulated price(s) will, for the purpose of this contract, be treated as a contract under which you have the share in the beans.

c. The acreage insured for each crop year will be beans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured beans at the time of planting.

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to beans, and such acreage was not replanted;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer beans;

(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;

(8) Which does not meet the rotation requirements designated by the actuarial table; or

(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice:

(1) You will report as irrigated only the acreage for which you have adequate facilities and water to carry out a good bean irrigation practice at the time of planting; and

(2) Any loss production caused by failure to carry out a good bean irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation but, if insured acreage is destroyed and replanted, whether in the same manner or by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage and not as acreage put to another use.

h. Any acreage of beans with is destroyed and replanted to an insurable class of dry edible beans or bush varieties or garden seed beans will be regarded as insured acreage and not as acreage put to another use.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of beans in the county in which you have a share;

b. The practice;

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any beans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing data for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the dry bean policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratios exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the beans are planted and ends at the earliest of:

a. total destruction of the beans;

b. combining, threshing, or removal from the field;

c. final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of damage or loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the beans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested beans (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, of you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the beans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the beans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of beans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit of dry edible beans by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. The amount of indemnity for any unit of bush varieties of garden seed beans will be determined by substracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed, which will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obtained by multiplying, by variety, the production guarantee per acre by the insured acreage, and the result by the price per pound at which indemnities will be computed, which will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

f. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent; or

(b) Which is threshed and of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, do not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table or would not meet these requirements if properly handled or, if a conversion factor is not designated by the actuarial table, any threshed beans which do not grade No. 2 or better in accordance with the Official United States Grain Standards will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium white, the price shall be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of: the day the loss is adjusted or the day such beans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of beans becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) When you have elected to exclude hail and fire as insured causes of loss and the beans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to the liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured beans replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed the product obtained by multiplying 100 pounds times the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will pay simple interest, however, computed on the net indemnity ultimately found to be due to you by us or by a final judgment from and including the 61st day after the date the insured signs, dates and submits to us the properly completed claim for indemnity form, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act (41 U.S.C. 611) and published in the **Federal Register.** This rate is referred to as the "Renegotiation Board Interest Rate" and is published semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with the 1985 crop year.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beans are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all beans produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set-off are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31.
All other states	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for five consecutive years.

16. Contract Changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of dry bean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding dry bean insurance in the county.

b. "County means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

d. "Harvest" means the completion of combining or threshing of beans on the unit.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to permium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Pick" means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to dry beans.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on August 16, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

Dated: December 7, 1984.

[FR Doc. 84-32624 Filed 12-13-84; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 448

[Doc. No. 1541S]

Extra Long Staple (Pima) Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Supplemental notice of proposed policy rulemaking and extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith issues this supplemental notice of proposed policy rulemaking and extension of comment period for the purpose of soliciting public comment on its proposed changes for: (1) Prescribing procedures for insuring extra long staple (ELS) cotton on an actual production history (APH) basis; (2) defining the insured's responsibility for reporting production records necessary for determining the insurance guarantee; (3) removing the Premium Adjustment Table; (4) adding a definition of mature ELS cotton; and (5) deleting Appendix A.

In addition, minor changes to the language and format of the regulations have been made which will have no effect on the policy for insuring ELS cotton.

The intended effect of this supplemental notice is to propose changes to the ELS cotton crop insurance, make minor changes in language and format of the regulations contained in 7 CFR Part 448, and to extend the comment period for an additional 30 days. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this supplemental notice of policy rulemaking must be submitted not later than January 14, 1985, to be sure of consideration.

ADDRESS: Written comments on this supplemental notice should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Tuesday, August 14, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 32363, proposing to issue a new Part 448 in Chapter IV of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, for the purpose of insuring extra long staple (ELS) pima cotton in certain counties.

FCIC has now proposed that such insurance would be offered on an actual production history (APH) basis with the coverages reflecting the actual production history of the crop on the unit. This proposal necessitates making some changes in the policy for insurance as previously proposed. These changes are:

1. *Section 2.d.(7)*—Remove this statement because it was published in error.

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will reflect the actual production history of the crop on the unit.

3. *Subsection 15.c.*—Add subsection to provide for automatic cancellation for failure to furnish production records prior to cancellation date. This statement was added to assure that policyholders are aware that it is their responsibility to report ELS cotton production for the most recent year. Because coverage guarantees will be based on the producer's actual production history (APH), this information is necessary for FCIC to determine the guarantee.

4. *Section 17.j.*—Add a definition for the term "Mature ELS Cotton" to clarify its use in Section 9.e.(1).

In addition to the policy changes FCIC also proposes not to codify Appendix A. The FCIC service offices will be able to advise a producer if ELS cotton insurance is offered in any county.

This notice extends the time for comment on the proposed rule published at 49 FR 32363, and requests comments on the changes set forth above.

The regulations and policy contained in 7 CFR Part 448, published as a notice of proposed rulemaking in the **Federal Register** on August 14, 1984, with the changes outlined herein, is republished below.

All written comments made pursuant to this notice will be available for public inspection in the Office of the Manager, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 448

Crop insurance, Extra long staple (Pima) Cotton.

Supplemental Notice of Proposed Policy Rulemaking and Extension of Comment Period

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes additional changes to the proposed Extra Long Staple (ELS) Cotton Crop Insurance Regulations published at 49 FR 32363 on August 14, 1984. The proposed regulations which would add a new Part 448 are republished below in their entirety to read as follows:

PART 448—EXTRA LONG STAPLE (PIMA) COTTON CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

448.1 Availability of extra long staple (pima) cotton crop insurance.
448.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
448.3 OMB control numbers.
448.4 Creditors.
448.5 Good faith reliance on misrepresentation.
448.6 The contract.
448.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 448.1 Availability of extra long staple (pima) cotton crop insurance

Insurance shall be offered under the provisions of this subpart on extra long staple (pima) cotton in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 448.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for extra long staple (pima) cotton which will be included in the county actuarial table on file in service offices and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 448.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 448) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 448.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 448.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the extra long staple (pima) cotton insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured, or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believes to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

§ 448.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance. The contract shall cover the extra long staple (pima) cotton crop as provided in the policy. The contract shall consist of the application, the policy, and the provisions of the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

§ 448.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the extra long staple (pima) cotton crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) Extra long staple (pima) cotton contracts in effect for the 1985 crop year may be amended from year to year and are continuous unless terminated in accordance with their terms. A new application is not required by these regulations for subsequent crop years unless the policy is terminated.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Extra Long Staple (Pima) Cotton Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Extra Long Staple Cotton—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(8).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good cotton farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservior project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be Extra Long Staple ("ELS") cotton, and American Upland lint ("AUP") cotton if the acreage was originally planted to ELS cotton which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be cotton planted on insurable acreage as designated by the actuarial table and in

which you have a share, as reported by you or as determined by us, whichever we elect. The acreage insured of skip-row cotton will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions, unless other acreage determinations are provided by the actuarial table.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured ELS cotton at the time of planting.

d. We do not insure any acreage:

(1) Which is non-irrigated and from which a hay crop was harvested or on which a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of the limitations established by any program administered by the United States Department of Agriculture;

(3) Which is new ground acreage;

(4) Where the farming practices carried out are not in accordance with the farming practices for which the permium rates have been established;

(5) Which is irrigated and an irrigated practice is not provided for by the actuarial table, unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(6) Which is destroyed, it is practical to replant to ELS cotton, and such acreage was not replanted;

(7) Which you have elected to exclude (the exclusion must be by unit, in writing on our form and made before the closing date for submitting applications as established by the actuarial table, except that, if a unit is acquired after the closing date, an exclusion may be filed up to 15 days after the acquisition but not later than the acreage reporting date); or

(8) Planted to a type or variety of cotton not established as adapted to the area or excluded by the actuarial table.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good cotton irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good cotton irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of cotton in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any ELS cotton planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the acturial table.

b. The production guarantees in the acturial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First Stage—From planting until 60 days after the final planting date for ELS cotton or until the shedding of the first blooms, whichever occurs first. We may limit the liability to the first stage if the cotton was damaged during this period to the extent that farmers generally would not further care for the cotton; or

(2) Second Stage—All insured cotton after the first stage.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the ELS cotton is planted and ends at the earliest of:

a. Total destruction of the cotton;

b. Removal of the cotton from the field;

c. Final adjustment of a loss; or

d. January 31 after planting;

B. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the cotton on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the cotton and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss is later determined, immediate notice must be given. A representative sample of unharvested cotton (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of the notice, unless we give you written consent to harvest the sample.

(5) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the cotton on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the cotton which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the cotton on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of cotton on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be

computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(2) Any mature ELS cotton production which is or can be harvested will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length and micronaire reading (price A), is less than 75 percent of price B.

Price B will be the market price quotation at the same market for ELS cotton of the grade, staple length and micronaire reading designated in our actuarial table for this purpose. The price quotations for prices A and B, will be the market price quotations on the earlier of the day the loss is adjusted or the day the damaged ELS cotton was sold. In the absence of a price quoation(s) on such date, the price quotations for the nearest prior date for which an ELS cotton price quotation, was listed for prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of production (harvested and unharvested) by price A and dividing the result by 75 percent of price B).

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length and micronaire reading shown in our actuarial table. The prices will be determined on the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(b) Not less than the applicable guarantee for any acrage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) above and which does not qualify for the second stage guarantee will be counted except as provided in (d) below;

(d) The total appraisal for uninsured causes.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage:

(a) Is not put to another use before harvest of cotton becomes general in the county;

(b) Is harvested; or

(c) Is further damaged by an insured cause before the acreage is put to another use.

(5) Any appraisal of the AUP cotton on acreage originally planted to ELS cotton will be reduced by the factor determined in section 9e(2) above. If prices are not yet available, the previous year's season average prices will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the second stage guarantee may be made on acreage where the stalks have been destroyed without our consent.

(7) The amount of production of any unharvested cotton may be determined on the basis of field appraisals conducted after the end of the insurance period.

(8) When you have elected to exclude hail and fire as insured causes of loss and the cotton is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

(9) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will pay simple interest, however, computed on the net indemnity ultimately found to be due to you by us or by a final judgment from and including the 61st day after the date the insured signs, dates and submits to us the properly completed claim for indemnity form, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act (41 U.S.C. 611) and published in the **Federal Register**. This rate is referred to as the "Renegotiation Board Interest Rate" and is published semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with the 1985 crop year.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the cotton is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller or:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignement of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all cotton produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. this contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the

amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by United States Department of Agriculture will be the date both such payment and set off are approved.

e. The cancellation and termination date is March 31.

f. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unles the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purpose of cotton crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding cotton insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Cotton" means Extra Long Staple Cotton and acreage replanted to American Upland Cotton if the acreage was originally planted to Extra Long Staple Cotton.

d. "County" means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

e. "Crop year" means the period within which the cotton is normally grown and will be designated by the calendar year in which the cotton is normally harvested.

f. "ELS cotton" means Extra Long Staple Cotton (also called Pima Cotton or American-Egyptian Cotton).

g. "Harvest" means the removal of the seed cotton from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Mature ELS cotton" means ELS cotton which can be harvested either manually or mechanically and includes both unharvested and harvested cotton.

k. "New ground acreage" means any acreage which has not been planted to a crop in any one of the previous three crop years, except that acreage in tame hay or rotation pasture during the previous crop year will not be considered new ground acreage.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. "Replanted" means performing the cultural practices necessary to replant acreage to AUP cotton originally planted to ELS cotton.

n. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. "Skip-row" means planting patterns consisting of alternating rows of cotton and fallow rows (or rows of another crop) as defined by ASCS.

p. "Tenant" means a person who rents land from another person for a share of the cotton or a share of the proceeds therefrom.

q. "Unit" means all insurable acreage of cotton in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

r. "Yield" means the actual yield reported by you to ASCS or the yield established by ASCS or us.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on November 28, 1984.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved: December 7, 1984.

Edward Hews,

Acting Manager.

[FR Doc. 84-32623 Filed 12-13-84; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 84-715]

Regulation of Direct Investment by Insured Institutions

Dated: December 10, 1984

AGENCY: Federal Home Loan Bank Board.

ACTION: Reproposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is reproposing for comment an amendment to its insurance regulations concerning the operations of institutions whose accounts are insured by the FSLIC ("insured institutions"). The purpose of the amendment is to create a process of supervisory review and approval of aggregate investments by these institutions in real estate, service corporations, and equity securities (collectively "direct investments") above certain threshold amounts. The Board also proposes to set qualitative and quantitative criteria for investment by insured institutions in equity securities. The reproposed regulation, which modifies an earlier proposal, is designed to ensure that insured institutions fulfill their obligation to provide economical home financing and to reduce the exposure of the FSLIC fund to the risks posed by excessive levels of direct investments while preserving, to a reasonable extent, the ability of insured institutions to diversify their investment portfolios.

DATE: Comments must be received by January 16, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph Longino, Attorney, Office of General Counsel, (202) 377–6446, Sandra Richardson, Attorney, Office of General Counsel, (202) 377–6455, or Steven Goldstein, Deputy Director, Office of Policy and Economic Research, (202) 377–6914, at the above address.

SUPPLEMENTARY INFORMATION: During the past few years, changes in federal and state legislation have provided new investment powers to insured institutions, including the authority to invest in equity securities, such as corporate stock, and in real estate for development and other purposes. Arizona, California, Florida, Ohio, and Texas, for example, have significantly expanded the asset powers of institutions which they charter. The prudent exercise of these new direct-investment powers, together with their more traditional powers, may allow insured institutions one possible means of reducing their exposure to certain forms of financial risk, such as the interest-rate risk associated with asset-liability maturity mismatch. However, the Board has found that the exercise of these nontraditional investment powers can expose insured institutions and the FSLIC to a degree of risk inconsistent with the purposes of Title IV of the National Housing Act ("NHA"), which established federal deposit insurance for thrift institutions. The Board also is concerned that some insured institutions may exercise new asset powers in a manner inconsistent with their obligation to provide economical home financing. The Board notes that, faced with similar risks, the Federal Deposit Insurance Corporation ("FDIC") on Monday, November 26, 1984, proposed a rule that would regulate direct investments made by its insured banks.

The May Proposal

To address these concerns, on May 10, 1984, the Board proposed the addition of two rules to its Insurance Regulations (the "May proposal"). 49 FR 20719 (May 16, 1984). The First rule would have provided for a process of federal supervisory review and approval once aggregate direct investment by an insured institution exceeded certain thresholds. An institution having a "special purpose" net worth of approximately 3 percent of its liabilities would have a threshold of the greater of 10 percent of its assets or twice its net worth. An institution meeting its regulatory net-worth requirement, but whose current dollar amount of net worth was less than the amount required by the "special purpose" net-worth test, would have a threshold of twice its regulatory net worth. An institution not meeting its regulatory net-worth requirement would need the approval of the Principal Supervisory Agent ("PSA") prior to making any direct investments. Regulatory approval would be based upon the overall condition of the applicant; whether the proposed investment would increase the applicant's risk of default or the financial exposure of the FSLIC, and whether the applicant's policies were consistent with economical home financing. Under the May proposal, institutions whose aggregate direct investments on May 10, 1984, exceeded these thresholds would be permitted to retain those investments, but they would not be allowed to make additional direct investments until their aggregate investment level complied with the applicable thresholds.

The second rule would have regulated investment in equity securities by insured institutions. It would have: (1) Permitted investment in stocks traded on the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX") or in certain equity securities issued by open-end management investment companies, (2) required that such investment be diversified, and (3) further required that an institution not invest in more than 5 percent of the stock of any one issuer. The Board preliminarily determined that other types or levels of investment in equity securities posed an unacceptable risk to the FSLIC fund. The rule would not have counted as direct investments, investment in stock of the Federal Home Loan Banks, the Federal National Mortgage Association, open-end management investment companies in which federal associations may invest, or small business investment companies.

As noted above, the May proposal was based, in part, upon the Board's preliminary determination, premised in economic theory and borne out by its supervisory experience and the loss experience of the FSLIC, that investments in real estate, stocks, and other equity investments pose a greater risk of loss to the thrift industry and the FSLIC fund than traditional thrift investments, such as home mortgages. The Board cannot, for lack of clear statutory authority, protect the FSLIC fund from loss by significantly raising the insurance premiums of those institutions which engage in these riskier investments. It can, however, take steps as insurer to supervise investment risks taken by insured institutions, especially when they would be exercising asset powers greater in kind or degree than those granted federal associations by the Home Owners' Loan Act ("HOLA"), as amended by the Garn-St Germain Depository Institutions Act of 1982 ("Garn Act"). Particularly in light of the excessive demands placed on the fund in recent years, it was the Board's view that regulatory efforts to control that risk, such as the May proposal, were extremely important in ensuring the continued health of the FSLIC fund and preserving public confidence in the thrift industry.

Since May, the staff of the Board has conducted further analysis of the impact of direct investments upon the health of the thrift industry in general and upon the FSLIC fund in particular. In addition, the Board reviewed the numerous comments it received in response to the May proposal. Based upon this additional information, the Board has determined to issue for further comment a new proposal which reorganizes the two rules into one and which, as described below, modifies the substance of the May proposal.

Overview of Comments on the May Proposal

The Board recieved 252 public comment letters on the proposed rules. The majority of these comment letters—82—were submited by or on behalf of savings and loan associations ("S&Ls") (54 state and 21 federal), with 38 submitted by or on behalf of savings banks (9 state and 5 federal), 20 from trade associations, 62 from members of Congress, 32 from their constituents, 8 from state regulators, and 10 from financial groups.

Of the total number of public comments received, 206 opposed the proposed regulations while 7 supported the regulations completely and one supported the proposed rules with certain modifications. The remaining 38 comments suggested modifications to the proposed rules. Many of the commenters opposed to the rules recognized that excessive direct investment could increase the risk of loss to the FSLIC, but they proposed alternative regulatory approaches.

Seventy-eight out of the 82 comment letters submitted by or on behalf of S&Ls opposed the proposed rules, arguing that the regulations would be contrary to the purposes and goals of deregulation and would amount to "reregulation" of the industry; that the proposed regulations would undermine the dual chartering system and conflict with states' rights; that the regulations would unfairly penalize the entire industry for the problems associated with a few

institutions; and that the regulations would provide for investment regulation disproportionate to the risk to the FSLIC fund. Moreover, commenters maintained that the Board lacks the statutory authority to promulgate the rules and argued that they would be arbitrary and capricious under the Administrative Procedures Act ("APA"). Some commenters also suggested alternative solutions to the proposed regulations, including case-by-case consideration of direct investments through the Board's supervisory and examination powers and the adoption of a risk-related premium system.

Four S&Ls—3 state and 1 federal—supported the proposed rules. One state-chartered S&L maintained that the proposed rules are necessary to protect the FSLIC and the industry. The two remaining state-chartered S&Ls supported the rules but sought clarification of the restrictions on service-corporation activities. Finally, the federal S&L supported the proposed rules because of the current inability of the FSLIC to charge risk-based premiums. This comment urged the Board to seek legislation permitting risk-based insurance premiums and expanding the investment authority of federal associations.

Of the 38 comment letters submitted by savings banks or their subsidiaries, 27 were submitted by a state-chartered savings bank and its subsidiaries. All of these 27 letters were to the same general effect, indicating the opposition of the savings bank and its subsidiaries to the proposed rules, which in their view amounted to "reregulation" of the industry. Nine other savings banks opposed the proposed rules, in whole or in part, for the same reasons as the S&Ls. One savings bank concluded that the limitations in the proposal were reasonable, and supported the proposed regulation unequivocally.

Of the 20 trade associations commenting, 17 opposed the proposed rules on the grounds described above. Several aruged that the proposal would unfairly deny the thrift industry the ability to diversify and to find more profitable investments. Others suggested that a 10-percent threshold for direct investments was unduly stringent. In addition, some of these trade-association commenters argued that, except in a few isolated cases, no factual basis had been shown for the proposition that direct investment powers were being abused. Trade-association commenters also suggested a number of modifications to the proposal, including adding a qualified-thrift-lender ("QTL") test requiring that roughly 60 percent of an insured institution's assets be invested in home finance and related items coupled with improved reporting and monitoring of non-QTL direct-investment activities.

Three trade associations supported the proposed rules. Two believed the rules would equalize the competition between S&Ls and banks on the one hand, and between S&Ls and independent real estate developers on the other. One trade association representing realtors supported the proposed regulations but suggested amending the insurance regulations to use the FSLIC's insuring authority over state-chartered S&Ls to restrict them from engaging in any activities not authorized for federally chartered associations. These associations expressed general concern regarding the limited investment experience of thrift management.

Thirteen members of the Congress submitted comments opposing the proposed rules, contesting the Board's authority to promulgate the proposed rules and contending that the problem should be solved by legislative action. They also challenged the factual basis for the proposal.

In addition to the 13 comments received from members of Congress during the comment period, the Board also received an additional 81 after the comment period closed. Of these additional submissions, which were treated as comments for the purpose of evaluation and analysis of the proposed rules, 49 were from members of Congress opposed to the proposed rules and 32 were letters forwarding constituents comments in opposition.

The Board also recevied comments from 8 state regulators, all of whom opposed the proposed regulations. Their concerns were the same as those expressed by the S&Ls and savings banks, especially as to the dual-banking system. Their suggested changes included excepting institutions in states permitting expanded investment powers whose supervision satisfies federal criteria; creating a joint state-federal approval process for investment in excess of thresholds; and promulgating a residential-lending requirement to ensure that diversification does not jeopardize the housing-finance mandate of thrifts.

The Board received 10 comments form financial groups, all of whom opposed the proposed rules. Some of these commenters objected that the proposed rules were too restrictive as they related to investments in mutual funds and that they would close the S&L conversion market for small and mid-size institutions.

Discussion of Issues Raised by Commenters

Statutory Authority

Many commenters expressed the view that the proposed rules would exceed the Board's statutory authority. The Board based the May proposal upon its authority under section 407 of the National Housing Act ("NHA"). 12 U.S.C. 1730. As discussed below, the Board believes that, in challenging this authority, the commenters took an unduly restrictive view of the Board's power under the NHA.

Additional authority for this proposal is also provided by section 402(a) of the NHA (12 U.S.C. 1725(a)) and section 17 of the Federal Home Loan Bank Act (12 U.S.C. 1437(a)) ("Bank Act"). The development and maintenance of economical home financing is the paramount goal of both the NHA and the Bank Act. To realize this goal, Congress provided in the NHA an insurance-of-accounts system for all federally chartered thrift institutions and eligible state-chartered thrifts, and in the Bank Act Congress established the Federal Home Loan Banks to provide members a ready source of credit. By participating in these federal programs, a state-chartered institution enters an arena regulated by the Board. The promulgation of the proposed regulations clearly falls within the Board's authority under these provisions.

Through section 402(a) of the NHA, Congress granted the Board as operating head of the FSLIC the power to prescribe rules and regulations "for carrying out the purposes of this [Act]." Protecting the FSLIC fund from undue risk is one of the paramount purposes of the NHA. The Board has a continuing duty to ensure that state-chartered insured institutions comply with the requirements of the NHA for the protection of the FSLIC fund. *See, e.g.*, 12 U.S.C. 1730(b)(1), 1730(e)(1), 1730(g)(1). To perform this duty, the Board has used the power granted it in section 402(a) to regulate all insured institutions. *See, e.g.*, 12 CFR 563.9–3.

As authorized by section 402(a) (12 U.S.C. 1725(a)) and in furtherance of its duties under the NHA, the Board as operating head of the FSLIC has an obligation to regulate the activities of federal and state-chartered institutions to ensure that once an application is granted, insured institutions cannot pursue a level of activity, such as excessive direct investment, that places

the FSLIC fund at risk and that would have warranted rejecting an application to become an insured institution. As described in detail below, the May proposal and this reproposal are designed to protect the FSLIC fund from excessive risk due to insured institutions' excessive reliance on riskier direct investments and to discourage insured institutions from pursuing a level of direct investment that is detrimental to, or incompatible with, the institutions' congressionally mandated primary responsibility to provide economical home financing. The proposed rule is wholly consistent with the purposes of the NHA and is authorized by section 402(a).

In addition to its rulemaking authority under section 402(a), the Board may initiate rulemaking proceedings in aid of the FSLIC's statutory responsibility under section 407 of the NHA (12 U.S.C. 1730) to issue cease-and-desist orders against insured institutions engaged in an "unsafe or unsound" practice. Specifically, under section 407(m)(3) (12 U.S.C. 1730(m)(3)), the Board as operating head of the FSLIC "is empowered to make rules and regulations" with respect to any proceeding initiated pursuant to this section. Commenters erroneously argued that this section merely authorizes the Board to make procedural rules pertaining to cease-and-desist proceedings held under section 407. The Board believes this is an unduly narrow reading of 407(m)(3). In *Independent Bankers Ass'n of America* v. *Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), the court held that identical language in 12 U.S.C. 1818(n) authorized the Comptroller of the Currency to promulgate rules and regulations defining "unsafe or unsound" practices for national banks. *See also, National Petroleum Refiners Ass'n* v. *FTC*, 482 F.2d 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974). The same provision grants to the Board of Governors of the Federal Reserve System ("FRB") and the FDIC rulemaking authority which extends to state banks. That language set forth in section 407(m)(3) necessarily provides the FSLIC the same rulemaking authority as the other federal financial institution supervisory agencies.

An independent basis for the proposed rule can also be found in the Bank Act. An institution is eligible for membership in the Federal Home Loan Bank system only if, in the judgment of the Board, its financial condition is such that advances may safely be made to it and the character of its management and its home-financing policy is consistent with sound and economical home financing. 12U.S.C. 1424(a). The Bank Act, in section 17, specifically grants the Board the "power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary for carrying out the purposes of this [Act]." 12 U.S.C. 1437(a).

As with the NHA, the paramount purpose of the Bank Act is to provide a stable supply of economical home financing. It is the Board's duty to see that this policy objective is carried out by all members and that members do not make investments or take risks which would be detrimental to, or inconsistent with, their congressionally mandated responsibility to provide a stable supply of mortgage credit. Under 12 U.S.C. 1437(a) the Board has explicit authority to make regulations to carry out the purposes of the Bank Act. *See Continental Bank and Trust Co.* v. *Woodall*, 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S.C. 909 (1957) (where the court construed a similar grant to the FRB). The proposed rule is consistent with the purposes of the Bank Act and is thus authorized by section 17.

Some commenters suggested that the May proposal was not authorized because it was inconsistent with the dual banking system and with the congressional purpose underlying the Garn Act. In the Board's view, the proposal respects the dual banking system by permitting state-chartered, federally insured institutions to exercise their state-granted powers. It requires Board supervision of the exercise of those powers, with input from state authorities, only when the level of investment may pose significant risk to the FSLIC fund or may be detrimental to, or incompatible with, economical home financing. The concept of the dual banking system never contemplated that the Board would abdicate its responsibilities to preserve the policy objectives mandated by Congress or to protect the FSLIC fund. As noted by the commenters, Congress gave federal associations broader asset power in the Garn Act, but it did so to make more funds available for home finance, which remains the primary mission of the insured thrift industry. *See* 12 U.S.C. 1464(a). As discussed above, the proposal, designed to protect the FSLIC fund and ensure the availability of home financing, is fully consistent with that congressional purpose.

Factual Bases for the Rule

Many commenters suggested that the Board lacked a factual basis for proposing rules regulating direct investments. In particular, these commenters argued that direct investments were no riskier than other investments and would not reduce the availability of economical home financing.

Before addressing these concerns, it is important to point out that many of the comments reflected a misunderstanding of the nature of the May proposal. The Board did not intend to assert, as one commenter suggested, that "it is presumably an unsafe and unsound investment for an S&L to have more than 10 percent of its assets in direct investments and that a figure in excess of 10 percent would expose the S&Ls and the FSLIC" to an unacceptable level of risk. The May proposal would not have prohibited investments above 10 percent or twice net worth, but would have required supervisory approval before such a level of investments could be undertaken.

The proposed regulation, as now modified, incorporates further steps to ensure that a blanket prohibition of direct investments does not occur. The sole effect of the regulation is to guarantee supervisory review before insured institutions undertake levels of direct investment greater than 10 percent of their assets or twice net worth. The reproposed rule allows for automatic approval of direct investments beyond the threshold levels if the PSA fails to disapprove the application within 30 days. this change was made to ensure that delay on the part of PSAs would not effectively dictate that direct investments remain below certain levels. The regulation is currently drafted merely to require supervisory review of direct investments above a certain level, and in no way reflects a Board view that direct investments at any particular level are always imprudent or unsound.

The Board believes that there are strong bases for regulating direct investments. Economic theory, empirical studies, and the Board's own supervisory experience all support the belief that such regulation could reduce the risk of thrift failure and loss to the FSLIC. In addition, studies support the Board's concerns that excessive direct investment can occur at the expenses of providing economical home financing, which Congress has stated to be the principal purpose for the thrift industry. The discussion that follows will summarize the Board's concerns.

The Board's first concern is that exessive direct investment increases the risk to the FSLIC. This requires an explanation of what "risk" means. To an economist, risk is measured by variability of return on an investment, which is a statistical measure of the

dispersion of probable outcomes of a series of transactions. To an insurer, risk is the expected loss, or the probability of loss, multiplied by the cost if such loss occurs. Many of the commenters were inconsistent in their use of the term "risk." Confusion of these two concepts can introduce serious errors into the analysis of the effect of the proposed rule.

The first step in any analysis of the relative risks posed by direct investment is to examine whether there is a theoretical answer. In this regard, economic theory predicts that equity investments are riskier than debt.

Claims of equity investors on the assets underlying their investment are generally subordinate to those of all other claimants. This implies that equity investors share disproportionately in both the losses and profits realized on the underlying investments. In contrast, the investor in debt obligations receives payments of interest on principal even after an equity investor's claim on cash flow has reached the zero level. Not surprisingly, average returns on equity investment are higher than those on debt investment because in a market of risk-averse investors there will be a positive trade-off between return and risk.

Risk-averse investors require a higher expected rate of return to undertake a riskier investment and are only able to achieve a higher expected rate of return by accepting the greater degree of risk.[1]

While this theoretical answer to the relative risks posed by direct investment is compelling, the Board has not relied simply on theory. Instead, it has reviewed a great deal of empirical data. That empirical evidence demonstrates that direct investments pose increased risk.

The Board's staff conducted an extensive examination of the economic and financial literature on rates of return and risk levels for various asset categories. *See* Office of Policy and Economic Research, *Examining Historical Returns and Risk for Debt and Equity Assets* (1984).[2] The examined studies measured both rates of return and economic risks for real estate, common stocks, government and corporate bonds, and Treasury bills. These studies clearly show that equity investments such as common stocks are riskier investments than debt securities when variation in return is used as a measure of risk. Studies of variability of return for direct real-estate investment provide no solid consensus, with some studies indicating that the returns on real-estate investments are riskier than both common stock and debt securities, others showing real estate is less risky than stocks but riskier than debt, and still others finding real estate to be less risky than either stocks or bonds.

The overall conclusion of the Board's staff is that the findings of these studies, when applied to actual situations in which S&Ls possess different levels of competence and face different investment decisions, suggest that real-estate investment will prove generally riskier than straight debt obligations. The studies surveyed implicitly assumed a geographically diversified real-estate portfolio, since they used national data. In most cases, however, insured institutions are unlikely to be able to achieve complete geographic diversification. Few S&Ls have interstate branch and lending networks, and thus the area they know best is relatively compact. Although attempts at geographic diversification can be made through joint ventures, this will often involve dealing with new and unknown partners in areas outside the institution's normal lending territory. Moreover, participation in such joint ventures can expose institutions to huge partnership liability that is totally disproportionate to the potential returns from such joint ventures. Finally, most real estate development occurs in fast-growing areas, and such areas can be prone to speculative overbuilding and resulting losses to developers.

Staff studies of the thrift industry also support the need for limitations on direct investments. One study analyzed how different hypothetical portfolios—consisting of fixed-rate mortgages, adjustable-rate mortgages, commercial loans, common stocks, and real estate—would have performed under the actual market conditions existing over the period from 1978 to mid-1984. *See* G. Stacy Sirmans, Office of Policy and Economic Research, *Deriving a Thrift Institutions's Efficient Frontiers in Constrained and Unconstrained Environments* (1984). The study concluded that, in general, while savings institutions could have increased their average expected return by increasing direct investments, this would also have entailed a major increase in the level of total portfolio risk for a broad range of portfolios.[3] The study also showed that even an inflexible 10-percent limit on direct investment would reduce risk without causing any material loss of economic efficiency.

While these conclusions must be examined with the restraint appropriate to any conclusion drawn from a hypothetical economic study, they clearly suggest that regulation of direct investment is a reasonable protection against additional risk. Indeed, because the study examines the effect of an assumed *optimal* portfolio, it could well understate the case for a 10-percent threshold for direct investment because several states place virtually no limits on direct investment, and there is no assurance that institutions will properly diversify their investment portfolios.

Several commenters attempted to rely on a 1982 Board staff study to support their opposition to the May proposal. The study evaluated the asset investment powers of Texas thrifts in connection with the Board's request that Congress broaden the powers of federally chartered thrifts. It found that the state-chartered thrifts had substantially higher average net returns on investments made through their broadened asset powers than they did on their conventional mortgage portfolios. These broadened asset powers included the ability to make commercial and personal loans and direct investments. The study also found that the pretax return on assets for Texas state-chartered stock institutions was significantly higher than for federally chartered mutual institutions. *See* Office of Policy and Economic Research, Research Working Paper No. 110, *The Contribution of New Asset Powers to S&L Earnings: A Comparison of Federal- and State-Chartered Associations in Texas* (July 1982).

There have been suggestions that the 1982 study demonstrated that direct investments were no riskier than other investments. In fact, that study did not

[1] The comment letter which Dr. Alan Greenspan, former Chairman of the Council of Economic Advisors, submitted concurs with the principle. He concludes that home mortgage loans are riskier than AAA corporate bonds because the mortgage interest rate is greater than the bond rate. The same logic requires the conclusion that direct investment is riskier than home mortgage loans because, as Dr. Greenspan notes, the former has a higher expected rate of return. To paraphrase Dr. Greenspan: "The difference in the two interest rates is a measure of the greater riskiness of the [direct investment]."

[2] This and the other staff and SRI studies relating to the regulation of direct investment are available in the Board's public reading room.

[3] The study found that fixed-rate mortgages and equity-security investments behaved quite poorly during the same period, but also confirmed that properly structured adjustable-rate mortgages would have performed very well. The relevant comparison, of course, is at the margin, where the issue is whether it would be riskier for an association to invest its funds in direct investments, adjustable-rate mortgages, or other loans. The studies confirm the rationality of the thrift industry's making over 70 percent of new mortgages in the form of adjustable-rate mortgages, particularly the improved adjustable-rate mortgages that are increasingly pervasive. In addition, hedging can ameliorate the interest-rate risk of fixed-rate mortgages in existing portfolios.

examine direct investments, but rather included the entire package of new equity *and debt* investment powers granted by Texas. The study confirmed only what is widely known and accepted—that the package of new asset powers could yield higher *average* returns than traditional investments—but did not deal with the issue of the *risk* of these investments and the possible consequences of that risk for both institutions and the FSLIC. During 1981, the period from which the study's data were derived, the average ratio of direct investment to assets for Texas-chartered thrifts was 0.56 percent, and the maximum was 7.97 percent. Given the context in which the study was conducted—a period in which direct investment accounted for relatively miniscule percentages of most institutions' assets—it is not surprising that the study did not evaluate this risk.

While the study did note that direct real-estate investment had a higher return than the *historical* mortgage portfolio, it also noted that the appropriate comparison would have been between the returns on direct real-estate investment and returns associated with new mortgage lending. A comparison was not made in the study itself. Using this more appropriate comparison, the yield advantage of direct real-estate investment would have proven far smaller. The authors of this study understood this limitation and acknowledged it by pointing out that "because mortgages have longer maturities than other assets, during a period of rising interest rates, the average mortgage yield is likely to be further below market rates than the average yield * * * and yields on new conventional mortgages would probably be closer to the yield on alternative assets."

Another study by Board staff examined rates of return and the variability of savings-institution investments in service corporations between 1979 and 1983. *See* Donald G. Edwards, Office of Policy and Economic Research, *Rates of Return from S&L Investments in Service Corporations. 1979–1983* (1984). Because service-corporation data are reasonable proxies for the rates of return and the variance of rates of return on direct real-estate investment by thrifts and such data are available to both Board staff and other researchers, the study used data from investments in service corporations to measure returns on direct investment. Data from over 1,000 institutions with investments in service corporations during the period 1979–83 were analyzed to obtain estimates of returns and variability of returns from these investments. Sample institutions were selected on the basis of consistent reporting of service-corporation investment and net income in their semiannual reports of condition to the Board.

The rates of return reported by the sample institutions were found to have a mean of 17.4 percent over the period from 1979 to 1983. The distribution of returns was extremely wide, with many associations reporting either large losses or large profits on their investments. The estimated median rate of return for the period was only 8.9 percent. The large difference between the mean rate of return and the median, coupled with the wide distribution of returns, demonstrates the general conclusion that savings institutions realized both high average rates of return and high average degrees of risk with investments in service corporations.

The distribution of rates of return reported by the sample of associations indicates that many investments performed very poorly. In the 1979–83 sample, 13 percent reported negative returns, 54 percent reported returns below the industry's average cost of funds (9.71 percent) for the period, and 67 percent reported returns below the industry's average interest rate on conventional single-family mortgage loans closed (13.35 percent). This large dispersion of service-corporation returns, coupled with the high mean rate of return, supports the Board's proposal to regulate institutions engaging in these riskier direct investments. In sum, the empirical studies considered by the Board have led it to believe that excessive direct investment would be riskier in the strict economic sense, and would increase the risks that thrifts would fail and that FSLIC losses would increase.

The Board also considered its recent supervisory experience in evaluating the risks of direct investments. Analysis indicates that a distressing number of failed and failing thrifts have engaged in significant direct investments that will cause serious losses to the FSLIC. Many of these investments take the form of purported "loans" that are in economic reality direct investments because the association bears the primary risk of loss. Examples of such "loans" include the investment portfolios of two institutions that generated significant FSLIC losses—Empire Savings and Loan Association of Mesquite, Texas, and San Marino Savings and Loan Association of Mesquite, Texas, and San Marino Savings and Loan Association of San Marino, California. Worse, FSLIC losses are expected to prove significantly greater in such "bad asset" failures than in "spread" cases, or failures caused typically by a negative interest-rate spread between an association's fixed-rate mortgage portfolio and its cost of funds.

In addition, the Board's supervisory experience is that most losses from direct investment will not show up for many years. First, significant direct investment is a very new phenomenon, and it may take years for many investments to go "sour." Second, many direct investments are improperly reported by associations as loans. Third, desperate or fraudulent management may fail to report expected losses of such investments and may actually cover up the problem. Fourth, many of the worst "loans" involve the creation of a reserve for the first several years of interest payments due on the loan. This purported reserve is simply a credit on the association's books "funded" by the "loan"—typically the borrower puts up no equity. The result of the reserve is that the "loan" remains current for several years—whereupon the entire scheme comes crashing down and the FSLIC experiences severe losses.

The Board's supervisory experience also reveals that many thrifts are not experts in such novel direct investments. Moreover, proper underwriting practices are frequently ignored.

One commenter, Dr. Benston, a professor at the University of Rochester, studied thrift failures from January 1, 1981, to June 30, 1984, and concluded that "direct investments played no role in causing or contributing to the solvency crisis that struck the savings and loan industry in the early eighties." While the study was ambitious, the Board found its conclusion unpersuasive because of material methodological and analytical defects.

First, as the study defined "direct investments," there were only *34* thrifts in the country with greater than 10-percent direct investments. Thus, in measuring failures between January 1, 1981, and June 1984, one would not expect to find many failed institutions with more than 10-percent direct investment. Dr. Benston's conclusion therefore states a tautology: before there was significant direct investment, significant failures did not result from direct investment.

During the early 1980s, the period studied, direct investment was *de minimis*, and the industry was subjected to catastrophic losses due to the sudden rise in the cost of deregulated liabilities that could not be offset by yields on fixed-rate investments. As a result,

many institutions failed due to operating losses caused by the negative "spread." Obviously, "spread" problems were the principal cause of losses in the "early eighties," as the study concluded. As noted above, most losses from direct investments may not show up until several years after the investments are made, and substantial direct investments were extremely uncommon even in 1983. Thus, the time period chosen for the study explains the inevitable results of the study.

Equally important, Dr. Benston mischaracterized the recently failed associations through his definition of direct investment, which is not the definition used in the proposed rule. This misclassification of assets in itself limits the utility of the study in analyzing the impact of the proposed rule.

Finally, the study does not contain any evidence that Dr. Benston has tested his results for statistical significance. Because the time period chosen reflects almost no significant direct investment as he defines it, his data include only 11 failed thrifts with "more than trivial direct investment." Of these, only 3 had more than 10-percent direct investment and would be affected by the proposed rule. Despite this, Dr. Benston proceeds to examine the proportion of these 11 thrifts that earned positive returns on their direct investments. No statistically significant analysis is possible from so few observations.

The thrift failure analysis is revealing, however, in one respect. The first basis Dr. Benston asserts for concluding that thrifts with substantial direct investments are generally strengthened in his finding of a "positive relationship" between direct investment and jumbo certificates of deposits ("CDs"). Dr. Benston concludes that this proves the strength of such associations because sophisticated depositors would not place their *uninsured*[4] money in weak thrifts. Subsequently, however, he noted that "the major reason" for the 164 thrift failures was that they had "considerably higher holdings of such liabilities as jumbo CDs." In sum, his study of thrift failures, if statistically significant, would prove that it is institutions on the verge of collapse that have greater amounts of jumbo CDs.

Overall, the Board's supervisory experience presents a compelling case for prompt regulation of direct investment to protect thrifts from failure and the FSLIC from loss.

The Board also examined the views of other federal regulatory bodies in evaluating the risks of direct investment. The staff has surveyed the significant federal regulatory bodies that make ratemaking decisions. The consistent practice of these agencies is to approve a significantly greater allowed rate of return for the equity component of investment. Moreover, the rationale for this differential is the necessity of awarding a greater expected rate of return to equity holders because they bear a greater risk than debt holders. A greater return is essential if equity capital is to be attracted to the regulated entity. The FDIC's recent proposed regulation concerning direct investment embodies the same rationale.

The Board also considered the claims of many commenters that direct investments provide substantial advantages. The Board concluded that, at this point, the asserted advantages of unlimited direct-investment authority are neither established nor unique. The first advantage claimed by commenters is that substantial direct investment is essential to increase thrift profitability. The Board disagrees for several reasons. First, economic theory and the empirical evidence demonstrate that any increase in the expected rate of return will come at the price of increased risk—both in the pure economic sense and in terms of the threat of loss to the FSLIC. Second, direct investments may not contribute to profitability. For example, the studies show that the average annual return on the S&P 500 Common Stock Index was 1.1 percent *less* than the thrift industry's average cost of funds for the period from 1978 through mid-1984. Similarly, as noted above, 54 percent of all investments in service corporations studied reported returns below the industry's average cost of funds from 1979 through 1983. Fixed-rate mortgages also performed very poorly during that period, but adjustable-rate mortgages could have fared quite well. Moreover, the risk to the FSLIC from direct investment is "unbalanced." That is, if Association A earns a 20-percent return on its direct investments and climbs from 3-percent to 6-percent net worth, the FSLIC realizes no material gain. If Association B "earns" a negative 5-percent return on its direct investments, it may fail and the FSLIC could bear substantial costs. The Sirmans study shows that portfolios containing over 10 percent of direct investments have a higher variability of return, which results in a potentially greater risk of loss to the FSLIC.

Some commenters claimed that the proposed rule would prevent diversification. None of the comments provided any theoretical or empirical basis for the claim that a 10-percent threshold (particularly one that could be exceeded absent PSA disapproval) would prevent a thrift from achieving diversification. The economic literature suggests the opposite—that effective diversification would be possible even if the 10-percent threshold were an absolute barrier. The empirical evidence of the efficient thrift frontier portfolio in the Sirmans study shows that low-risk portfolios can be achieved with no material loss of efficiency under the proposed rule.

In order to address the effect that different forms of investment may have on the total risk of an institution's portfolio, a separate Board survey examined the correlation coefficients between various equity and debt investments. The results generally show that the correlations between different forms of equity and different forms of debt are either positive or only moderately negative.

Indeed, the rule, as reproposed, spurs diversification in three regards. First, it is likely to discourage excessive portfolio concentration in direct investments in the aggregate. Absent such a rule, thrifts in several states could place 100 percent of their assets in direct investments. Second, the reproposed rule would impose internal diversification requirements by applying the loans-to-one-borrower restrictions to direct investments, preventing a thrift from unduly concentrating its direct investments in a particular investment. State statutes generally do not require analogous diversification. Third, the general restriction on acquiring more than 25 percent of the stock of any traded company assists diversification. Absent the proposed rule, an association with $100 million in assets and a 3-percent net worth could, for example, place $30 million of its assets in a particular stock. A 10-percent drop in the value of that stock, if recognized, could render the thrift insolvent. Such stock fluctuations occur daily.

An argument has been made that direct investments in real estate and equity securities are short-term assets and therefore provide a good "match" with liabilities of thrift institutions. The entire notion of asset-liability matching rests on the principle that a "good

[4] This factual premise is inconsistent with the fact that most jumbo CDs are in the amount of $100,000 or have multiple beneficial owners in insured increments and their principal is fully insured. Moreover, the commenter himself has noted in another context that the FSLIC generally provides for the full payment of *uninsured* depositors. *See* George J. Benston, *Financial Disclosure and Bank Failure*, Econ. Rev. (Federal Reserve Bank of Atlanta, March 1984), at 11.

match" results when the fluctuations in the rate paid on a liability closely follow the fluctuations in the return on the asset that the liability is funding. Adjustable-rate mortgages provide an excellent match for thrift-institution deposits since rates paid and rates received tend to move closely in tandem. Hedging can greatly reduce spread risk even for fixed-rate mortgages. Conversely, as the Board's studies have shown, there is no reason to expect a close correlation between the cost of an institution's deposits and the returns received from any particular form of direct investment. The large distribution of service-corporation rates of return suggests that funding direct investments through savings deposits results in an extremely awkward asset-liability match. If anything, a need for close asset-liability matching by thrift institutions argues strongly in favor of requiring additional net worth for institutions engaging in greater direct investments.

The final claimed advantage of unrestricted direct investments is aiding thrift competition with banks. This argument seems baseless. This is not the role of the Board and the FSLIC. Moreover, the data show that direct investment will frequently harm competition. In any event, the FDIC's proposed regulation of direct investment would remove the premise for the argument.

Two overall observations are appropriate regarding the claimed disadvantages of the proposed rule. First, relatively few thrifts with authority to do so are exceeding the 10-percent threshold. Plainly, most thrift managers do not view unrestricted direct investment as essential. Second, substantial direct investment is new both to the thrift industry and the Board. In essence, both are engaged in an experiment with these new powers. The great flexibility provided by the PSA-approval procedures would allow the prudent exercise of these new powers without endangering the FSLIC fund, and the sunset provision in the reproposal would ensure prompt Board reexamination and evaluation of the success of this mutual experiment.

At this time, the Board believes that it has a firm basis for its concern that excessive direct investment could increase thrift failures and FSLIC losses. This concern supports regulation of direct investment, particularly with the highly flexible PSA exception procedure for levels or types of direct investment not generally authorized. The Board specifically requests further comments regarding the Board's economic and supervisory analyses.

A second factual basis for the regulation of direct investment is the Board's concern that excessive direct investment may be contrary to ensuring the availability of economical home financing. The Board and insured institutions are charged by Congress with a duty to ensure the provision of economical home financing. 12 U.S.C. 1424(a), 1464(a)(1), 1726(c).

The facts available to the Board suggest that excessive direct investment may derogate from this clear mandate of Congress. A Board study based on June 30, 1984, data indicates that institutions with significant service-corporation or direct real-estate investment are growing far more rapidly, have asset portfolios with significantly more potential credit risk, have liability structures that are potentially less stable, and originate significantly lower proportions of permanent 1- to 4-family home mortgages than the average savings institution. See Joseph A. McKenzie, Office of Policy and Economic Research, An Analysis of Service Corporation Investment and Direct Real Estate Investment by FSLIC-Insured Savings Institutions (1984).

Common sense supports the same conclusion. If a thrift is empowered to place 100 percent of its assets in nonresidential investments, there can be no *assurance* that the thrift will make home financing available.

Some commenters have claimed that the Board had no factual basis for this concern. Dr. Greenspan argued that the S&L industry, as now constituted, is no longer necessary to maintain a viable home mortgage market and, consequently, there is no reason why S&Ls should not be permitted to make significant amounts of direct investments. His argument is based on the erroneous assumption that "[s]ince 1979, the value of home mortgages held by the secondary market has been growing much more rapidly than the value of home mortgages held by savings and loan associations." In order to demonstrate this point, he attempts to show there was a greater increase in outstanding home mortgages that took the form of mortgage pools in 1982 and 1983 than were added to savings-institution portfolios during those same two years.

This analysis reflects a serious misunderstanding of the function of the secondary mortgage market and leads to several serious analytic mistakes. The secondary mortgage market does not hold mortgages, as Dr. Greenspan implies, but simply acts as a conduit for mortgages among financial institutions, with the savings institutions often being either the buyers or sellers or both. As a consequence of this error, his empirical conclusions are wrong. Dr. Greenspan states that "[i]n 1982 and 1983 combined * * * savings and loans saw a net decline of $7 billion in home mortgages held." To the contrary, using consistent time series and including mortgage-backed securities held by savings institutions as investments in mortgages, there were net increases of $13.4 billion for the 1981–82 period and $91.5 billion for the 1982–83 period. When mortgage-backed securities are properly accounted for, savings institutions accounted for 51 percent of the net increase in home mortgages held in 1983. Savings institutions have continued to account for more than half of the net increase in outstanding home mortgages, and this share has risen consistently over the last several years.

In sum, the thrift industry remains critical to the provision of economical home financing. The congressional mandate to the Board and insured institutions to ensure the provision of such financing, together with the Board's legitimate concerns that excessive direct investment could be contrary to this mandate, support regulation of direct investment.

Procedural Issues

A number of commenters requested an opportunity to comment on any economic studies underlying the May proposal and argued that they would otherwise lack a meaningful opportunity to comment on it. This reproposal, with its identification of such reports, opportunity to review them, and provision for a new comment period, directly responds to these requests.

Other commenters requested that the Board conduct a hearing on the May proposal. Both the May proposal and this reproposal involve informal agency rulemaking that is not "required by statute to be made on the record after opportunity for an agency hearing." 5 U.S.C. 553(c). Accordingly, the APA does not require a hearing, and the Board believes that it would be more expeditious to decide the matter on the basis of the administrative record, including all comments on these proposals.

Specific Changes Suggested by Commenters

1. *Percentages.* Some commenters asserted that the Board erred in imposing the aggregate thresholds proposed because the perfection of a national market for residential real-

estate loans and efficient secondary market mechanisms make it likely that the interest-rate spread on traditional home loans above the cost of funds will be less than 1 percent, perhaps as low as 30 basis points. Commenters also pointed out that thrift institutions generally have an average cost of operations of 1.5 percent. Thus, they argued that if thrifts are expected to continue to commit as much as 60 percent of their assets to residential lending and related activities without sustaining debilitating losses, they must be allowed a considerable degree of latitude with respect to the investment of the remaining 40 percent of assets in more profitable activities. The Board disagrees with both premises. The Board does not believe that mortgages will inevitably produce a spread loss. In addition, as discussed above, returns from direct investments have often been poor, and such investments can increase the risk of loss to the association and the FSLIC.

Some comments proposed specific alternative formulas for direct-investment activity. These comments ranged from unlimited flexibility in investing 40 percent of assets, to 20 percent of assets in real estate alone or combined with service corporations, to limits closer to those in the May proposal. One commenter suggested as a variation that the asset base be calculated on a consolidated basis (including assets of section 561.26 service corporations). The most frequently proposed formulas were: (1) The greater of two times net worth or 10 percent of assets for each of the three categories of direct investment (real estate, service corporations, and equity securities); and (2) an aggregate threshold of up to 25 percent of assets which would depend upon "snapshot" net worth (calculated without 5-year averaging or 20-year phase-in), with the following maximum limitations applicable to individual categories: 10 percent of assets in service corporations, 10 percent of assets in real estate, and 5 percent of assets in equity securities.

The Board has carefully considered these alternatives in light of the theoretical and empirical research underlying the reproposed rule. To recapitulate, that research indicated that higher returns accompanied greater allocations of resources to some direct equity investments, but that higher returns were accompanied by disproportionately higher portfolio risk levels. The Board believes that the thresholds it has proposed for direct investment by qualified institutions without preapproval best balance portfolio risk and return levels within a framework of state chartering authority and FSLIC insuring responsibility. While there is no way of knowing the precise optimal threshold, the economic research indicates that a 10-percent direct-investment limitation would reduce the variability of portfolio returns. In addition, the studies show that the 10-percent threshold does not require any material loss of portfolio efficiency. Finally, the flexibility in the 10-percent threshold provided by the option to apply to the PSA for increased investment further supports the choice of 10 percent as a threshold.

2. *Net-Worth Test.* Some comments expressed concern that the "special-purpose" net-worth requirement might lead to an array of different standards in different regulatory contexts. They suggested instead the adoption of a more stringent uniform net-worth requirement, perhaps along the lines of the Board's February 15 proposed net-worth requirement (49 FR 6501 (Feb. 22, 1984)), for thrifts engaging in nontraditional activities which could be guaranteed by their holding companies. Other commenters maintained that direct-investment criteria should include the regulatory analysis of an institution's business plan, earnings potential, and viability. One comment suggested revising the formula to be 10 percent of assets or 3 times net worth to encourage associations to maintain high net worths relative to assets on the ground that encouraging greater asset size rather than profitability and net worth creates greater risk to the FSLIC.

As the Board explained in the May proposal, it sought a reasonable balance between limiting risk to the FSLIC and state's regulation of the powers of thrift institutions they charter. Part of the approach chosen is the proposed "special-purpose" net-worth requirement, to be calculated on a "snapshot" basis without 5-year averaging or 20-year base-in. An institution meeting this requirement could engage in direct investment without prior approval up to the aggregate threshold of the greater of 10 percent of assets or twice regulatory net worth.

The Board specifically noted in the May proposal that its reason for offering the alternative aggregate threshold of the greater of 10 percent of assets or twice regulatory net worth was to encourage institutions to increase their net worth. While raising the net-worth component of the threshold to 3 times net worth would further encourage profitability, it would also increase the risk factor to the FSLIC, which the Board does not wish to do. The criteria contained in the proposal for the approval of direct investments above the threshold level include the various additional elements suggested, such as earnings potential and viability.

On November 30, 1984, the Board issued a proposal (Board Res. No. 84-861, 49 FR 47852 (Dec. 7, 1984)) in furtherance of rulemaking initiated with its February 15 proposal which, if adopted as a final rule, would revise the minimum net-worth requirement set forth in section 563.13(b). Among other things, the proposal would eliminate the ability of an institution to calculate its minimum net-worth requirement by: (1) Averaging the liabilities at the beginning of the current fiscal year with any of the 4 preceding fiscal years (5-year averaging) and (2) phasing in the minimum requirement by multiplying 3 percent of liabilities by a fraction the numerator of which is the number of years that the institution's deposits have been insured by the FSLIC and the denominator of which is 20 (20-year phase-in). The 5-year averaging and 20-year phase-in techniques permit an institution to have a minimum net-worth requirement less than 3 percent of current liabilities, which is the "special purpose" net-worth requirement. The net-worth proposal would permit an institution to amortize, on a straight-line basis over 5 years, any increase in the minimum net-worth requirement resulting from discontinuing the use of these techniques. Also, an institution having assets of $100,000,000 or less and growing at an annual rate of 15 percent or less would, under the proposal, be permitted to continue using the 5-year averaging technique (but would not be able to use the 20-year phase-in technique). Further, the proposed minimum net-worth revision would require an institution to increase its minimum net-worth requirement by an amount equal to 3, 4, or 5 percent of any quarterly growth in liabilities, depending upon the rate of growth of its liabilities.

The proposed net-worth requirement would have varying consequences for the direct-investment approval requirements. An institution, which had not used the 5-year averaging and 20-year phase-in techniques and which increased its liabilities at a rate requiring an increase in the minimum requirement of 4 or 5 percent of the increased liabilities, could exceed the "special purpose" net-worth requirement and yet fail the minimum requirement of section 563.13(b). However, another institution which had used the 5-year averaging and twenty-

year phase-in techniques could, during the 5-year amortization period, exceed the minimum requirement of section 563.13(b) yet not exceed the "special purpose" net-worth requirement. Lastly, after the 5-year amortization period had ended, a small institution, by continuing to use 5-year averaging, could have a minimum net-worth requirement under section 563.13(b) that is less than the "special purpose" net-worth requirement.

The Board specifically solicits comment on whether to adjust the threshold requirements of the reproposed direct-investment rule if the Board adopts the reproposed minimum net-worth requirement as a final rule. If no adjustment were made, then an institution could exceed the "special purpose" requirement but be required to obtain prior approval for all direct investments because it failed to meet its section 563.13(b) requirement.

Retaining the proposed threshold would thus favor institutions amortizing the effect of discontinuing 5-year averaging and 20-year phase-in, if their section 563.13(b) requirements were lower than the "special purpose" net-worth requirement. Similarly, the present threshold would favor small institutions that would be permitted to continue using 5-year averaging under the reproposed minimum net-worth revision. An alternative would be to establish a threshold based upon the higher of the section 563.13(b) requirement or the "special purpose" requirement. Institutions failing to meet this alternative threshold would be required to obtain prior approval for any direct investment; those exceeding it could make direct investments, without prior approval, up to the greater of twice their net worth or 10 percent of assets. The Board seeks comments on these alternatives or other alternatives.

Finally, the Board notes that the reproposed net-worth rule employs a combination of "factors" for the calculation of the regulatory net-worth requirement. One of these factors is the "contingency factor," which includes the current requirements of 2 percent of recourse liabilities and 20 percent of scheduled items plus a new amount equal to 10 percent of "direct investment," as defined in this reproposal. The Board hereby notifies the public that if the net-worth rule is not adopted in final form substantially as reproposed or if any such final rule omits from the contingency factor the 10-percent 'reserve" for direct investments, the Board may require such a "reserve" in any final direct-investment rule. The Board solicits comments on this possible amendment to any final direct-investment rule.

3. *Proposed Definitions.*

a. *Insured Institution.* Several commenters expressed confusion regarding the intended scope and applicability of the May proposal, specifically questioning whether it extended solely to state-chartered FSLIC-insured institutions. The rule as reproposed sets forth a definition of "insured institutions" which clearly includes both federally chartered and state-chartered institutions insured by the FSLIC. Only those federal associations whose deposits are insured by the FDIC are excluded from the definition of "insured institution."

b. *Real-Estate Investment.* Numerous commenters suggested that real-estate loans with "equity" features in conformance with section 555.19 of the Board's regulations should be excluded from the definition of "direct investment." It was also suggested that a loan on real estate which qualifies under generally accepted accounting procedures ("GAAP") as debt rather than equity should also qualify as debt under the May proposal. In this regard, another commenter maintained that the application of GAAP with sufficient precision to characterize a proposed investment appropriately prior to its commitment is a difficult and uncertain undertaking.

Several commenters also proposed that accounting for real-estate investments under the proposed rule be based on GAAP as opposed to regulatory accounting principles ("RAP") because regulatory net worth is artificially inflated by items such as deferred losses and goodwill. In support of this suggestion, some commenters noted that, as RAP and GAAP move farther apart, mutuals will be relectant to covert to stock form due to the shock of shifting to GAAP.

Since the adoption of the May proposal, the Board has proposed a statement of policy on accounting for real-estate loans with equity features and for preparing financial statements in accordance with GAAP. Board Res. No. 84–579, 49 FR 43557 (Oct. 30, 1984). The proposed policy statement contains detailed guidance to ensure that the economic substance of acquisition, development, and construction loans is consistently reflected by the accounting practices used in the preparation of financial statements. Comments on the proposed policy statement, which has a proposed effective date of October 28, 1984, are due December 21, 1984. Because the Board's proposed policy statement reflects guidance by the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants issued in a notice in the November 1983 issue of the *Journal of Accountancy* and would be applicable to institutions reporting under either RAP or GAAP, the proposed policy statement would achieve the desired consistency of treatment between mutual and stock institutions.

Some commenters suggested that the preamble's discussion of the role of the auditor in determining whether real-estate investments have been properly characterized as debt or equity assumes a greater level of responsibility by the accounting profession than exists under generally accepted auditing standards, which are the applicable standards for an independent auditor's ordinary examination of an insured institution's financial statements under Board Bulletin PA–7a. Commenters suggested striking this discussion from the preamble to any final rule or revising it to indicate that the independent auditor has a responsibility to determine whether management's financial statements are presented fairly in conformity with GAAP rather than to examine the characterization of real-estate investments. Sensitive to these concerns, the Board omits any mention of, and by this statement supersedes the statement in the preamble of the May proposal concerning, the role of the independent auditor as to these transactions.

c. *Service Corporations.* A number of commenters suggested that certain investments in service corporations should not be counted as direct investment. Several commenters suggested that where investments in service-corporation activities would be permissible for the parent inself to engage in without direct-investment regulation, such investments should be excluded from the parent's threshold for direct investment, and suggested that the May proposal should be revised: (1) To exclude from the calculation of aggregate thresholds loans to service corporations for purposes of temporarily warehousing realestate mortgage loans; and (2) to count investments in service corporations toward the applicable threshold by subtracting liabilities transferred to the service corporation from assets transferred to the service corporation.

After considering these comments, the Board has determined to revise the May proposal by adding a proviso which would exclude investments of an institution in any of its service-corporation subsidiaries from the

calculation of its aggregate direct-investment threshold if the institution consolidates the direct investments of such subsidiaries with its own direct investments for purposes of compliance with the proposed rule. Thus, if an institution consolidates its direct investments with the direct investments of any of its subsidiaries, loans to or investments in such subsidiaries would be excluded from the institution's aggregate threshold for direct investments. The Board has also added a definition of "investment in service corporation" to clarify that both debt and equity investments in a service corporation by an insured institution are intended to be included in an institution's aggregate direct investments.

Another commenter suggested excluding from the calculation of aggregate direct investment all investments in service corporations organized by institutions solely for the purpose of raising capital or, in the alternative, offsetting monies deposited by the service corporation in the institution against aggregate direct investment. The Board wishes to clarify that investments of institutions in finance subsidiaries will not, and were not intended to, constitute "direct investment" for purposes of the proposed rule. The inapplicability of the direct-investment thresholds to investments made by institutions in finance subsidiaries was first expressed by the Board in the preamble to its final rule regarding finance subsidiaries of federal associations. 49 FR 29357 (July 19, 1984) (to be codified at 12 CFR 545.82). The Board stated that transferring assets to finance subsidiaries "would not be considered to be an investment for the purposes for the Board's (direct-investment proposal) if that rule were adopted in final form by the Board." *Id.* at 29359.

Finally, numerous commenters contended that applying the proposed thresholds to investments in service corporations would improperly infringe upon either state or federal powers granted to institutions, and suggested that the definitions of "service corporations" and "equity security" be revised to authorize investment in service corporations engaged in activities permitted by state law even though federal associations could not engage in such activities. Some commenters also expressed general concern that the failure of federal associations to meet the net-worth standards set forth in the May proposal would limit the extent to which such associations could fully utilize the authority to invest in service corporations granted by section 5(c)(4)(B) of the HOLA. Other commenters suggested revisions to avoid any effect on the establishment of second- and third-tier subsidiaries.

In this reproposal, the Board has decided to exclude an institution's investments in its service corporations from the calculation of aggregate direct investment so long as the parent association consolidates the direct investments of its subsidiaries with its own. In addition, the Board has revised the definition of "equity security" to exclude investments in equity securities of service corporations, operating subsidiaries, or finance subsidiaries regardless of whether they are authorized by federal or state law. These revisions to the proposed rule to a large extent address the concerns raised by commenters regarding the limitation of federal and state powers with respect to investments in service corporations. The Board has fully considered the additional suggested changes described above and has concluded that giving effect to them would probably expose insured institutions and the FSLIC to an unacceptable degree of risk and would undermine the intent and effectiveness of the proposed regulation.

D. *Equity Securities.* Many comments contended that the definition of the term "equity security" was overbroad and suggested excluding the following types of investments: (1) Investments in limited partnerships, joint ventures, and interests or participations in profit-sharing agreements; (2) the debt portion of convertible debt and debt with warrants; (3) stock and securities acquired by an institution through a foreclosure action or as a result of a good-faith compromise of doubtful claims; (4) investments in stock of the Student Loan Marketing Association ("Sallie Mae"); and (5) equity securities issued by subsidiaries 50 percent or more of whose outstanding securities are held by an S&L.

The Board continues to believe that the exclusions from the definition of "equity security" described in (1) and (2) above are not appropriate. Investments by institutions in limited partnerships and joint ventures must be included in the definition in order to achieve the purpose of the proposed rule. These types of arrangements have served as a primary vehicle for investments in real estate and other direct investments that the Board has found to be riskier than debt investments. Further, the Board believes that characterization under GAAP of convertible debt securities or debt securities with warrants should govern for purposes of the proposed rule.

In response to the suggestion described in (3) above, the Board has revised the definition of "equity security" to exclude equity securities acquired by an institution through foreclosure proceedings or through settlement in lieu of foreclosure. The Board believes, however, that exclusion of securities acquired through a good-faith compromise of doubtful claims from the definition of "equity security" would be counterproductive of the purposes of the proposed rule. Similarly, the Board cannot reconcile excluding investments in Sallie Mae stock from the definition of "equity security," as recommended in (4) above, with the purposes of the proposed rule, inasmuch as Sallie Mae stock is subject to the same risks attending investment in equity securities generally. The Board has, however, revised the proposed rule to authorize institutions to invest in equity securities issued by Sallie Mae. As a technical matter, the Board has also revised the definition of "equity security" to exclude equity securities issued by the Federal Home Loan Mortgage Corporation.

The requested exclusion from the definition of "equity security" described in (5) above was to a large extent already accomplished by the May proposal, which excluded equity securities issued by a service corporation having characteristics specified by Board regulation applicable to federal associations. Thus, to the extent that an S&L's subsidiaries, or the interests of an S&L in subsidiairies, met the definition of service corporation set forth in section 561.26 of the Board's regulations, investments by the S&L in equity securities issued by such subsidiaries would have been excluded from the definition of "equity security." In the reproposed rule, the Board has, as discussed above, further broadened the exclusion of investments in equity securities of various subsidiary corporations from the definition of "equity security."

Several commenters also advocated expansion of the types of permissible equity-security investments specified in the May proposal. They argued that investments should not be limited to stocks traded on the NYSE and the AMEX, maintaining that in the recent past over-the-counter ("OTC") and National Association of Securities Dealers Automated Quotation system ("NASDAQ system") stocks have outperformed stocks on the NYSE and the AMEX with very little, if any, risk-related differences due to greater

liquidity and Securities and Exchange Commission ("SEC") registration requirements. Others recommended including: (1) Investment in the stock of small, local companies; and (2) investment in closed-end investment companies. One commenter also suggested deleting the proposed limits on S&L stock so that larger S&Ls would not be prohibited from investing in smaller S&Ls on a friendly basis as part of the conversion process.

Based upon these comments and further analysis, the Board has determined that investment in OTC stocks quoted on the NASDAQ system does not pose a greater risk than other equity investments permitted in the May proposal. It has therefore revised the proposed rule to include stocks quoted on the NASDAQ system as permissible investments. Information submitted to the Board demonstrated the substantial similarity of quality and liquidity of such stocks as compared to NYSE- and AMEX-listed stocks.

These same considerations—quality and liquidity—have led the Board to reject the other types of investments recommended for inclusion as approved stock investments. It should be noted, however, that to the extent that shares of closed-end investment companies are traded or quoted on the NYSE, the AMEX, or the NASDAQ system, investment in such securities would be permissible. As under the May proposal, the Director of the Office of Examinations and Supervision would have authority to permit investment in stocks listed on other exchanges or quotation services. Further, the Board has revised the proposal to include procedures for PSA approval of investment in stocks not listed on any exchange or quotation service.

Commenters also questioned the necessity of specifically authorizing investment in equity securities issued by any diversified open-end management investment company ("mutual fund") registered with the SEC under the Investment Company Act of 1940. It was noted that section 545.76 of the Board's regulations already permits federal institutions to invest in shares of mutual funds the portfolios of which are limited to investments such associations could make directly. For this reason, commenters maintained that the authorization set forth in the proposed rule was duplicative and should be deleted.

The provisions of section 545.76 of the Board's regulations and the proposed rule, however, are not duplicative and are in fact intended to serve two separate purposes. Section 545.76 addresses the extent to which federal associations may invest in mutual funds, providing that such investment may occur only to the extent that the fund restricts its portfolio to investments which a federal association is authorized to make. Investments which meet these requirements are excluded from the definition of "equity security" set forth in the proposed rule. Thus, such investments are not included in calculations regarding an association's threshold for supervised direct investments.

Equity securities issued by other mutual funds in which investment is specifically authorized in the proposed rule, however, would be counted toward aggregate direct-investment because the portfolios of such funds would not be limited to investments that federal associations are authorized to make; instead, these funds would largely constitute vehicles for investments of state-chartered institutions with broader investment powers. For this reason, the Board proposes to retain these provisions in order to achieve the purposes of the proposed rule.

Commenters maintained that this provision was in any event unduly restrictive in that it permitted institutions to invest in shares of mutual funds only if the fund had a portfolio limited by fundamental policy, changeable only by shareholder vote, "solely to equity securities." Two commenters pointed out that most mutual funds have policies that permit them to invest a small percentage of their portfolios in nonequity-security investments for defensive purposes or to ensure a source of liquidity to meet redemption requirements. Commenters therefore suggested that this provision, if retained, should be revised to require that the mutual fund's portfolio be restricted *primarily* to equity securities instead of *solely* to equity securities.

The Board agrees that the proposed requirement that a mutual fund's portfolio be confined "solely" to equity securities was unduly restrictive and has deleted the restriction entirely in the reproposal.

Finally, several commenters argued that the proposed 5-percent limit on equity investments in the stock of any one issuer would compel institutions to forefiet the use of equity accounting principles available only by investing in 20 percent of the outstanding stock of a company. The commenters suggested that permitting a 20-percent investment could provide a steady source of income to an association which could offset interest-rate risk in other areas of an association's business. Upon review of the comments and re-examination of this issue, the Board has revised the proposed rule to increase the quantitiative limitation to 25 percent of the outstanding equity securities of any one issuer.

Some commenters also argued that these proposed limitations on equity-security investments might actually encourage short-term investments which would result in increased speculation, contrary to the purpose of the proposed regulation. They reasoned that only the speculative investment of the limited amounts permitted by the May proposal in issuers listed on the NYSE and the AMEX could possibly result in worthwhile income for thrift investors. In this regard, some argued that the diversification requirement of the proposal was sufficient without the further single-issuer limitation.

The Board believes that both the diversification requirement and the single-issuer limitations are necessary if it is to control risk in a meaningful fashion and achieve the purposes of the proposed rule. The Board has, however, increased the limitation on investment in any one issuer from 5 percent to 25 percent of the issuer's outstanding equity securities, which will permit more investment opportunity in this area and will make available the benefits of equity accounting. As discussed above, it has also expanded the list of generally permissible issuers.

4. *Grandfathering.* The May proposal set forth a "saving" clause for grandfathering nonconforming direct investments. It provided that an institution whose aggregate direct investments on May 10, 1984, exceeded the thresholds set forth in the proposal would be allowed to maintain the investments in which it had already invested as of that date, but would not be allowed to make additional unsupervised direct investments until it was in compliance with the applicable threshold.

A substantial number of commenters expressed concern regarding the proposed May 10, 1984, effective date of the saving clause and recommended that it be changed to the date of publication of the final rule. The Board chose the May 10 date because it believed that it was inperative to eliminate any incentive for institutions to increase their direct investments in anticipation of any final rule. The Board believes this concern still to be valid, but because of the many revisions to the reproposed rule the Board also believes it appropriate to revise the proposed effective date of the saving clause to December 10, 1984, the date of this reproposal.

Many of these commenters also questioned the extent of the coverage of the saving clause. Suggestions were made that the saving clause should also encompass commitments to invest and the completion of pending projects as well as completed transactions, and should be extended to cover all restrictions applicable to equity-security investments and other investments, not just to aggregate investment thresholds. the Board agrees with these comments and has therefore revised the proposed rule to permit the performance of commitments to make direct investments to which an institution was legally committed on or before December 10, 1984, as well as the completion of projects pursuant to definitive plans in existence on that date. The saving clause now also includes within its coverage all equity-security investments and other investments subject to the reproposed rule.

Numerous commenters suggested that any subsequent reduction of an institution's assets or net worth should not, in the absence of supervisory concerns, alter the effectiveness of the saving clause with regard to investments otherwise grandfathered. The svaing clause contained language which the Board thought achieved this result, and it hereby confirms that reductions in net worth or assets will not affect grandfathered investments, provided that additional conforming direct investments are not made until the institution once again is in compliance with the applicable thresholds. The saving clause, however, has been revised to provide more clearly that nothing in it shall be interpreted to limit the authority otherwise granted to PSAs to require a reduction of aggregate direct investments or the divestiture of specific direct investments in appropriate cases.

Finally, a number of commenters suggested grandfathering the activities of converted federal savings banks ("FSBs"), permitted under section 5(i) of the HOLA and section 543.11–1 of the Board's regulations, to avoid a conflict between those sections and the proposed rule. An additional commenter suggested that the same treatment should be extended to former state-chartered savings banks which converted to federal charters and FSLIC insurance rather than retaining FDIC insurance. With regard to converted FSBs which are FDIC-insured, the proposed rule has been revised specifically to exclude federal associations whose deposits are insured by the FDIC from the definition of "insured institution." With regard to converted FSBs which are FSLIC-insured, the Board has determined that exclusion of such institutions from the definition of "insured institution" would be inconsistent with the purposes of the proposed rule. Section 5(o) of the HOLA permits these institutions to exercise their prior state powers only to "the extent authorized" by the Board and therefore does not conflict with this proposal. *See also* 12 CFR 543.11–1. Thus, these formerly state-chartered savings banks would have only the "grandfathered" authority provided by the reproposed rule. The Board is continuing to examine the issue of the appropriate reach of the saving clause and solicits further views on this issue.

Approval Process

The May proposal provided an approval process by which insured institutions seeking to invest amounts in excess of the aggregate investment thresholds could apply to their PSAs for additional investment authorization. A number of commenters contended that the process was too uncertain, time-consuming, and unworkable, and suggested placing a 30-day limit on the PSAs' time to disapprove an application. Commenters also expressed concern about the volume of information to be submitted, the overloading of already overworked supervisory agents and the resulting potential for administrative delay, and the subjectivity of the standards upon which approval of an application were to be based.

The Board believes that the volume of information the proposal would require of applicants is not unduly burdensome and is necessary to achieve the purposes of the rule. The Board gave due consideration to the effect of the review and analysis of such information upon the workload of supervisory staff, and remains confident that applications for additional investment authorization will be acted upon in an efficient and timely manner. To provide concerned institutions additional assurance of prompt action, the reproposal adopts the suggestion that the PSA have a 30-day period, commencing upon receipt of all necessary information, to act upon an application. If within that 30-day period the application is not disapproved, it will be deemed to be approved for purposes of the direct-investment authority requested. The Board has also revised the May proposal to require that within 10 days of the filling of any application or the submission of any additional information requested by the PSA, the applicant must be notified in writing either that all necessary information has been filed or that additional information must be submitted. Finally, the Board has addressed the concerns of commenters regarding subjectivity of the approval standards by proposing to require the approval of the application unless the PSA makes one or more of three findings.

Some commenters were unsure of the role of state supervisors in the approval process and asked for greater specificity than that provided by the proposed rule. The May proposal would have required the filing of an application for additional investment authorization with an institution's state supervisor and required the PSA to give due consideration to any written views and recommendations submitted by the state supervisor. In an effort to clarify further the weight to be accorded the views of a state supervisor in any action on such applications, the Board has revised the reproposal to provide that if the views of the state supervisor and the PSA differ with respect to the disposition of an application after consultation, the PSA shall refer the application to the Corporation for decision.

Two commenters recommended that the Board establish a presumption in favor of approval if certain criteria had been met. As indicated above, the Board has essentially adopted that recommendation by recasting the standards for approval set forth in the proposed rule and by adding the 30-day limitation upon the PSA's power to disapprove an application.

The availability of the PSA-approval process for nonconforming equity-security investments was implicit in the May proposal in that the Corporation reserved the right to waive the limitations on such investments in appropriate cases. The Board has revised the rule as reproposed to make explicit the extension of the PSA-approval process to all aspects of direct investment. In this regard, and as a technical matter, the Board has deleted a provision which might have been read to limit the PSA's authority over the equity-security investments of supervisory cases.

Alternative Solutions

A number of commenters suggested alternative solutions which they believed would address more appropriately the problems which the Board had identified.

1. *Case-by-Case Method.* Some comments suggested that problems with direct investment abuse should be handled on a case-by-case basis, utilizing expanded supervisory and examination powers and resources. These commenters suggested as

alternatives to the proposed rule a disclosure procedure (all direct investments would be disclosed to the PSA within 30 days to permit determination of any basis for regulatory concern) and revising examination procedures to focus on direct-investment abuse.

Another commenter suggested the adoption of standards and procedures by the FSLIC which would be applicable to FSLIC-insured, state-chartered institutions and enforced by the respective state chartering authority. As long as the standards and procedures were met, associations located in the state would be permitted the engage in any investment activities authorized by the state. Conversely, however, if such standards and procedures were not met, the investment activities of associations located in the state would be limited to those in which federal associations are authorized to engage. A further variation suggested by one commenter was the setting of direct-investment thresholds on a state-by-state basis after consulting with state regulators.

These alternatives ignore the fact that unrestricted direct investment poses a generic problem for the FSLIC. Debt investments are inherently less risky than the direct-investment powers authorized in an increasing number of states. Thus, the issue the Board faces is not merely the abuse or misuse of such augmented investment powers, but the fact that even their proper and informed use entails greater risk, the unavoidable price to be paid for greater expected returns. Moreover, whereas the FSLIC would not benefit materially from any increase in returns, it would be far more likely to suffer catastrophically from substantially increased credit risk.

In addition, examination and supervision are after-the-fact and after-the-loss. It is totally impractical for supervisory agents to inspect every direct investment, before it may be undertaken because of staffing limitations. Moreover, such a rule would be unduly burdensome. The Board has already acted to expand and refocus examination and supervisory efforts in conjunction with the risk posed by factors such as direct investment by insured institutions.

2. *Alternative Means of Strengthening the FSLIC Fund.* Commenters proposed addressing the problem of increased risk to the FSLIC fund from riskier investment activities by insured institutions by: (1) enacting legislative reforms to allow the FSLIC to assess risk-related premiums; (2) transferring excess capital from the Banks to the FSLIC fund; or (3) encouraging development of private guarantee funds or private insurance to compensate for potential losses from higher-risk investment. Several members of Congress requested that the Board delay final action on the proposed rule until Congress had the opportunity to resolve by legislation the problem of risk to the FSLIC fund.

The Board in the last session of Congress introduced and urged the enactment of S. 2700 and H.R. 5739, companion bills which would have authorized the Board to assess additional insurance premiums for institutions exercising asset powers greater in kind or degree than those permitted federal associations. Whatever the fate of such legislation may be in the future, however, the Board is now faced with a clear threat to the integrity of the FSLIC fund, and it cannot under the circumstances discharge its statutory duty to safeguard that fund based upon the mere possibility that Congress may or may not take action at some future date, even when many members of the Congress have themselves requested that the Board delay to permit them time to consider the issue. It remains, of course, the prerogative of the Congress to respond to a problem with a legislative solution, whether or not the Board acts in the interim. Under the circumstances, the Board is convinced that it is appropriate to publish this proposed rule for comment without further delay. This reasoning applies with even more force to the suggested alternative of waiting for an "encouraged" market to offer private guarantee or insurance funds to protect against the increased risks of direct-investment powers.

The suggestion of transferring capital from the Banks to the FSLIC is without merit. The Board finds such an approach undesirable because there is no "excess" capital in the Banks and, even if there were, such a transfer would not be a solution commensurate with either the magnitude or duration of the risk to the FSLIC fund posed by the increasingly augmented investment powers available to thrifts in an increasing number of states.

Additional Issues

1. *Diversification.* Based upon additional staff analysis of the risks posed by direct investments, the Board has revised the May proposal to ensure that institutions diversify their investments in real estate, as well as their investment in equity securities, which was addressed in that earlier proposal. Both Board supervisory experience and economic analysis clearly demonstrate that excessive investment in any one investment, whether a loan or a direct investment in stock or real estate, can pose undue risk of loss upon insured institutions and the FSLIC. This undue risk of loss is compounded when an institution makes a number of debt and equity investments in any one entity. Therefore, in this reproposal, the Board has applied the limitation on aggregate loans (but not the limit on commercial loans) of the loans-to-one-borrower rule to the aggregate of an institution's debt and equity investments in any one entity. It is the Board's intent that no institution be permitted to invest more than the aggregate limitation on loans to one borrower in any one real-estate project or in any one person or entity, whether such investment is made in equity securities of, real-estate projects of, or through loans or guarantees to such person or entity. Diversification of investments of service corporations, however, would only be required if an insured institution consolidates its direct investments with the direct investments of its subsidiaries for purposes of the rule. PSAs will, however, consider whether service corporations' investments are properly diversified in their review of applications for additional investment authorization.

2. *Sunset Provision.* Becuase of the novel problems posed by increased investment authority for thrift institutions, the Board intends to re-examine the issues presented by the implementation of this proposal, if it is adopted as a final rule. The Board is therefore proposing that any final rule would expire on January 1, 1987, unless further action is taken. At that time, the Board will determine whether this approach has been effective in controlling risk and whether further regulatory action is required.

Studies and data cited in this preamble will be available for public inspection, as well as comments received on the proposal.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980), the board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all institutions the accounts of which are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would protect the financial integrity of all insured institutions without regard to their asset size.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The requirements of the proposed regulation are based upon the Board's preliminary determination, premised in economic theory and borne out by the loss experience of the FSLIC, that investment in real estate, stocks and other equity investment poses a greater risk of loss to the FSLIC insurance fund and the thrift industry than traditional thrift investments. The Board adopted or rejected for inclusion in this reproposal revisions and alternatives discussed above in **SUPPLEMENTARY INFORMATION** for the reasons given therein.

The Board has determined to provide less than a 60-day comment period, with comments due by January 16, 1985, because (1) this is a reproposal in which a number of issues have been addressed based upon comments received on the May proposal, and (2) the Board desires to act promptly to enable institutions to conduct their financial planning for fiscal year 1985 with as much certainty as possible.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

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

Subchapter D—Regulations of the Federal Savings and Loan Insurance Corporation

PART 563—OPERATIONS

Add new § 563.9–8 as follows:

§ 563.9–8 Regulation of direct investment in real estate, service corporations, and equity securities.

(a) *Scope.* An insured institution, to the extent it has independent legal authority to do so, may make investments in real estate, service corporations, and equity securities (collectively "direct investments") only in compliance with the provisions of this section.

(b) *Defintions.* When used in this section—

(1) "Equity security" means any stock, treasury stock, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; or, in general, any interest or instrument commonly known as an equity security; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant, option, or other right to subscribe for or purchase any of the foregoing; or any debt security convertible, with or without consideration, into such a security; *but does not mean:* (i) Stock issued by a Federal Home Loan Bank, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968; (ii) equity securities issued by any open-end management investment company that is registered under the Investment Company Act of 1940 and the portfolio of which is subject to the restrictions set forth at § 5(c)(1)(Q) of the Home Owners' Loan Act; (iii) equity securities issued by a service corporation, a finance subsidiary, or an operating subsidiary corporation engaged exclusively in activities which are a part of or are incidental to the business of the institution, as authorized by applicable law; or (iv) equity securities acquired through foreclosure proceedings or through settlement in lieu of foreclosure.

(2) "Insured institution" means an institution as defined in § 561.1 of this Subchapter, including institutions subject to § 543.11–1 of this Subchapter, but excluding Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation.

(3) "Investment in real estate" means the direct or indirect ownership of an equity interest in real property, as determined in accordance with generally accepted accounting principles (or the Corporation's accounting regulations if applicable), exclusive of: (i) Real property to be used primarily by the institution for offices or other related facilities; and (ii) real property acquired in foreclosure, by deed in lieu of foreclosure, or on which a contract purchaser has defaulted and the contract has been cancelled.

(4) "Investment in service corporation" means all equity and debt investments made by an insured institution in a service corporation, including, but not limited to, investing in equity securities issued by a service corporation and underwriting extensions of credit to, or guaranteeing debt of, a service corporation.

(5) "Issuer" has the same meaning as that set forth in § 3(a)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(8)).

(6) "Service corporation" means a corporation as defined in § 561.26 of this Subchapter or as authorized by state law.

(c) *Aggregate investment thresholds.* (1) *Consolidation of direct investments.* For purposes of determining compliance with the requirements of this section, an institution may consolidate the direct investments of any or all of its subsidiaries with its own direct investments and may exclude its investments in such subsidiaries from the calculation of its aggregate direct investment: *Provided,* That all such consolidated direct investments shall be deemed to be those of the institution for purposes of the diversification requirement of paragraph (e) of this section.

(2) *Thresholds.* Except as provided in paragraphs (f) and (g) of this section:

(i) With respect to an institution that is not subject to the limitations of paragraphs (c)(2)(ii) or (c)(2)(iii) of this section, the aggregate of the institution's direct investments shall not exceed the greater of (A) 10 percent of the institution's assets or (B) twice the institution's "regulatory net worth" (as defined in § 561.13 of this Subchapter).

(ii) An institution that fails to satisfy the regulatory-net-worth requirement of § 563.13(b)(2)(i)(a) of this Part (calculated in accordance with § 563.13(b)(2) (ii) or (iii) if appropriate) shall not invest in direct investments except as approved by the Principal Supervisory Agent.

(iii) With respect to an institution that satisfies such regulatory-net-worth requirement but fails to satisfy the "special purpose" net-worth requirement set forth in this paragraph (c)(2)(iii), the aggregate of the institution's direct investments shall not exceed twice the institution's regulatory net worth calculated as of the end of the immediately preceding calendar month. The "special purpose" net-worth requirement is an amount at least equal to 3 percent of "all liabilities," which for the purposes of this section means (A) total assets (net of loans in process, specific reserves, and deferred credits other than deferred taxes) minus (B) "net worth" as defined in § 561.13.

(d) *Equity-security investments.* (1) *Permissible investments.* The equity securities in which an institution may invest shall be limited to: (1) Common or preferred stock listed on the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers Automated Quotation System, or such other national securities

exchange or quotation service as the Corporation may determine; (ii) securities issued by any diversified open-end management investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940; (iii) stock of any small business investment company ("SBIC") formed pursuant to § 301(d) of the Small Business Investment Act, provided that the institution's outstanding aggregate investment in such SBICs does not exceed 1 percent of the institution's assets; and (iv) equity securities issued by the Student Loan Marketing Association.

(2) *Other investments.* The Director of the Office of Examinations and Supervision is authorized to determine whether insured institutions may be permitted to invest in stocks listed on exchanges or listed for quotation on national quotation services other than those set forth in paragraph (d)(1)(i) of this section.

(3) *Quantitative limitations.* No insured institution shall at any time, directly or indirectly, or through or in concert with one or more other persons, or through one or more subsidiaries, be the beneficial owner of, control, or hold with power to vote more than 25 percent of the outstanding equity securities of any one issuer.

(4) *Savings-and-loan stock.* No insured institution shall at any time, directly or indirectly, or through or in concert with one or more other persons, or through one or more subsidiaries, be the beneficial owner of, control, or hold with power to vote common stock issued by: (i) Any insured institution; or (ii) any nondiversified savings and loan holding company, unless the amount of such stock so owned, controlled, or held by the investing institution is such that the investing institution is deemed to be a savings and loan holding company within the meaning of 12 U.S.C. 1730a(1)(D). The term "nondiversified savings and loan holding company" means a "savings and loan holding company" within the meaning of 12 U.S.C. 1730a(1)(D) that is not a "diversified savings and loan holding company" within the meaning of 12 U.S.C. 1730a(1)(F).

(e) *Diversification.* (1) For purposes of this section, direct investments made by insured institutions in the equity securities of any one issuer and in real estate (but not in service corporations) shall be subject to the limitation on aggregate loans made to one borrower, but not the limitation on commercial loans to one borrower, set forth in § 563.9–3 of this Part.

(2) For purposes of this section, in calculating the aggregate loans made to one borrower under § 563.9–3:

(i) Direct investments shall be deemed to be "loans," and

(A) Direct investments by an institution in any one issuer of equity securities shall be deemed to be made to "one borrower" and aggregated for purposes of the limitation;

(B) Direct investments by an institution in any one "person" (as defined in § 563b.2(a)(24) of this Subchapter) directly or indirectly owning a 10-percent-or-more interest in a real-estate investment shall be deemed to be made to "one borrower" and aggregated for purposes of the limitation;

(C) Direct investments by an institution in any one real-estate project, including, but not limited to, acquisition, development, and carrying costs and assumption of any debt or liability in connection with such project, shall be deemed to be made to "one borrower" and aggregated for purposes of the limitation;

(D) Direct investments by an institution described in paragraphs (e)(2)(i) (A) and (B) of this section shall be deemed to be made to "one borrower" and aggregated for purposes of the limitation whenever the issuer of the equity securities, or any "affiliate" (as defined in § 563.2(a)(1) of this Subchapter) of such issuer, also directly or indirectly owns a 10-percent-or-more interest in a real-estate investment in which the institution has invested; and

(E) Direct investments described in paragraph (e)(2)(i)(C) of this section shall be aggregated for purposes of the limitation with investments described in paragraphs (e)(2)(i) (A) and (B) of this section and deemed to be made to "one borrower" solely to the extent of an insured institution's investment in any person for purposes of development of such real-estate project whenever such person is also an issuer, an affiliate of such issuer, or a person within the purview of paragraph (e)(2)(i)(B), in which an institution has invested.

(ii) The total amount of all such direct investments made to "one borrower" shall be aggregated with all loans to such borrower, calculated pursuant to § 563.9–3, for purposes of the limitation.

(f) *Saving clause.* An institution whose aggregate or specific types of direct investments on December 10, 1984, did not conform with the requirements of this section shall not be prohibited solely for that reason from maintaining such investments, making investments to which it was legally committed on that date, or completing projects pursuant to definitive plans in existence on that date; nor shall an institution be required to divest any investment solely because of a subsequent change in its assets or regulatory net worth: *Provided,* That additional direct investments of a type permitted by this section may not be made until the institution is in compliance with the applicable threshold. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to Principal Supervisory Agents in appropriate cases to require a reduction of aggregate direct investments or the divestiture of specific direct investments.

(g) *Exception.* (1) An insured institution seeking to make direct investments in an amount or of a type other than permitted by this section shall file an application with its Principal Supervisory Agent and, if it is state-chartered, shall send a copy of the application to its State Supervisor. Within 10 days of the filing of such an application or any additional information, the Principal Supervisory Agent shall notify the applicant in writing either that all information required under paragraph (g)(2) of this section has been filed or that additional specified information must be filed. If the Principal Supervisory Agent does not disapprove an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(2) The application shall set forth the following:

(i) The total amount, in dollars and as a percentage of the applicant's assets, of direct investments that the insured institution seeks to make:

(ii) An identification of the applicant's applicable investment threshold as determined in accordance with paragraph (c) of this section, including, as of the end of the preceding calendar month, the applicant's (A) total assets; (B) regulatory net worth; (C) regulatory-net-worth requirement under § 563.13(b) of this Part; and (D) "special purpose" net-worth requirement set forth in paragraph (b)(2)(iii) of this section;

(iii) A description and quantification, as a dollar amount and as a percentage of assets and regulatory net worth, of the applicant's outstanding direct investments;

(iv) A business plan which includes a proposal for appropriate diversification of the applicant's direct investments and which describes the proposed investment and its anticipated financial impact on the applicant; and

(v) Such other information as may be requested in writing by the Principal Supervisory Agent.

(3)(i) The Principal Supervisory Agent shall approve or disapprove an application in writing, giving due consideration to any written views and recommendations submitted by the appropriate State Supervisor. If the views of the Principal Supervisory Agent and the State Supervisor differ after consultation, the Principal Supervisory Agent shall refer the application to the Corporation for decision.

(ii) The Principal Supervisory Agent shall approve an application unless he or she makes any of the following findings:

(A) The overall policies, condition, and operation of the applicant afford a basis for supervisory objection;

(B) The proposed investment or level of investment is likely to increase either the applicant's risk of default or the financial exposure of the Corporation; or

(C) The applicant's policies are inconsistent with economical home financing, as evidenced when the insured institution fails to meet the requirements of a "qualified institution" as set forth in § 584.2–2(b) of this Chapter.

(iii) In the event that the Principal Supervisory Agent makes any of the findings in paragraph (g)(3)(ii) of this section, he or she may nevertheless approve the application subject to written conditions.

(4) An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Corporation. The institution shall file its petition with the Office of the Secretary to the Board, and shall send a copy to the Principal Supervisory Agent and, if the institution is state-chartered, to the State Supervisor.

(h) Expiration date. This section shall expire on January 1, 1987.

(Sec. 17, 47 Stat. 736, as amended (12 USC 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 USC 1725, 1726, 1730); 1947 Reorg. Plan No. 3, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84–32566 Filed 12–13–84; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–84–14]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before February 14, 1985.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No.———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–204), Room 916, FAA Headquarters Building (FOB–10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on December 10, 1984.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24254	Aerospace Industries	*Description of Petition:* To supplement current concept of helicopter engine ratings and their substantiation requirements (including their application to the certification of the helicopter) with a new rating structure which will better match the engine technological capabilities with the helicopter short-field aerodynamic needs identified particularly in 14 CFR Part 29 for Category A helicopters *Regulations Affected:* 14 CFR Parts 1, 27, 29, and 33. *Petitioner's Reason for Rule:* The revised engine rating system will permit an increased productivity in Category A helicopters which will encourage their use with smaller heliports but with no degradation in overall safety or reliability.

PETITIONS FOR RULEMAKING: WITHDRAWN OR DENIED

Docket No.	Petitioner	Description of the petition
22269	Flight Engineers International Assoc. (FEIA)	Description of Petition: To amend appropriate FAR Parts to the extent necessary in order to regulate the certification of transport category airplane cockpits and their use in air transportation in the United States. These amendments would include the establishment of an integrated and coordinated set of regulatory standards, documentation requirements and evaluation criteria for the certification, configuration control, and modification of flight cockpits used on transport category airplanes. Additionally, the amendments would provide for the certification of appropriate flight operational procedures and training specifications consistent with: criteria used in the aircraft/cockpit system, and procedures dictated by flight operational activity, i.e., low visibility approach and landing operations currently permitted by the Category II and Category III advisory circular criteria, etc. They would also cover the certification of cockpit instrumentation, equipment and software configurations, minimum flight crew, master minimum equipment list—for a particular aircraft type, minimum equipment list—for the particular air carrier, cockpit/crew operational procedures, and crew function training. Regulations Affected: 14 CFR Parts 21, 25, and 121. Denied Oct. 11, 1984.

[FR Doc. 84–32557 Filed 12–13–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 33

[Docket No. 23737; Notice 84-23]

Airworthiness Standards: Aircraft Engines; Turboprop Engine Propeller Brake Proposals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Special Conditions have recently been issued to provide the safety standards found necessary to establish a level of safety equivalent to that established in the regulations for a new series turboprop engine equipped with a propeller brake. It is anticipated that other turboprop engine designs may similarly incorporate a propeller brake. Therefore, this notice proposes to establish new airworthiness standards applicable to turbopropeller engines equipped with a propeller brake.

DATES: Comments must be received on or before January 24, 1985.

ADDRESS: Comments on the proposal may be mailed in duplicate: Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20519, Attn: Rules Docket No. 23737. Comments on the Rules Docket may be examined weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Donald F. Perrault, Engine and Propeller Standards Staff, ANE-110, Federal Aviation Administration, New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7330.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before January 24, 1985, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23737." The postcard will be date/time stamped and returned to the commenter.

The General Electric Company was issued Special Conditions No. SC-83-1-NE for type certification of the CT7 series turboprop engines which feature a propeller brake. The brake allows the propeller to be brought to a stop, while the gas generator portion of the engine remains in operation, and remain stopped during operation of the engine as an auxiliary power unit ("APU Mode"). Other new engine designs will also incorporate a propeller brake system. The applicable airworthiness requirements, however, do not presently contain adequate or appropriate safety standards for the type certification of this unusual design feature. The proposed standards will require basic airworthiness engine tests of the APU Mode. The tests are intended to provide for assessment of:

—Hot section tolerance for locked rotor operations affects on combustor stability/coking, turbine nozzle integrity, turbine blade integrity, vibration, etc.

—Engine drive system stability/response, including the power turbine rotors, shafting, bearings and supports, reduction and accessory geartrains, and rotar brake components.

Accordingly, this notice proposes to establish airworthiness standards applicable to turbopropeller engines equipped with a propeller brake.

List of Subjects in 14 CFR Part 33

Engines, Air transportation, Aircraft, Aviation safety, Propellers.

The Proposed Amendment

PART 33—[AMENDED]

In consideration of the foregoing, it is proposed to amend Part 33 of the Federal Aviation Regulations (FAR) (14 CFR Part 33) as follows:

1. By adding new §§ 33.7(c)(1)(vii) to read as follows:

§ 33.7 Engine rating and operation limitations.

* * * * *

(c) * * *

(1) * * *

(vii) Auxiliary power unit (APU) mode of operation.

* * * * *

2. By adding new §§ 33.96 to read as follows:

§ 33.96 Engine propeller brake systems tests.

If the engine is designed with a propeller brake which will allow the propeller to be brought to a stop, while the gas generator portion of the engine remains in operation, and remain stopped during operation of the engine as an auxiliary power unit ("APU Mode"), in addition to the requirements of FAR 33.87, the applicant must conduct the following tests:

(a) Ground locking: A total of 45 hours with the propeller brake engaged in a manner which clearly demonstrates its ability to function without adverse effect on the complete engine while the engine is operating in the "APU Mode" under the maximum conditions of engine speed, torque, temperature, air bleed, and power extraction as specified by the applicant.

(b) Dynamic braking: A total of 400 application-release cycles of brake engagements must be made in a manner which clearly demonstrates its ability to function without adverse effects on the complete engine under the maximum conditions of engine acceleration/deceleration rate, speed, torque, and temperature. The propeller must be stopped prior to brake release.

(c) 100 engine starts and stops with the propeller brake engaged. The above testing must be followed by disassembly to the extent necessary to show compliance with the requirements of §§ 33.93(a) and 33.93(b).

(Sec. 313(a), 601, and 603, 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); 14 CFR 11.45)

Note.—The FAA believes there will be little to no cost impact as a result of these proposals, since they are an extension of the overall development and test program that a manufacturer would ordinarily do as part of good engineering practice. Further, the turbine engine manufacturers who may develop a propeller brake are all large entities; therefore, the proposed regulation will not have a significant economic impact on a substantial number of small entities. Therefore, the FAA has determined that this document involves a proposed regulation which is not considered to be a major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and, certifies that if promulgated, it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on October 31, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-32558 Filed 12-13-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-104-AD]

Airworthiness Directives; Boeing Model 767 Airplanes Equipped With General Electric CF6 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require inspection and repair of electrical wiring and terminals that have been damaged by engine heat and vibration. There have been four reported cases of engine system malfunctions that were caused by these wiring terminal failures. Most malfunctions associated with these failures can be detected in the course of normal flight operations; however, certain malfunctions may not be normally detectable and can result in engine damage or lead to precautionary engine shutdown. These failures are time-related and may occur on both engines on the same flight.

DATES: Comments must be received no later than February 5, 1985.

ADDRESSES: The applicable service information may be obtained from the Boeing Company, P.O. Box 3707, Seattle, Washington 98124, or may also be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington. Send comments to Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Wash. 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Rees, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2941. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Available of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-104-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Three operators have reported four recent incidents involving engine system malfunctions caused by failure of the electrical wiring and terminals attached to the ground studs on General Electric CF6 engines of Boeing Model 767 airplanes. Ground stud brackets are bolted directly to the compressor case on the GE engines and, due to the extreme heat and vibration experienced at this location, the electrical wiring and terminals attached to the ground studs are subject to failure under these conditions.

Reported engine system malfunctions caused by failure of these wiring terminals have included excessive oil temperature indication, resulting in precautionary engine shutdown; start valve malfunction, resulting in necessity for manual operation; an engine failing to go into ground idle after touchdown; and a faulty engine low oil pressure indication.

Additional engine systems that are also subject to similar wiring terminal failures are the integrated drive generator (IDG) oil cooling valve, IDG disconnect, fuel filter bypass indication, oil filter bypass indication, hydraulic pump depressurizing valve, and fuel shutoff.

Most malfunctions associated with these failures can be detected in the course of normal flight operations as operational anomalies or may appear as false cockpit indications. A false oil pressure indication may result in precautionary engine shutdown. Failure of the IDG disconnect function or the oil filter bypass indication is detectable and can result in engine damage.

An inoperative engine, whether resulting from a precautionary shutdown or arising from actual damage, is a serious condition that may lead to hazardous flight operations. Furthermore, since these failures are related to the time of exposure to heat and vibration on identical engines on a twin engine airplane, the potential exists for a combination of events to occur on the same flight that could lead to loss of the airplane. Boeing Alert Service Bulletin 767-71A0019 was issued to provide periodic inspection and interim repair instructions for essential system wiring.

Since this condition is likely to exist or develop on all airplanes of this type design, an AD is proposed that would require the accomplishment of the inspections and repair instructions as described in Boeing Alert Service Bulletin 767-71A0019.

It is estimated that 25 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD is estimated to be $12,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within

the meaning of the Regulatory Flexibility Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to all Model 767 airplanes equipped with GE CF6 engines. Compliance is required as indicated, unless already accomplished. To minimize the potential for engine shutdown or engine damage due to engine ground wire damage or ground terminal failure, accomplish the following within the next 30 days after the effective date of this AD or upon accumulation of 1000 flight hours on any engine, whichever is later, and thereafter at intervals not to exceed 1000 hours:

A. Inspect and repair wiring and terminals as specified in Boeing Alert Service Bulletin 767-71A0019, Revision 3, dated August 23, 1984.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle aircraft certification Office, FAA, Northwest Mountain Region.

C. 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.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibaility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **FOR FURTHER INFORMATION CONTACT.**

Issued in Seattle, Washington, on December 6, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84–32555 Filed 12–13–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: This Notice extends the comment period from December 13, 1984, to January 13, 1985, on the Advance Notice of Proposed Rulemaking concerning removal of postproduction platforms which was published in the **Federal Register** on November 13, 1984 (49 FR 44924). The extension of the comment period is in response to requests received from the public to allow additional time for comment.

DATES: Comments by January 13, 1985.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Minerals Management Service; U.S. Department of the Interior; 12203 Sunrise Valley Drive; Reston, Virginia 22091; telephone (703) 860–7916 or (FTS) 928–7916.

Dated: December 6, 1984.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84–32628 Filed 12–13–84; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2736–7]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking; extension of the public comment period.

SUMMARY: On October 9, 1984 (49 FR 39574, USEPA reproposed rulemaking on the Indiana plan for attaining and maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide. The State requested an extension to the public comment period in order to submit additional material. USEPA is extending the public comment period to February 8, 1985, based upon this request.

DATE: Comments must be postmarked on or before February 8, 1985.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section (5AR–26), Air and Radiation Branch, Region V, U.S. Environmental Protection Agency, 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Robert B. Miller, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Air and Radiation Branch, Region V (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Robert B. Miller, (312) 886–6031.

Authority: 42 U.S.C. 7410, 7502, and 7601

Dated: December 5, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–32613 Filed 12–13–84; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 45

[CGD 84–058]

River Service Dry Cargo Barges; Load Line Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposed to amend 46 CFR Part 45 to exempt dry cargo river service barges operating on short voyages in Lake Michigan from Calumet Harbor in Chicago, Illinois to Burns Harbor, Indiana from the requirements to obtain a Load Line Certificate. These barges typically carry non-hazardous and non-polluting cargoes and, thus, are not regulated. This regulation, pursuant to the Coast Guard Authorization Act of 1984 (Pub. L. 98–557), provides for an exemption from the requirements to obtain load line certificates in compliance with the Coastwise Load Line Act of 1935. It will eliminate the need for plan review, inspection or survey, drydockings and periodic inspection that are typically a part of normal load line assignment. It will require that each barge owner certify to the Coast Guard that each

barge making this voyage is structurally sound and will be operated in accordance with certain safety requirements.

DATES: Comments must be received on or before February 12, 1985.

ADDRESSES: Comments should be submitted to Commandant (G-GMC/24) (CGD 84–058), U.S. Coast Guard, Washington, D.C. 205983. Comments may be delivered and will be available for inspection or copying at the Marine Safety Council (G-CMC/24), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C., 20593, (202) 426–1477 between the hours of 7 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Randall R. Fiebrandt, Office of Merchant Marine Safety, (202) 426–2606.

Drafting Information: The principal persons involved in drafting this proposal are Lieutenant Randall R. Fiebrandt, Office of Merchant Marine Safety, and Michael M. Mervin (Project Attorney), Office of the Chief Counsel.

SUPPLEMENTARY INFORMATION:

Comments Invited

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, and identify this notice (CGD 84–058). Persons desiring acknowledgment that their comment has been received should enclose a stamped, self-addressed postcard. All comments received before expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if requested by anyone raising a genuine issue.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The cost of the proposed regulation will amount to less than $50 per vessel. Estimates of the number of vessels affected each year vary between several hundred and several thousand. However, in no case should the total cost exceed $100,000 for the first two years, with significant reductions in cost thereafter. Compliance with the existing regulations costs over $4,000 per vessel.

Regulatory Flexibility Act

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

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in § 45.175. It has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503, ATTN: Desk Officer, (U.S. Coast Guard). Person submitting comments to OMB are also requested to submit a copy of their comments to the U.S. Coast Guard as indicated under **"ADDRESSES."**

Discussion of Proposed Rule

The Coastwise Load Line Act of 1935, which applies to the Great Lakes, requires all merchant vessels 150 gross tons and over to be assigned a load line and marked indicating the maximum draft to which they can be safely loaded. The law is clear in that these vessels must have load lines; no authority is provided for total exemptions.

In the mid 1950's, it was first discovered that many river barges were operating on lower Lake Michigan between Calumet Harbor in Chicago, Illinois, and Burns Harbor, Gary, Indiana, without load lines. These barges were uninspected, unmanned, and carried non-hazardous cargoes. Their primary service was in the inland rivers, but occasionally they made short trips between Calumet Harbor in Chicago and Burns Harbor, Indiana.

The Coast Guard's position at the time, based on a literal interpretation of the law, was that all Great Lakes vessels should be assigned load lines and that the vessels should meet full ABS Great Lakes strength requirements. The barge operators were opposed to obtaining load lines for their barges because the vast majority of the barges' time was spent inland, and it was felt that load lines neither contributed to safety nor were economically cost effective or administratively practical for their unique operation.

The Coast Guard allowed those river scantling barges to operate on short trips on lower Lake Michigan with limited load lines provided they operated in "fair weather" only and that these excursions were limited to the specific area between Calumet Harbor in Chicago and Burns Harbor, Indiana, no more than five (5) miles from a harbor of safe refuge.

Still dissatisfied with the administrative and economic burdens of obtaining load lines for the barges, the river barge industry unsuccessfully petitioned the Coast Guard in 1976 for self-regulation. The specific language of the Coastwise Load line Act was the major obstacle to granting their request.

In February 1984, a non-fatal accident involving the sinking of river hopper barges showed that barges continued to operate on lower Lake Michigan without load lines. The Coast Guard and the industry met to set up interim measures for expediting load line assignment for voyages on the Great Lakes. A letter of intent was requested by the Coast Guard from the owners to show their intention to obtain load lines during the interim period. No letters were received.

On October 30, 1984, 46 U.S.C. 88 was amended to permit the exemption of certain barges operating on the Great Lakes from having a load line certificate and mark, subject to special operating regulations established by the Secretary of Transportation. These regulations establish an exemption for these river service dry cargo barges. Because of the nature of the voyage and the excellent safety record over the years, the Coast Guard is prepared to accept certification from the owners that each vessel is in conformance with certain design and operating requirements. The freeboard, coaming heights and all other operating restrictions in the proposed regulations are based on a Towing Safety Advisory Committee recommendation and prior experience with a few load lined barges operating under "fair weather" certificates. The Coast Guard will, within its general authority to conduct boardings (14 U.S.C. 89), make verification spot-checks for compliance with these operating requirements.

List of Subjects in 46 CFR Part 45

Great Lakes, Vessels, Navigation (water), Marine safety.

PART 45—GREAT LAKES LOAD LINES

In consideration of the foregoing, the Coast Guard proposes to amend Part 45 of Title 46, Code of Federal Regulations as follows:

1. By revising the authority citation for Part 45 as follows:

Authority: 46 App. U.S.C. 88–88i, 49 CFR 1.46.

1. By adding a new paragraph § 45.15(d) as follows:

§ 45.15 Exemptions.

* * * * *

(d) Any river service dry cargo barge that is operated between Calumet Harbor in Chicago, Illinois and Burns Harbor, Indiana and intermediate ports in Lake Michigan that meets the definition in Subpart E of this Part is exempt from load line and marking requirements but is subject to the certification and special operating requirements listed in Subpart E.

3. By adding a new Subpart E, as follows:

Subpart E—River Service Dry Cargo Barges

Sec.
45.171 Purpose.
45.173 Vessels subject to this subpart.
45.175 Certification.
45.177 Special operating requirements.

Subpart E—River Service Dry Cargo Barges

§ 45.171 Purpose.

This subpart prescribes conditions under which certain river service dry cargo barges may be exempt from the load line and marking requirements. In lieu of these requirements, they are subject to special certification and operating requirements.

§ 45.173 Vessels subject to this subpart.

(a) This subpart applies to a vessel which is—

(1) A river service dry cargo barge with a length to depth ratio not to exceed 22 and built to at least the minimum scantlings of the American Bureau of Shipping River Rules;

(2) Operated on the Great Lakes on a voyage between Calumet Harbor in Chicago, Illinois and Burns Harbor, Indiana and intermediate ports on Lake Michigan;

(3) Operated during fair weather conditions only; and

(4) Carrying only dry bulk cargoes which have not been designated as hazardous under 46 CFR Part 148.

§ 45.175 Certification.

(a) In order to be exempt from the load line and marking requirements of this Part, the owner of a vessel must apply for exemption in writing to the Officer in Charge, Marine Inspection, Chicago, Illinois. He must also certify the physical condition and operation of the vessel. The application may be in any form and must be signed by an officer authorized to represent the barge's owners. The mailing address is Commanding Officer, U.S. Coast Guard Marine Safety Office, 610 S. Canal Street, Chicago, Illinois, 60607. No form or certificate will be returned, however, the owner's certification will be kept on file at the Marine Safety Office, Chicago.

(b) The owner and operator of a vessel for which a load line exemption has been requested must be responsible for maintaining the vessel and complying with these special operating conditions.

(c) The application for exemption from the load line requirements must include the following general information:

(1) Barge name.

(2) Type.

(3) Dimensions.

(4) Types of Cargo.

(5) Official Number or other classification numbers.

(6) Owner and operator addresses and telephone numbers.

(7) Place and date built.

(d) The application must state and certify compliance with the following:

(1) The vessel has been designed and built to at least the minimum scantlings of the ABS River Rules which were in effect at the time of construction.

(2) The shell and deck plating of the vessel are free of holes and fractures as well as damage that would be considered in excess of normal wear and tear. All cargo box side and end coamings are watertight.

(3) This vessel will operate in fair weather only.

(4) This vessel will only be operated with a minimum of 54 inches from the waterline to the top of the coaming with no less that 24 inches freeboard to the deckline.

§ 45.177 Special operating requirements.

(a) All vessels must meet the following minimum operating requirements in all seasons:

(1) The vessel must be operated during fair weather conditions only.

(2) All manholes must remain covered and secured watertight.

(3) The freeboard of the vessel must not be less than 24 inches.

(4) The combined operating freeboard plus the height of cargo box coamings must be at least 54 inches.

(5) Cargo box side and end coamings must be watertight.

(6) The vessels must not be farther than 5 miles from a harbor of safe refuge between Calumet Harbor, Chicago Illinois and Burns Harbor, Indiana.

(7) All void tanks must be kept free of excess water.

(8) Deck and side shell plating must be free of visable holes, fractures or serious indentations.

Dated: December 10, 1984.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 32489 Filed 12-13-84; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 84-37]

Application of the Shipping Act of 1984 to Certain Transshipment Agreements

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: This rule describes the approach the Commission intends to take under the Shipping Act of 1984 with regard to transshipment agreements where one party to the agreement provides a service in the domestic offshore commerce of the United States and the other party provides a service in the foreign commerce of the United States. The Shipping Act of 1984 does not provide for the regulation of common carriers by water operating exclusively in the domestic offshore trades. However, when the movement of cargo in a domestic trade is part of a through movement of cargo via transshipment involving the foreign commerce of the United States, the entire arrangement shall be considered to be in the foreign commerce of the United States and, therefore, subject only to the Shipping Act of 1984.

DATES: Comments due January 28, 1984.

ADDRESS: Send comments (original and 20 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Commission has on file approximately 50 nonexclusive [1] transshipment agreements submitted under the Shipping Act, 1916 (1916 Act) (46 U.S.C. app. section 801 *et seq.*) where one of the parties to the agreement provides a service solely in the foreign commerce of the United States and the other party provides a service solely in the United States domestic offshore trades. An

[1] There may be relatively few, similar type transshipment agreements of an *exclusive* nature.

example would be cargo moving from Europe to Puerto Rico with transshipment there, for on movement to a U.S. East Coast port.

The Shipping Act of 1984 (1984 Act) (46 U.S.C. app. section 1701, *et seq.*) effective June 18, 1984, applies only to the common carriage of goods by water in the foreign commerce of the United States. Since the operations of common carriers by water in the domestic offshore trades are not subject to the 1984 Act questions arise about the status of transshipment agreements currently on file with the Commission when newly amended, and the status of any such new arrangements under the 1984 Act. This proposed Rule describes the approach the Commission intends to take with regard to such agreements.

Therefore, in order to clarify the question of jurisdiction, the Commission interprets the 1984 Act to apply to all agreements involving domestic offshore movements when such movement is part of a continuous through movement of cargo via transshipment involving the foreign commerce of the United States.

The Commission has determined that these rules are not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because they will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

The Chairman, Federal Maritime Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects in 46 CFR Part 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and recordkeeping requirements.

PART 572—[AMENDED]

Therefore, pursuant to 5 U.S.C. 553 and sections 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1715, 1716), the Commission hereby proposes to amend section 572.104 of Title 46 of the Code of Federal Regulations by adding the following language at the end of paragraph (ff) to read:

§ 572.104 Definitions.

* * * * *

(ff) *Transshipment Agreement.* * * * An agreement which involves the movement of cargo in a domestic offshore trade as part of a through movement of cargo via transshipment involving the foreign commerce of the United States, shall be considered to be in the foreign commerce of the United States and, therefore, subject to the Shipping Act of 1984 and the rules of this part.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-32634 Filed 12-13-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, and 76

[MM Docket No. 84-1296; FCC 84-612]

Implementing the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice proposes changes in the Commission's rules and regulations. This action is necessitated by the passage of the Cable Communications Policy Act of 1984 which sets a national cable communications policy. This action is intended to revise our rules and regulations to conform with the Cable Communications Policy Act of 1984.

DATE: Comments are due by January 14, 1985 and replies by January 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 63

Extension of lines, discontinuance of service by carriers.

47 CFR Part 76

Cable television service.

The collection of information requirement contained in this proposed rule making has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Notice of Proposed Rule Making

In the matter of amendment of Parts 1, 63 and 76 of the Commission's Rules to implement the provisions of the Cable Communications Policy Act of 1984 (MM Docket No. 84-1296).

Adopted: December 4, 1984.

Released: December 11, 1984.

By the Commission.

Introduction

1. By this *Notice of Proposed Rule Making*, the Commission proposes to amend its rules to implement certain provisions of the Cable Communications Policy Act of 1984 (Cable Act). This legislation establishes guidelines for the regulation of cable systems in the areas of ownership, channel usage, franchising, rates and service regulations and equal employment opportunity requirements. A separate *Notice of Proposed Rule Making* will be issued in the near future to implement the equal employment opportunity provisions of the Cable Act.

Background

2. On October 30, 1984, the Cable Act was signed into law.[1] This legislation amends the Communications Act of 1934 by adding a new Title VI, entitled "Cable Communications."[2] The purposes of this new title, as set forth in Section 601 of the Cable Act, are to:

(1) Establish a national policy concerning cable communications;

(2) Establish franchise procedures and standards which encourage the growth and development of cable systems and which assure that cable systems are responsive to the needs and interests of the local community;

[1] Cable Communications Policy Act, Pub. L. No. 98-549, section 1 *et seq.*, 98 Stat. —, (1984). In order to facilitate compliance with the requirements of the statute, we are proposing to include the complete text of the Cable Act as an appendix to Part 76 of the Commission's rules as set forth in the attached Appendix. **Editorial Note:** The Cable Act was filed with this document at the Office of the Federal Register but is not being published.

[2] The Cable Act also amends certain other sections of the Communications Act. *See*, for example, paragraph 51 below.

(3) Establish guidelines for the exercise of Federal, State, and local authority with respect to the regulation of cable systems;

(4) Assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public;

(5) Establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by this title; and

(6) Promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.

3. The Cable Act is intended to establish a national policy to encourage the growth and development of cable television services and to assure that cable systems are responsive to the needs and interests of the local communities they serve.[3] A major aim of the Cable Act is to provide the stability and certainty that has been regarded as desirable for the continued growth and development of the cable industry. As stated in the House Report:

> In adopting this legislation, the Committee has endeavored to create an environment in which cable will flourish, providing all Americans with access to a technology that will become an increasingly important part of our national communications network.[4]

4. The Cable Act establishes restrictions on the ownership of a cable system, requires the reservation of channels for commercial access use and grants authority to cities to require public, educational, and governmental access channels. Significant restrictions, however, are placed on government's ability to exercise editorial control over the content of programming on cable channels. Further, local government's ability to regulate the rates of "basic" cable service is restricted after two years to only those markets where the Commission has found that cable is not subject to effective competition. In addition, the Cable Act requires that the cable operator establish a program to ensure equal employment opportunities.

Discussion

5. Several provisions of the Cable Act requires changes in the Commission's rules. In some areas, we believe that amendment or deletion of the present rule will be sufficient. In other areas, however, we believe that new rules should be promulgated. The sections of the Cable Act that we believe affect our regulatory responsibilities are discussed below. Accordingly, we seek comment on our proposed rule changes, as set forth in the attached Appendix. In addition, we encourage all parties to submit comments with respect to any other sections of the Cable Act that they believe should be considered herein.

Section 602—Definitions

6. A number of fundamental terms used throughout the Cable Act are defined in Section 602. In most cases, the definitions are consistent with those contained in the Commission's cable television rules[5] or are in common usage within the cable industry. We seek comment on any differences between the definitions of terms in the Cable Act and the Commission's rules and the impact these differences may have on the implementation of this legislation or application of our rules. In particular, comments are required on the terms discussed below:

7. *Definition of Cable Operator.* Paragraph (4) of Section 602 defines the term "cable operator" as:

> Any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;[6]

A "significant interest" for the purposes of this definition means a cognizable interest as provided in the Commission's rules for attributing interests in broadcast, cable television and newpaper properties.[7]

8. Section 76.5(11) of the Commission's rules presently defines a cable television system operator as "(t)hat local busiess entity, be it natural person, partnership, corporation, or association, which offers for sale services of a cable television system in the system community." We believe that these two definitions are compatible with one another. However, for consistency with the Cable Act, we are proposing to adopt the definition set forth in the statute.

9. *Ddefinition of Cable Service.* We also request comment on the definition of the term "cable service." Paragraph (5) of Section 602 states that the term cable service means:

> (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection of such video programming or other programming service;[8]

The Commission's rules currently do not contain a definition of cable service.

10. The legislative background of this section indicates that the intent of this definition is to mark the boundary between the cable services that the legislation specifically exempts from common carrier regulation under Section 621(c) of the Cable Act, and all other non-cable communications services that could be provided over a cable system.[9] In general, according to the definition in the Cable Act, cable service is the one-way transmission to subsribers of video or other programming services together with any subscriber interaction that is required for the selection of such programming. Programming services that make non-video information generally available to all subscribers and do not include subscriber-specific information are included in the definition of cable services. Some examples of cable services are: pay-per-view video programming, teletext, one-way transmission of computer sofeware, and on-line airline guides or catalog services that do not allow direct customer purchases. Services that allow subscribers to manipulate or otherwise process information or data would not be classified as cable services. Such non-cable services include: at-home shopping and banking services, data processsing, video conferencing, and all voice communications.[10]

11. *Definition of Cable System.* We also request comments with regard to differences in the definition of the term "cable system." The Cable Act defines a cablle system as:

> . . . a facility, consisting of a set of closed transmission paths and associated signal

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[3] *See* House Committee on Energy and Commerce, H.R. Rep. No. 934, 98th Cong., 2nd Sess. (1984) (hereinafter House Report).

[4] *See* House Report at 20.

[5] *See 47 CFR 76.5.*

[6] The term affiliate, when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person. *See* Section 602(1) of the Cable Act.

[7] *See 47 CFR 73.3615 and 76.501. See also* House Report at 41 and paragraph 24 *infra.*

[8] In Section 602(16) of the Cable Act, video programming is defined as programming which is "provided by, or generally considered comparable to programming provided by, a television broadcast station."

[9] In this regard, the House Report states that the legislation "does not intend to resolve or even address the issue of the state or Federal treatment of non-cable communications services offered over cable systems . . . . " *See* House Report at 60. This *Notice* proposes to resolve only those issues addressed in the Cable Act. Thus, for example, we are not addressing the issues raised by Cox Cable, in its cable system in Omaha, Nebraska. (*In re* Cox Cable Communications, Inc., Commline, Inc., and Cox DTS, Inc. (CCB–DFD–83–1).

[10] *See* House Report at 41–44.

generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community . . . .[11]

Furthermore, the Cable Act exempts four classifications of facilities from this definition. Among them are facilities which only retransmit the signals of one or more television broadcast stations and facilities that serve one or more multiple unit dwellings under common ownership, unless the facility uses a public right-of-way. These exceptions are intended to exclude master antenna and some satellite master antenna television systems.[12] Common carrier facilities, subject to Title II of the Communications Act of 1934, are not cable systems, except to the extent that they are used by the carrier to provide video programming directly to subscribers. (i.e., without an intervening cable operator). Finally, the facilities of any electric utility used solely for operating its electric utility are excluded from the definition of a cable system.

12. The definition of a cable television system contained in § 76.5(a) of the Commission's rules is as follows:

A nonbroadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations. . . .[13]

In addition, the Commission's rules exclude any such facility with fewer than 50 subscribers and any facility that serves only subscribers in one or more multiple unit dwellings under common ownership.[14]

13. Several differences between the two definitions are immediately apparent. First, according to the Commission's rules, a facility must distribute the signals of broadcast television stations to be considered a cable system. The Cable Act, however, defines a cable system as a facility which provides video programming. Second, the Commission presently exempts cable systems with fewer than 50 subscribers from Part 76 of its rules. Such an exemption does not appear in the Cable Act, except for Section 634(h)(2) relating to equal employment opportunity. Third, the definition of a cable system in the Cable Act specifically excludes facilities that only retransmit broadcast signals.[15] Such systems are, however, included as cable systems under the Commission's present rules.[16]

14. A fourth difference occurs with regard to facilities, such as satellite master antenna systems (SMATV), that serve subscribers in one or more multiple unit dwellings under common ownership, control or management. The definition of a cable system contained in the Cable Act includes such systems if they use public rights-of-way. The Commission's rules exclude all facilities that serve multiple unit dwellings under common ownership, control or management. A question, therefore, arises with regard to SMATV systems that serve multiple unit dwelling that are not under common ownership, control or management. We propose that such facilities be considered cable systems only if they use public rights-of-way. Comments are requested on this approach.

15. In this *Notice*, we are proposing to adopt the definitions of cable operator, cable service and cable system, as set forth in the Cable Act. It is clear, however, that the discrepancies between these definitions and the definitions presently in the Commission's rules may affect the manner in which we currently regulate certain segments of the cable industry. For example, cable systems that merely retransmit local broadcast signals will no longer be subject to Part 76 of our rules. On the other hand, certain cable systems with less than 50 subscribers may now be subject to Commission regulation. Comments therefore are requested on this approach. We recognize that even if cable systems carrying only broadcast signals no longer come within the statutory definition of a "cable system" some regulatory concerns will necessarily remain. For example, concerns relating to radio frequency radiation will remain. We seek comment on what, if any, other rules should be applied to these broadcast signal only "community antenna television systems." For example, existing federal preemption policies, franchise fee limits, technical standards, mandatory signal carriage, sports blackout, and network nonduplication rules would no longer be applicable to these systems under the statutory definition. In addition, such systems would no longer be eligible licensees in the microwave Cable Television Relay Service, raising the question of whether existing licensees should be "grandfathered" or whether the microwave station eligibility rules should be amended.

Section 611 and 612—Use of Cable Channels

16. Sections 611 and 612 of the Cable Act deal with the use of cable channels. Section 611 specifies that a franchising authority may establish requirements to designate channels for public, educational or governmental use. In addition, Section 611 prohibits the cable operator from exercising any editorial control over any of these channels. Section 612 of the Cable Act establishes those conditions under which a cable system must designate channels for commercial use by persons unaffiliated with the cable operator. The term "commercial use" means the provision of video programming whether or not for profit. Cable systems with less than 36 activated channels do not have to designate channels for commercial use.[17] Systems with 36 to 54 activated channels must designate 10 percent for commercial use. Systems with 55 or more activated channels must designate 15 percent for commercial use. When applying these percentages to channel counts, those channels carrying "must carry" signals and those channels which cannot be used due to technical and safety requirements (*e.g.*, aeronautical channels) are subtracted from the system's total channel capacity except for systems with more than 100 channels.[18]

[11] Section 602(6).

[12] *See* House Report at 44.

[13] 47 CFR 76.5(a).

[14] In several instances, the Commission further modifies the definition of a cable system for the application of its rules. For example, the network nonduplication rules apply only to cable systems with 1000 or more subscribers.

[15] The staff estimates that about 10 to 12 percent of all cable systems, serving less than 2 percent of all subscribers, carry only broadcast signals. In developing this estimate, we examined the signal carriage of all cable systems in 12 states. The states chosen were ones we believed would be the most likely to have older cable systems and terrain problems that would lead to the need for "community antenna systems." The data come from the *Television Factbook*, Services Volume No. 52.

[16] There is some question of how "superstations" should be considered within the meaning of this exemption. While they are licensed as broadcast stations, these stations are generally delivered to cable systems by satellite (as are many nonbroadcast cable networks). Accordingly, we request comment on whether or not to include satellite-received superstations within the meaning of television broadcast signals. Initially, we believe the term should be limited to only those local signals received in a conventional manner. We believe that such an interpretation may be consistent with the intent of Congress. The House Report, in discussing this exemption, contains the following language:

. . . a facility or combination of facilities that serves only to retransmit the television signals of one or more television broadcast stations (in other words, *a master antenna television system*); (Emphasis added.) *See* House Report at 44.

[17] Section 612(b)(1)(D), however, grandfathers the provisions of any existing franchise covering a system with less than 36 channels that provides leased access to parties unaffiliated with the cable operator.

[18] Any fractional amount of a channel is to be rounded up to the next whole number of channels. *See* House Report at 49.

17. Section 612(d) of the Cable Act also provides a right of action for any person aggrieved by failure or refusal of a cable operator to make channel capacity available for commercial use pursuant to this section. The first avenue of relief is the Federal courts. In an effort to prevent the need to continuously enforce such rights in Federal courts, however, section 612(e) of the Cable Act provides that parties may petition the Commission for relief upon a showing that a cable operator or a multiple system operator (MSO) has repeatedly violated this section.[19] In addition, the Commission is authorized to establish any additional rule or order, including a rate schedule, if it finds that there is a pattern or practice of abuse of this section.

18. In order to implement the provisions of Section 612(e), we propose to follow the administrative procedures set forth in § 76.7 of the Commission's rules. Section 76.7 of the rules provides procedures whereby an aggrieved party may petition the Commission for a ruling or to file a complaint. The guidelines contained in this section are appropriate for an action such as commercial channel access enforcement. We therefore propose to amend § 76.7 to specifically include channel access enforcement requests as shown in the attached Appendix. We seek comment as to the appropriateness of this model for adjudicating disputes between parties. Comments are invited on any other remedial procedures that could be applied such as, for example, the show cause procedures in § 76.9 of the rules.

19. Section 612 also prohibits cable operators from exercising editorial control over any video programming pursuant to this section except for the purpose of establishing a reasonable price for commercial use of a designated channel. Section 612(h) gives the franchising authority the right to prohibit or otherwise restrict any cable service that it deems obscene.

20. Section 612(g) specifies that when cable systems with 36 or more activated channels are available to 70% of all households in the United States and are subscribed by 70% of such households, the Commission may promulgate additional rules to ensure diversity of information sources. We do not propose any action at this time with respect to this subsection.

[19] The House Report indicates that three or more adjudicated violations would generally constitute a pattern or practice of abuse with respect to a single cable operator. (However, three violations by three different cable systems controlled by a MSO would not necessarily constitute a pattern or practice of abuse.) *See* House Report at 53.

Section 613—Ownership Restrictions

21. Section 613 of the Cable Act establishes restrictions on ownership of cable television systems by local television broadcasters and local telephone c companies.[20] These ownership restrictions are intended to prevent the development of local media monopolies and to encourage a diversity of ownership of communications outlets.

22. Section 613(a) of the Cable Act prohibits the ownership of a cable system by a television broadcast licensee whose station's predicted grade B contour covers any portion of cable community.[21] This provision is the same in substance as § 76.501(a)(2) of the Commission's rules. Accordingly, we do not propose any change to the substance of that rule at this time.

23. The Cable Act also incorporates the thrust of the Commission's existing regulations pertaining to cable system ownership by a common carrier in its telephone service area. Section 613(b)(1) makes it unlawful for a common carrier to provide video programming to cable subscribers in its telephone service area, either directly or indirectly through an affiliate. Under Section 613(b)(2), a common carrier is prohibited from providing pole or conduit space, or channels of communications, to any entity that it owns or controls, if these facilities are to be used for the provision of video programming directly to subscribers. These portions of the Cable Act are similar to the prohibitions stated in §§ 63.54(a), 63.54(b) and 63.55 of the Commission's rules. While we presently do not propose any major rule changes, we request comment on whether to amend Part 63 to replace "cable television service" with the "the provision of video programming" language contained in the Cable Act.

24. The Cable Act and legislative history are unclear on the matter or what constitutes ownership with regard to the telephone common carrier-cable system prohibition. While the legislative history specifically states that the Commission's attribution rules apply for broadcast station-cable system crossownership, it is silent on the issue of common carriers. We note that the current Commission attribution standards differ for common carriers and broadcast stations.[22] Therefore, we request comment on the issue of attribution for the purposes of defining ownership and control as it relates to cable system ownership by a common carrier.

25. Subsection 613(b)(3) exempts telephone common carriers from the ban on cable system ownership in "rural areas" as defined by the Commission. The Commission's rules currently permit telephone company ownership of a cable system in rural areas, as defined in § 63.58, when "no cable television system is under construction or in existence within the proposed cable television service area." Under this subsection of the Cable Act, telephone companies may now acquire existing cable systems or franchises to serve rural area without applying to the Commission for waivers as is presently required by the rules.[23] Accordingly, we proposel to expand the exemption from the waiver process to all systems in rural areas, as set forth in the attached Appendix.

26. The Cable Act also gives the Commission the responsibility to define "rural areas." The legislative background indicates that the intent of subsection 613(b)(3) of the Cable Act is to eliminate all legal and administrative barriers preventing a common carrier from providing rural cable system service.[24] Further, it states that the Commission should "give full consideration to the need to bring cable television service as rapidly as possible to those remote areas" when it defines the term rural area.[25] The Commission currently defines a rural area in terms of population as described in Section 63.58. We propose to make no changes to this definition and seek comment on this proposal.

27. Subsection 613(b)(4) of the Cable Act permits the Commission to waive these crossownership restrictions in those circumstances where a waiver is justified in accordance with § 63.56 of its rules. The legislative history specifically indicates that the provisions of the Cable Act are not meant to prevent telephone companies from providing information services or other non-video communications. Also, the Cable Act does not prohibit a common carrier from constructing or leasing a local distribution system capable of delivering video programming and other communications services to multiple subscribers in a community.

[20] The comparable Commission rules are contained in 47 CFR 63.54–63.58, and 76.501.

[21] Ownership includes any cognizable interest as defined in the Commission's attribution rules, 47 CFR 73.3615 and 76.501. *See* House Report at 55–56.

[22] *See* CFR 63.54 notes 1 and 2.

[23] House Report at 56–57.

[24] Such cable systems will still have to obtain cable franchises and certify to the FCC that they serve rural areas. House Report at 56.

[25] House Report at 57.

28. Section 613(c) of the Cable Act gives the Commission the authority to enact rules relating to local crossownership between cable systems and other media of mass communications. Under Section 613(d), the right of any State or franchising authority to regulate cable system ownership by those with other media interests is preempted. Section 613(g) of the Cable Act defines the term "media of mass communications" as it is defined earlier in Section 309(i)(3)(C)(i) of the Communications Act of 1934, as amended. That definition states that "media of mass communications" are:

> Television, radio, cable television, multipoint distribution service, direct broadcast satellite service and other services, the licensed facilities of which may be substantially devoted toward providing programming or other information services within the editorial control of the licensee.

Given the explicit authority of Section 613(c) related to local crossownership and the definition of Section 613(g), we believe it is appropriate at this time for the Commission to consider whether its cable crossownership restrictions should apply to other competing media of mass communications. Thus, we seek comment from the public regarding whether competing media, such as MDS, should be prohibited from owning a cable television system in their local service area.

29. Section 613(e) enables a State or franchising authority to own a cable television system as long as editorial control is exercised through a separate entity. This is to preclude undue government control of programming.[26]

30. The Cable Act "grandfathers" any combination of interests held on July 1, 1984, to the extent such interests were not inconsistent with applicable Federal or state law or regulations on that date. This is consistent with existing rules so that no change appears required.[27]

Sections 621 and 622—Franchise Requirements and Fees

31. *General Franchise Requirements.* Section 621 of the Cable Act sets forth general franchising requirements. This section specifically grants a franchising authority the ability to grant one or more franchise within its jurisdiction. Section 621 also authorizes construction of a cable system over public rights-of-way and through easements designated for compatible uses such as those used for utilities. Thus, a property owner that has already granted or is obligated to grant an easement for utilities cannot deny cable access. In constructing the system, the franchisee must ensure the safety and appearance of the property accessed through the easement and must bear the cost of the installation, operation or removal of equipment.

32. In addition, Section 621 requires that franchise authorities assure that no class of potential residential cable subscribers may be denied service due to income status. In other words, the franchising authority shall require that all areas of the franchised area be wired. The franchising authority could, however, award separate franchises within its jurisdiction.

33. Section 621(c) states that a cable system shall not be subject to regulation as a common carrier or utility by reason or providing any cable service. Further, Section 621 gives the Commission authority to require the filing of informational tariffs for any intra-state non-cable communications service offered by a cable system that would be subject to regulation by the Commission or a state if provided on a common carrier basis. Under this provision, the Commission could require the filing of informational tariffs to monitor such services. We do not, however, see a need for this information at this time. Therefore, the Commission does not propose to require the filing of informational tariffs at present, but retains the right to do so in the future.

34. Finally, Section 621(e) states that the Cable Act does not affect the authority of any state to license or regulate any facility, such as a SMATV system, that does not use a public right-of-way. In this regard, the House Report notes that the Commission has sought to preempt state regulation of satellite receive facilities and that the Cable Act does not intend to affect the Commission's decision, or to affect any review of this decision by the courts.[28]

35. *Franchise Fees.* Section 622 of the Cable Act provides that the franchise fee required to be paid by the cable operator to the franchising authority be no more than five percent of gross revenue. The five percent limit applies to the gross revenues for each 12 month period of the franchise. This section also specifies that the Commission or any other Federal agency may not regulate the amount of the franchise fee or the use of the funds derived from said fee.

36. Our current rules addressing franchise fees are found in § 76.31.[29] The rules limit the franchise fee to 3 percent of the franchisee's gross revenue with a 5 percent fee obtainable upon a showing of reasonableness.[30] This rule also contains suggested, but not mandatory, procedures for the local franchising process. These recommendations include: (1) The franchisee's qualifications and construction arrangements should be approved by the franchising authority as part of a full public proceeding affording due process; (2) initial and renewal franchise should not exceed 15 years; (3) construction should be significant within the first year of certification and completed under a reasonable timetable; (4) a franchise should be allowed to wire less than the complete franchise area only after a full hearing; and, (5) the franchise should provide for investigation and resolution of complaints, maintain a local office and notify each subscriber of complaint procedures. These provisions are generally dealt with in Section 621 and other sections of the Cable Act.[31]

37. In order to comport fully with Sections 621 and 622 of the Cable Act, we propose to delete section 76.31 of the Commissions rules entitled, "Franchise Standards." In addition, we propose to delete Section 76.30 which makes the existing rule applicable only to systems with 1000 or more subscribers.

Section 623—Regulation of Rates

38. Section 623 of the Cable Act specifies the manner in which subscriber rates for cable services may be regulated. In particular, a franchising authority may regulate the rates for basic service on cable systems when such systems are not subject to effective competition as defined by the Commission. This regulation applies to all cable systems franchised after the effective date of the Cable Act and to all previously franchised systems two years after such date. In addition, the Cable Act does not prohibit any Federal agency, State or franchising authority from prohibiting discrimination among customers of basic service, or from requiring or regulating the provision of equipment which facilitates the reception of basic cable service by individuals who are hearing impaired.[32]

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[26] House Report at 58.

[27] *See Memorandum Opinion and Order* in RM-3810 and Docket 20423, FCC 84-527, released December 4, 1984.

[28] Earth Satellite Communications, Inc. (CSR-2347), *Memorandum Opinion, Declaratory Ruling and Order*, FCC 83-526, released November 17, 1983; and *Memorandum Opinion and Order*, FCC 84-206, released May 14, 1984.

[29] *See* 47 CFR 76.31.

[30] The rules provide that these provisions apply only to those systems with 1,000 or more subscribers (47 CFR 76.30). Under the statute, the 5% limit applies also to systems with under 1,000 subscribers.

[31] *See*, for example, Section 626 of the Cable Act.

[32] *See* Section 623(f) of the Cable Act.

39. Section 623 specifically charges the Commission with the responsibility of defining effective competition and establishing standards for rate regulation. In addition, the Cable Act requires the Commission to monitor and periodically review such regulations. This review is for the dual purposes of: (1) Amending our regulations when judged appropriate and in a manner consistent with the Cable Act, and (2) within six years, preparing a report for Congress evaluating the impact of rate regulation and proposing any legislative changes which are deemed necessary. The following discussion considers the definition of effective competition, the establishment of rate regulation standards, and the preparation of the six year study for Congress.

40. *Effective Competition.* Section 623(b) requires that the Commission, within 180 days after the enactment of the Cable Act, "shall prescribe and make effective regulations" that authorize a franchising authority to regulate basic cable service rates in circumstances in which a cable system is not subject to effective competition.[33] Such regulations shall "define the circumstances in which a cable system is not subject to effective competition."

41. In developing a definition of effective competition, the Commission recognizes the desirability of a standard which can be both easily interpreted and readily applied by a franchising authority within its community (or communities). On the other hand, this should be accomplished in a manner which permits the correct identification of those situations where a cable system may have sufficient market power to take undue advantage of its subscribers. In this regard, the legislative history of the Cable Act provides some guidance for the Commission's task of defining "effective competition":

> In determining whether a cable system is subject to effective competition for the purpose of regulation of basic cable service, the FCC should consider the number and nature of services provided, compared with the number and nature of services available from alternative sources and, if so, at what price. In establishing the necessary regulations, the FCC should establish objective nationwide criteria which are readily applicable for determining on a community-by-community basis whether a cable system is subject to effective competition. Such standards should apply on a community-by-community basis since the presence nationwide of various telecommunications services does not speak to the availability of such services in a particular community. . . . Regulations should specify objective criteria to avoid the need for an independent examination of the status of competition on a community-by-community basis.[34]

Further guidance may also be obtained from the earlier version of the Senate cable bill. In that document, the Senate proposed that a cable system should not be regulated if it were located within the Grade B contour of four television signals, including one affiliate of each major network.[35]

42. In recent years, several states, in deregulating cable subscriber rates, have also addressed the issue of competitive services. In 1978, New Jersey adopted a standard in which rate ceilings were specified for six categories of cable systems.[36] The categories of cable systems were defined according to competitiveness, density of service and system size.[37] In 1980, the state of Alaska adopted legislation that exempted cable systems that serve areas with 3,500 or more population from all rate regulation.[38] California has determined that competition is effective whenever a cable system: (a) Has a channel capacity of at least 20; (b) carries some satellite delivered programming; (c) has a penetration of less than 70%; (d) lies within a country with 3 significantly viewed stations (or two significantly viewed stations and one education station); and (e) provides a community service channel.[39] In addition, automatic inflationary increases of up to 75 percent of the consumer price index were permissible for those systems meeting conditions (a), (b), (d), and (e).[40] In 1980, Massachusetts deregulated all cable systems which were within the Grade B contour of three unduplicated major network signals and which had a penetration rate of 70% or less. In adopting this rule, the state commission noted that "(w)here consumers have the ability to receive the three major television networks by means other than a cable system, there is no compelling reason to price regulate cable television service in that geographic area."[41]

43. We ask comment on what constitutes "effective competition" for basic cable service. In order to answer this question, we must first determine what kinds of signals or services compete with basic cable service. In essence, basic cable service is the provision of locally viewed broadcast signals and required access channels.[42] While basic service can now contain additional programming (such as superstations or cable satellite networks) it need not, as a matter of definition. The alternative to transmission of locally viewed signals by cable is off-the-air reception by home receiving antennas. As such, competition to a cable system's basic service would seemingly exist if a subscriber can receive locally viewed broadcast signals off-the-air. If that alternative is readily available, then a subscriber has a direct, self-help remedy to basic service pricing that he finds unreasonable; he can disconnect the cable service and obtain those signals by means of a home antenna.[43]

44. Thus, one way of defining "effective competition" would be for the Commission to look to the availability of off-the-air signals in the cable system's community. If this approach were to be followed and in view of the Congressional instruction to provide "readily applicable criteria," we seek comment on how we should shape such a rule based on the availability of broadcast stations. Specifically, we ask comment on the appropriate signal complement needed for effective competition: should it be the four of the Senate bill, the three of Massachesetts and California, or some other number? Further, should the availability of all three networks be part of such rule? [44]

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[33] *See* Section 602 of the Cable Act.

[34] *See* House Report at 66.

[35] *See* S. 66, 98th Congress, Sect. 607(d).

[36] *See* Rules of Cable Television Common Tariff, 15 N.J.R. 1350–1358.

[37] For example, the top category in New Jersey required a system to (a) lie within the Grade A contours of three signals which provided the programming of the three major networks, (b) have a capacity of more than 12 channels, and (c) have less than 200 subscribers per cable mile.

[38] In June 1983, this was amended to permit rate regulation only when 25% of the subscribers petitioned for regulation. *See* 1983 SLA on 30, effective June 30, 1983, amending AS 42.05.711.

[39] *See* California Law A.B. 699 (1979).

[40] In 1983, California amended its rules to permit deregulation for systems with a penetration rate greater than 70% whenever there were five significantly viewed (or four significantly viewed plus one "educational") signals.

[41] *See Competitive Standard rule Making Report and Order*, Docket No. R–4, July 25, 1980, at 7.

[42] Section 602 of the Cable Act defines basic service. *See* paragraph 45 below and House report at 66 for further discussion.

[43] We note that the unavailability of off-the-air signals for reasons of interference, rather than lack of local signals, is not the competitive threat to which this part of Act appears to be directed. A subscriber in Manhattan, where severe "ghosting" is a common problem for off-air reception, may be willing to pay a premium for better reception. In that instance, off-the-air reception may not be equivalent to that available by cable, but that reception would not be a basis for finding lack of effective competition. We seek comment on whether this exclusion is appropriate. We also seek comment on whether a subscriber's willingness to pay a premium for an unavailable signal could be a function of increased value to the subscriber as distinguished from a "monopoly rent" resulting from a lack of effective competition. If so, how can we differentiate the two situations?

[44] We note that in smaller markets it is commonplace for cable systems to import missing

Continued

Is the risk of anti-competitive behavior increased if we do not require each of the three networks? If so, how? If a market has only one network and no independent or noncommercial service exists, can the cable subscriber's ability to disconnect be an effective alternative to the basic service of the cable system? If a signal complement criterion is chosen, one approach would be to use as a test four unduplicated off-the-air signals, including those of the three major networks. We seek comment on this approach. We also seek comment on whether a lesser requirement could also constitute effective competition.

45. Alternatively, we are aware that ease of application of the effective competition test may not have been Congress' primary policy goal. The legislative history suggests that Congress intended the Commission not merely to consider terrestrial television in formulating a test for "effective competition" but also to factor in other competitive delivery systems as well. For example, the House report says that in "determining whether a cable system is subject to effective competition for the purpose of regulation of basic cable service" the Commission should "consider the number and nature of services available from alternative sources and, if so, at what price." Presumably, these competing technologies include direct broadcast satellites, low power television, multipoint distribution services, satellite master antennas, direct satellite reception, video cassette recorders and video discs. Because these services may not offer off-the-air broadcast signals, however, we invite comment on the degree, if any, to which they provide effective competition to basic cable service. In addition, we specifically ask comment on how the Commission might formulate a test which counts these competing technologies that is both easy to apply and accurately describes competition in the video marketplace.

46. In implementing a standard for effective competition, we must also develop a method for determining whether a particular station is available in a given franchise area. If an over-the-air broadcast signal standard is used, one possible method might be to include stations that place a predicted Grade B signal contour over the cable community. A second method would be to count all signals within a specific mileage zone, *i.e.*, the 35-mile zone. A third approach would be to use the standards in the Commission's "must carry" rules.[45] If such a standard is chosen, we believe that the Grade B signal criteria is the most appropriate method. We request specific comment on the most appropriate manner in which to implement this approach. Should, for example, the Grade B signal cover the entire cable community, the franchise area, the cable headend or some portion of the cable community? Comments are also invited on any aspect of these approaches. For example, how should "hyphenated markets" be treated if a "must carry" approach were used to determine effective competition?[46] Comment is also requested on whether a penetration level should be included in our definition of effective competition.[47]

47. *Regulatory Standards.* Section 623 of the Cable Act also requires that the Commission establish standards for the regulation of basic cable rates by a franchising authority. This involves not only specifying what services can be regulated but also in what manner. The former question addresses the appropriate definition of "basic cable service", which is defined in Section 602 of the Cable act as simply "any service tier which includes the retransmission of local television broadcast signals." In the House Report, the Commission was encouraged to "fashion a definition of basic cable services most appropriate to achieve the purpose of the regulations consistent with the provisions of Title VI." In this context, we believe that it is appropriate to include significantly viewed as well as local signals. Accordingly, we propose defining basic cable service as "any service tier(s) which include(s) the retransmission of must-carry broadcast television signals as defined in § 76.55 to 76.61 of the rules."[48] Comments on this definition of basic service are requested.

48. The House Report provides no specific guidance regarding the establishment of a rate regulation standard for basic cable service. Section 623 simply directs the Commission "to establish standards for such rate regulation." It is our tentative view that any rate standard include the following administrative procedures: (1) Formal notice to the public; (2) an opportunity for interested parties to make their views known, at least through written submissions, and (3) a formal statement when a decision on a rate matter is made. With respect to the substance of the rate making decision, it is clear that several alternatives are available for establishing the appropriate standards by which rates may be set. A method commonly employed in the case of public utilities is rate of return regulation. This involves setting rates such that the realized return on invested capital is comparable to that in unregulated industries. Due to its inherent costliness and complexity, we do not feel rate of return regulation is an appropriate choice for basic cable service. A simple alternative would be to require that rates be set according to a comparable rate method. This method would set the regulated rate equal to the level in comparable unregulated markets. In calculating this average, we believe that a minimum of three cable systems should be used that are chosen in an unbiased manner and that are similar in size, offerings and community characteristics. Further, to ensure greater flexibility and ease of implementation, we propose including a "zone of reasonableness" with the comparable rate standard. Accordingly, we propose that franchise authorities may prescribe rates that are within 10 percent, either above or below, of the average rate of the comparable cable systems. Comments are solicited on this proposal. We are particularly interested in comments from franchising authorities on this approach. It should be noted that the Cable Act permits cable operators to automatically increase their rates up to 5% annually in most instances.[49] Furthermore, they may deem any rate request to be granted if not acted upon by the franchising authority within 180 days.[50]

49. *Six Year Report.* Subsection 623(h) requires the Commission to submit a report to Congress within six years on the effect of competition in the marketplace as it relates to rate regulation of cable systems. Recommendations for legislative change may be made by the Commission at this time as well. It is envisioned presently that the report will take the form of an economic study of cable rates and offerings as they relate to local demographic and market characteristics as well as the degree of regulatory

network service as a distant signal and include it as part of the basic tier.

[45] Must carry signals include all television stations within a 35-mile zone, certain Grade B contour signals and signals that have attained significantly viewed status within the cable community. *See* §§ 76.54, 55, 57, 59 and 61 of the Commission's rules.

[46] That is, television broadcast stations licensed to other communities that are generally considered to be part of the same television market. *See* §§ 76.51 and 76.59(a)(4) of the Commission's rules.

[47] *See*, for example, Section 612(g) for a discussion of penetration levels.

[48] We believe that the broadcast signals included in this definition of basic cable service will closely duplicate the signals available to viewers over-the-air.

[49] *See* Section 623(e)(1) of the Cable Act.

[50] *See* Section 623(d) of the Cable Act.

control. While much of the needed data can be obtained from trade publications, it may also be necessary to require cable operators to submit certian financial information to us. A version of the former annual cable financial report form might be used for this purpose. Such a form would not only be valuable in obtaining information which may be otherwise unavailable, but could also reduce the amount of Commission resources expended in compiling the necessary data set. In order to minimize costs, we propose to collect data only from a random sample of both regulated and unregulated cable systems. Comment is solicited on the choice of both data and sample size.

Section 624—Regulation of Services, Facilities, and Equipment

50. Section 624 of the Cable Act provides procedures for and imposes limitations on a franchising authority's ability to establish requirements related to services, facilities, and equipment provided by a cable operator. The subsections limiting the editorial control of the franchising authority are of particular importance. Subsection (b) specifies that the cable operator may not be required, either directly or indirectly, as part of the franchise renewal or for a new franchise, to provide particular video or other information services, or even a broad category of video or other information service.[51] Subsection (d) makes clear, however, that a franchising authority and a cable operator may specify in a franchise that a cable service which is obscene or otherwise unprotected by the Constitution may be prohibited or only provided subject to conditions. Subsection 624(d)(2)(A) provides one method of dealing with obscene or indecent programming by requiring a cable operator to sell or lease to a subscriber, upon request, a device by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber. This requirement provides one means to effectively restrict the availability of such programming, particularly with respect to children, without infringing upon the First Amendment rights of the cable operator, the cable programmer, or other cable viewers. This requirement takes effect 180 days after the effective date of the Cable Act and all cable operators must fulfill this requirement. In addition, we seek guidance from the commenters regarding the appropriate remedy for the failure of a cable operator to abide by this subsection of the Cable Act. Subsection (f) limits the authority of the FCC and other Federal, state or franchising authority to regulate the provision or content of cable services other than as provided in this new title of the Communications Act. However, all Federal rules, regulations and orders in place on September 21, 1983, including those of the FCC, remain in effect as they were in place on that date.

51. *Technical Standards.* As a final matter, Subsection 624(e) allows the Commission to set technical standards related to facilities and equipment required by a franchising authority pursuant to a franchise agreement. This provision does not affect the authority of a franchising authority to establish standards regarding facilities and equipment in the franchise which are not inconsistent with standards established by the FCC. At this time, the Commission has technical standards applicable to the carriage of broadcast signals by cable systems.[52] We do not propose to promulgate any new standards at this time.

Section 639—Obscene Programming

52. Section 639 of the Cable Act establishes the Federal standards and criminal penalties applicable to the transmission of any cable service which is obscene or otherwise unprotected by the Constitution. Any violation is punishable by a fine of up to $10,000 and/or by imprisonment for up to two years. Section 76.215 of our rules provides that "(n)o cable television system operator when engaged in origination cablecasting shall transmit or permit to be transmitted on the origination cablecasting channel or channels material that is obscene or indecent." We believe that these criminal provisions supersede our rule and we therefore purpose to delete section 76.215 of our rules.

Section 4—Pole Attachments

53. Section 4 of the Cable Act amends Section 224(c) of the Communications Act of 1934 by adding a new paragraph Section 224(c)(3). This addition provides that a state will not be considered to be regulating the rates, terms and conditions for pole attachments for Section 224(c)(1) purposes unless it has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments and takes final action on individual complaints within the time limits specified in the Cable Act. This is in addition to the present requirement that states certify to the Commission that they regulate pole attachments under Section 224(c)(2).

54. Section 1.1414 of the Commission's rules presently sets forth the procedures for state certification with regard to pole attachments. We now propose to modify our rules to reflect the new language contained in the Cable Act. Comments are solicited on this proposed rule change.

Conclusion

55. By this *Notice of Proposed Rule Making*, the Commission proposes to amend its rules to implement certain provisions of the Cable Communications Policy Act of 1984. We request comments on any of the proposed rule changes discussed above. In addition, we encourage parties to submit comments with respect to any other sections of the Cable Act that they believe may affect the Commission's rules and policies.

Regulatory Flexibility Act Initial Analysis

56. *Reason for action.* This action is taken to implement certain provisions of the Cable Communications Policy Act of 1984.

57. *The Objective.* The legislation and this subsequent Commission action establish guidelines for the regulation of cable service in the areas of ownership, channel usage, franchising, rate and service regulations. This proceeding is intended to institute a national policy to encourage the growth and development of cable television service and to assure that cable systems are responsive to the needs and interests of the local communities they serve. It is also our intent herein to provide for the stability and certainty essential for continued growth and development of the cable industry.

58. *Legal basis.* Action as proposed for this rule making is contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, and the Cable Communications Policy Act of 1984.

59. *Description, potential impact and number of small entities affected.* In order to implement the Cable Act, the Commission has proposed to delete some rules, modify others or add new rules. Depending on which changes are adopted, different cable systems may be affected in different ways. For example,

[51] As noted above, the cable operator is precluded from exercising editorial control over any public, educational, or governmental use of channel capacity (see Section 611(e)) or on channels set aside for commercial use (*see* Section 612(c)(2)). A specific exception is made with respect to editorial control of programming on a commercial channel that is determined to be obscene by the franchising authority (*see* section 612(h)).

[52] *See* 47 CFR 76.601–76.617.

a non-broadcast facility with less than 50 subscribers is not considered a cable system under current Commission rules. Adopting the Cable Act definition of a cable system, which we have proposed to do, would subject those facilities with less than 50 subscribers to Part 76 of the Cable rules. Also, systems with less than 1000 subscribers are exempt from the Commission's current franchising standards. The Cable Act definition, as proposed, would include approximately 3000 such systems under the franchising rules. Conversely, the Commission includes as cable systems those systems that retransmit only local broadcast signals. The Cable Act excludes such systems. We believe that there are about 600 cable systems that carry only broadcast signals.

60. In addition, all of these cable systems deemed not subject to effective competition as defined by the Commission will be subject to rate regulation by the franchising authority. This shall take effect after a two year period.

61. *Recording, record keeping and other compliance requirements:* None.

62. *Federal rules which overlap, duplicate or conflict with this rule:* None.

63. *Any significant alternatives minimizing impact on small entities and consistent with stated objectives:* None.

Paperwork Reduction Act Implications

64. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Presentations

65. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1201 of the Commission's rules.

66. Pursuant to procedures set out in § 1.415 of the Commission's rules, interested parties may file comments on or before January 14, 1985, and reply comments on or before January 29, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

67. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rule on small entities. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice,* but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice,* including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. 601 et seq.) (1981).

68. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, Northwest).

69. For further information concerning this proceeding, contact Bruce A. Franca, Policy Analysis Branch, Mass Media Bureau, (202) 632-6302.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 1, 63 and 76 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. Section 1.1414 is proposed to be amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§ 1.1414 State certification.

(a) If the Commission does not receive certification from a State that:

(1) It regulates rates, terms and conditions for pole attachments;

(2) In so regulating such rates, terms and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility services; and

(3) It has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments (and attaches such rules and regulations to the certification), it will be rebuttably presumed that the State is not regulating pole attachments.

* * * * *

(e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:

(1) Within 180 days after the complaint is filed with the state, or

(2) Within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

1. In Section 63.58, introductory portion of paragraph (a) is proposed to be revised to read as follows:

§ 63.58 Exemption.

(a) A telephone common carrier shall be exempt from the provisions of §§ 63.54 through 63.56 if the proposed cable television service area contains none of the following:

(1) * * *

* * * * *

PART 76—CABLE TELEVISION SERVICE

1. Section 76.5 is proposed to be amended by revising paragraphs (a) and (ll) and by adding new paragraphs (oo) and (pp) to read as follows:

§ 76.5 Definitions.

(a) *Cable television system.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless such facility or facilities uses any public right-of-way; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934 as amended except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or (4) any facilities of any electric utility used solely for operating its electric utility systems.

* * * * *

(ll) *Cable television system operator or operator.* Any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

* * * * *

(oo) *Cable service.* The (1) one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

(pp) *Basic cable service.* Any service tier(s) that includes the retransmission of must-carry broadcast television signals as defined in § § 76.55 to 76.61 of the rules.

2. A new Section 76.10 is proposed to be added to read as follows:

§ 76.10 Channel access enforcement.

(a) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communications Act may bring an action in the district court of the United States for the judicial district in which the cable system is located to compel that such capacity be made available.

(b) Any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available in accordance with the provisions of Title VI of the Communication Act may petition the Commission for relief upon a showing of prior adjudicated violations. Records of previous adjudications resulting in a court determination that the operator has violated the provisions of the Communications Act concerning commercial channel access shall be considered as sufficient for the showing necessary under this section.

(c) Petitions filed with the Commission in response to paragraph (b) shall be made in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

§ 76.30 [Reserved]

3. Section 76.30 is proposed to be removed by and designated reserved.

§ 76.31 [Reserved]

4. Section 76.31 is proposed to be removed by and designated reserved.

5. Part 76 is proposed to be amended by adding a new § 76.33 entitled, Standards for rate regulation, to read as follows:

§ 76.33 Standards for rate regulation.

(a) A franchising authority may regulate the rates of a cable system granted a franchise after December 29, 1984, and any cable system after December 29, 1986, subject to the following conditions:

1) Only basic cable service as defined in § 76.5(pp) may be regulated;

(2) Only cable systems which are not subject to effective competition may be rate regulated. A cable system will be determined to have effective competition whenever four unduplicated Grade B signals, three of which must supply national network programming, are placed over the community it serves; and

(3) Rates must be just and reasonable and should be chosen within the range of 10% above and 10% below the average of the rates of at least three cable systems which are comparable in size and offerings.

(b) For those franchises granted on or before December 29, 1984, a franchising authority may until December 29, 1986, to the extent provided in the franchise:

(1) Regulate the rates for the provision of basic cable service;

(2) Require the provision of one tier of service without charge; and

(3) Regulate the rate of installation of one set of equipment necessary to receive basic cable service.

(c) Any state law in existence on December 29, 1984, which limits or preempts regulation or rates for cable service by any franchising authority shall remain in effect until December 29, 1986 to the extent that it provides for such limitation or preemption.

(d) In establishing any rate for the provision basic cable service by cable systems subject to paragraphs (a) and (b) of this section, the franchising authority shall: (1) Give formal notice to the public; (2) provide an opportunity for interested parties to make their views known, at least through written submissions; and (3) make a formal statement when a decision on a rate matter is made.

§ 76.215 [Reserved]

6. Section 76.215 is proposed to be removed by and designated reserved.

[FR Doc. 84-32892 Filed 12-13-84; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-172]

Withdrawal of Antitrust Immunity for Collective Ratemaking on Small Shipments

AGENCY: Interstate Commerce Commission.

ACTION: Notice of discontinuance of rulemaking.

SUMMARY: On June 27, 1983, the National Small Shipments Traffic Conference, Inc., and the Drug and Toilet Preparation Traffic Conference, Inc. (NASSTRAC and D&TPTC), jointly filed a petition requesting that the Commission withdraw antitrust immunity for motor carrier collective ratemaking with respect to rates on shipments under 1,000 pounds. Petitioners argued that motor common carriers of property face little competition for small shipments traffic and that the ability of these carriers to set rates collectively had resulted in the imposition of unreasonable rate increases. The Commission issued a notice published on October 12, 1983 (48 FR 46399), which solicited comments on petitioners' request. In an open voting conference held on August 9, 1984, the Commission found that the record in this proceeding did not support the withdrawal of antitrust immunity, in whole or in part, for collective ratemaking activities performed by rate bureaus for motor carriers of property. The record in this proceeding will be certified to Congress.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT:

Howell I. Sporn, (202) 275–7691;

or

Thomas T. Vining, (202) 275–7813

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's written decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800–424–5403).

This decision will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: November 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley and Strenio. Chairman Taylor and Vice Chairman Andre commented with separate expressions. Commissioners Simmons, Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–32590 Filed 12–13–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Proposed Changes in Appendices to the Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species, which are listed in appendices to this treaty. The United States, as a Party to CITES, may propose amendments to Appendix I or II for consideration by the other Parties.

In this notice, the Fish and Wildlife Service announces its decisions on proposals submitted by the United States to amend Appendices I and II. These proposals will be considered for adoption at the Fifth Regular Meeting of the Conference of the Parties. The meeting is scheduled for April 22–May 3, 1985, in Buenos Aires, Argentina.

DATE: The proposals announced in this notice were received by the CITES Secretariat on November 23, 1984, in order to be considered at the meeting in Buenos Aires.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, in room 537, 1717 H Street, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Jachowski, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION: The Service invited information and comments that would help in identifying potential U.S. proposals on February 24, 1984 (49 FR 6951). The resulting suggested proposals to amend CITES Appendices I and II were discussed in a notice on September 7, 1984 (49 FR 35390).

The present notice summarizes comments that were received on the suggested proposals and announces the Service's decisions on whether to submit them. Proposed amendments submitted by the United States and other Party countries will be subject to voting at the meeting of the Parties in Buenos Aires. The Service will publish a notice in the Federal Register to announce the results of the voting. Amendments that are accepted by the Conference of the Parties will enter into force 90 days after the meeting, except for those Parties that enter a reservation with respect to the inclusion of particular species in Appendix I or II.

Decisions about suggested U.S. proposals discussed in the previous notice of September 7, 1984, are as follows:

1. Northern elephant seal (*Mirounga angustirostris*)—The U.S. National Marine Fisheries Service has recommended that this species be proposed for removal from Appendix II. The Fish and Wildlife Service received information from the Australian National Parks and Wildlife Service and from the Direccion Nacional de Fauna Silvestre of Argentina concerning the southern elephant seal (*M. leonina*), which also is listed in Appendix II. There is no known international trade in either species. The CITES Management Authorities of Australia and Norway indicated no problems with delisting the northern elephant seal. However, the CITES Management Authority for Argentina suggested postponing its delisting for several years because of uncertainty about whether harvesting of the southern elephant seal might resume (exploitation ceased in 1961). The Curator of Ornithology of the New York Zoological Society suggested retaining the northern elephant seal in Appendix II because it would require some monitoring of the species' status and because delisting could lead to exploitation of the southern species. TRAFFIC (U.S.A.) commented that no trade has been documented for northern elephant seals, but that difficulties of distinguishing among parts and products of different seal species may warrant maintaining the species in Appendix II. TRAFFIC (U.S.A.) also noted that Mexico, which harbors a major population of northern elephant seals, is not a Party to CITES, "which makes that country's effectiveness at controlling general wildlife trade difficult to judge."

The Service has considered these comments and has decided to submit the proposal for consideration at Buenos Aires. The prohibitions against harvesting both species of elephant seals have been in effect for many years and the Parties have recorded no trade in either species since CITES entered into force. Inclusion of the northern elephant seal in Appendix II has no relation to the ongoing monitoring of its population status or to the effective protection conferred on this species by the Mexican and U.S. Governments.

There is no indication that exploitation of southern elephant seals will resume; if that were to happen, and if it became necessary to include the northern species because of similarity in appearance, it is always possible to place the latter species again in Appendix II.

2. Red-kneed tarantula spider (*Brachypelma smithi*)—The Service received several comments on a draft proposal submitted by the Environmental Defense Fund to add this species to Appendix II. The author of the entry for this species in *The IUCN Invertebrate Red Data Book* (1983), Dr. N. M. Collins, commented that listing should proceed only if the Mexican Government supports it as a means of enhancing the effectiveness of their law. He noted that "there is as yet no evidence that the spider is harmed by the trade, and if the Mexican authorities would prefer to carry out detailed research before reaching a decision on the CITES listing, nothing should be done to jeopardize that research." Dr. Jose G. Palacios-Vargas of the Universidad Nacional Autonoma de Mexico wrote in support of the proposal, as did Dr. Carlos E. Valerio of the Universidad de Costa Rica, Drs. Vincent D. Roth and Willis J. Gertsch of the Southwestern Research Station in Arizona, and TRAFFIC (U.S.A.).

The Service has decided to submit this proposal, recognizing that there is little information about the effect of trade on the species. Comments from the Government of Mexico have been requested, and will be considered prior to final action on the proposal in Buenos Aires.

3. Cycad plants in the genus *Ceratozamia*—The Service received two comments on a draft proposal submitted by TRAFFIC (U.S.A.) to transfer *Ceratozamia* spp. from Appendix II to Appendix I. The proposal is supported by the Natural Resources Defense Council and by Dr. D.W. Stevenson, a specialist in Cycadales at Barnard College of Columbia University and associated with the New York Botanical Garden. The Service has decided to submit this proposal.

4. Parts and derivatives of plants included in Appendix II—The Service received three comments regarding a possible proposal to amend the listing of plants included in Appendix II. The proposal would implement part of a resolution of the Conference of the Parties to CITES on this subject (Conf. 4.24), which urged that all readily recognizable parts and derivatives of Appendix II plants be subject to CITES unless they are specifically exempted. The Service has decided to submit the following proposal:

Specify all readily recognizable parts and derivatives of each plant species as included in Appendix II in relation to the species, except for the following:

(1) Seeds, spores, and pollen (including pollinia);

(2) Tissue cultures and flasked seedling cultures;

(3) Parts of derivatives of particular plant species:

(a) exempt cut flowers of artificially propagated Orchidaceae spp. from inclusion in CITES; and

(b) do not exempt seeds of the following Appendix II taxa from inclusion in CITES: *Agave victoriae-reginae, Shortia galacifolia, Kalmia cuneata, Lewisia* spp., Cycadaceae spp., Stangeriaceae spp., and Zamiaceae spp.;

(c) exempt separate leaves and parts and derivatives thereof of naturalized or artificially propagated *Aloe vera* from inclusion in CITES;

(d) exempt fruits and parts and derivatives thereof of artificially propagated *Vanilla* spp. from inclusion in CITES;

(e) exempt parts and derivatives, other than roots and readily recognizable parts thereof, of *Panax quinquefolius* (American ginseng) from inclusion in CITES; and

(f) exempt fruits and parts and derivatives thereof of naturalized or artificially propagated Cactaceae spp., and separate stem joints (pads) and parts and derivatives thereof of naturalized or artificially propagated *Opuntia* subgenus *Opuntia* spp. (prickly pear cactus) from inclusion in CITES.

The Natural Resources Defense Council (NRDC) commented in support of the implementation of Conf. 4.24, to add most parts and derivatives of most Appendix II plants, exempting seeds, spores, tissue cultures, and cut flowers of artificially propagated orchids. In addition, NRDC suggested exemption of: derivatives of *Aloe vera* (accepted as to leaf derivatives); vanilla beans and derivatives (accepted); teas and other products containing *Panax quinquefolius* (accepted); and cut pads of a species of *Opuntia* that is widely cultivated for consumption (accepted). NRDC also suggested exempting derivatives of *Dioscorea deltoidea* and of *Saussurea lappa* (neither accepted). Roots of these two species have been regulated by CITES; both are native in India, and the *Dioscorea* ranges eastward into Napal and China. Both are used medicinally and for other purposes. The Service considers that India is in a better position to assess whether derivatives of these species can be exempted without detriment to wild populations. TRAFFIC (U.S.A.) has advised the Service that earlier in 1984 Dr. M.P. Nayar, joint director of the Botanical Survey of India and also a member of the Plant Working Group of the Technical Committee of CITES, had indicated to TRAFFIC (U.S.A.) that it was probably necessary to regulate trade in derivatives of *Dioscorea deltoidea* (e.g. diosgenin) under CITES.

The American Orchid Society commented that pollen (including pollinia, or naturally clumped pollen) and artificially propagated orchids in flask should be exempt from CITES (accepted). The Cosmetic, Toiletry and Fragrance Association (CTFA) requested exemption of *Aloe vera* from regulation by CITES, or that parts and derivatives of this species not be regulated, or alternatively that categorical exemptions be made for leaves, cuttings and "pup" shoots of all Appendix II plants. The proposal of the United States meets the principal concerns of CTFA by exempting parts and derivatives traded because of the *Aloe vera* industry, which is based on crop-grown plants, while maintaining protection for the species in its natural wild habitat. The third alternative of CTFA would place other species of *Aloe* at risk, as well as other plants regulated by CITES, and is therefore not accepted. CITES does provide certificates to allow international trade in plants on Appendix II that are artificially propagated, which could readily accommodate any such trade in offsets (suckers or "pup" shoots) of cultivated *Aloe vera* used to replant the crop at 4–5 year intervals.

5. Psittacine birds (Psittaciformes spp.)—In its September 7, 1984, notice, the Service indicated that it did not intend to propose removing any psittacine bird species (parrots, cockatoos, macaws and their allies) from Appendix I or II. Comments in support of this decision were received from the American Association of Zoological Parks and Aquariums, the Zoological Society of Philadelphia, the Greater Baton Rouge Zoo, the Riverbanks Zoological Park, the Bronx Zoo, TRAFFIC (U.S.A.), and Monitor (on behalf of the Animal Welfare Institute, the Fund for Animals, Greenpeace, U.S.A., the Humane Society of the United States, the International Fund for Animal Welfare, and the Society for Animal Protective Legislation).

6. Naiad mussels (Unionidae spp.)—The listing of naiad mussels (family Unionidae) in Appendices I and II was discussed in the September 7, 1984, notice. In response, the Tennessee

Wildlife Resources Agency commented that the mussel fauna in Tennessee rivers, considered the most diverse in the world, has been reduced primarily through industrial and reservoir development and siltation, but not through harvest. Tennessee supplied information on its protection and management programs, and stated that inclusion of any additional mussel species in CITES appendices would provide no additional protection to the resource beyond that already given under state and Federal laws. TRAFFIC (U.S.A.), on the other hand, supported listing the family in Appendix II to allow more detailed monitoring of trade.

The service had decided not to propose any amendments to the appendices concerning naiad mussels at this time. Additional information is needed in order to assess whether to retain the present listings, to list all species of naiads in Appendix II, or to remove those species now listed from Appendices I and II.

7. American ginseng *(Panax quinquefolius)*—The Service announced in its notice of September 7, 1984, that it did not intend to propose removing the plant, American ginseng, from Appendix II. Comments in support of this decision were received from the Natural Resources Defense Council and from the Michigan Department of Natural Resources, which noted that current findings by the Service on the export of ginseng provide support for state conservation efforts on behalf of the species.

In summary, the service is submitting the following proposals for consideration at the Fifth Meeting of the Conference of the Parties to CITES:

1. *Mirounga angustirostris* (northern elephant seal)—remove from Appendix II.

2. *Brachypelma smithi* (red-kneed tarantula spider)—Add to Appendix II.

3. *Ceratozamia* spp. (Ceratozamia cycads)—transfer from Appendix II to Appendix I.

4. Parts and derivatives of plants listed in Appendix II—include all readily recognizable parts and derivatives under CITES regulation except for certain specified parts and derivatives.

Copies of these proposals are available from the Office of Scientific Authority (see address above).

The Service will publish a notice announcing proposals by other Party countries after it receives information about those proposals from the CITES Secretariat. In that notice, the Service will invite information and comments for use in the development of negotiating positions for the U.S. delegation to the meeting of the Parties.

This notice was prepared by Drs. Richard L. Jachowski and Bruce MacBryde, Office of Scientific Authority, under the authority of 16 U.S.C. 1531 *et seq.*

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine Mammals, Plants (agriculture), Treaties.

Dated: December 11, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-32627 Filed 12-13-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 222

[Docket No. 40805-4105]

Endangered Fish or Wildlife; Certificates of Exemption for Certain Holders of Finished Scrimshaw Products

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

ACTION: Proposed rule and request for comments.

SUMMARY: NOAA proposes this rule to implement, in part, the Endangered Species Act Amendments of 1982 concerning certificates of exemption for certain holders of finished scrimshaw products. This rule would amend the regulations on certificates of exemption to make them conform with the current state of the law, and change the recordkeeping and reporting requirements, as well as the application procedure for renewal of a previously issued certificate of exemption.

DATE: Comments must be received on or before January 14, 1985.

ADDRESS: Comments may be mailed to the Enforcement Division (F/Mx1), National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Bennett (Enforcement Division), 202 634-7265, or Ms. Linda Marks (Office of General Counsel), 202 254-8350.

SUPPLEMENTARY INFORMATION: .

Background

NMFS enforces the Endangered Species Act of 19173 as amended (the Act), with respect to, but not limited to, all species of whales of the order Cetacea. The aspect that is affected by these amendments is the certificates of exemption issued to dealers in scrimshaw made from whale teeth, whale bone, and baleen.

On July 12, 1976, Congress passed an amendment to the Act (Pub. L. 94-359) that allowed persons who held quantities of endangered species parts prior to December 28, 1973, to obtain a certificate of exemption to sell their stocks through exportation or interstate commerce. Certificate holders were given three years from the date of issuance of a certificate of exemption for them to sell their pre-Act inventories. In the June 22, 1977, issue of the **Federal Register** (42 FR 28137-41), NMFS published a final rule regarding certificates of exemption.

Congress again amended the Act on December 28, 1979 (Pub. L. 96-159), to allow persons issued an original certificate of exemption, under the 1976 amendments (Pub. L. 94-359), to apply for an extension of their certificates of up to three additional years from the date of expiration of the original certificate (45 FR 57132).

Despite the limited number of certificates in existence, the whale ivory inventories were not used up. On October 13, 1982 (Pub. L. 97-304), Congress directed the Secretary of Commerce to carry out a comprehensive review of the regulations governing the administration and enforcement of the certificate of exemption program, and to submit a report of such review to the House Committee on Merchant Marine and Fisheries, and to the Senate Committee on the Environment and Public Works. Congress also provided that the regulations be revised as deemed "necessary and appropriate." Congress provided that the Secretary of Commerce could renew the certificates for a period not to exceed three years. Copies of the report are available from NMFS at the address given above.

These regulations amend the definition of "scrimshaw product" to conform to the definition in the act. They require certificate holders who apply for a renewal to inventory their stock and number each item. The inventories will be submitted with the application for renewal and will be used to monitor the quantity of stock. The regulations no longer require a certificate holder to provide interstate purchasers with a copy of their certificate of exemption. This change was made to reduce the possibility of unlawful trading using certificates of exemption. Instead, certificate holders

must provide purchasers of exempt pre-Act endangered species parts with written notification of an item's inventory number, and inform purchasers who are not ultimate users of their obligation to report to NMFS.

Certificate holders will now be required to submit quarterly reports identifying sales or transfers of pre-Act parts. The previous regulations imposed similar recordkeeping requirements, and provided that such records could be requested by the Assistant Administrator for Fisheries. The new regulations imposed an affirmative reporting requirement in order to respond to the concerns of Congress that there be a "tightening" of the reporting and recordkeeping requirements.

Classification

NOAA's Administrator has determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291 because the rule directly affects only a small number of entities (less than 50) and, therefore, is not likely to result in an annual effect on the economy of $100 million or more; also the rule is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, state or local governmental agencies, or geographic regions. Further, the rule is not likely to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because it grants a privilege or exemption to a limited number of people and the costs of compliance and recordkeeping are nominal. Also, this proposed rule is essentially a restatement and extension of an existing rule.

The collection of information and reporting for certificates of exemption has been approved by the Office of Management and Budget under OMB No. 0648-0078. OMB approved, in April 1984, the additional reporting requirements specified in this rule.

List of Subjects In 50 CFR Parts 217 and 722

Administrative practice and procedure, Permits, Endangered fish or wildlife Reporting and recordkeeping requirements.

Dated: December 10, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management.

For the reasons set forth in the preamble, 50 CFR Parts 217 and 222 are proposed to be amended as follows:

PART 217—GENERAL PROVISIONS

1. The authority citation for Part 217 is amended to read as follows:

Authority: 16 U.S.C. 1531-1543; and 16 U.S.C. 742a *et seq.*, unless otherwise noted.

2. Section 217.12 is amended by revising the definition of "Scrimshaw Product" to read as follows:

§ 217.12 Definitions.

* * * * *

"Scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth or any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding or minor superficial markings does not constitute substantial etching, engraving or carving.

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for Subpart B of Part 222 is amended to read as follows:

Authority: 16 U.S.C. 1531-1543.

2. In § 222.11-1, remove from paragraph (a) the phrase "except for importation," remove from paragraph (a)(2) the word "to" between the words "ship" and "interstate" and insert in its place the word "in," and add a new paragraph (c) to read as follows:

§ 222.11-1 General certificate of exemption requirements.

* * * * *

(c) After January 31, 1984, no person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid certificate of exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

§ 222.11-3 [Amended]

3. In § 222. 1-3, remove from paragraph (a)(1) the phrase "Pub. L. 96-159" and insert in its place the phrase "Pub. L. 79-304,", remove from paragraph (a)(4) the word "original" and insert in its place the phrase "previous renewal of the," add in paragraph (a)(6) the phrase "Pub. L. 97-304, 95 Stat. 715," after the phrase "93 Stat. 1225," and add in paragraph (a)(5) after the first sentence the following: "Each item on the inventory must be serial numbered and accurately described in sufficient detail as to permit ready identification of the item. However, small lots, not exceeding five pounds, of scraps and pieces of raw material may be identified by a single serial number, and all subsequent finished scrimshaw items from that lot must be identified by the lot serial number plus a digit to signify the piece number of the particular finished item."

4. Section 222.11-8 is revised to read as follows:

§ 222.11-8 Purchaser provisions.

(a) Any person granted a certificate of exemption, including a renewal, under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including serial number) of the part sold, and the number of the certificate it is included in, and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(b) Any purchaser of pre-Act endangered species parts included in a valid certificate of exemption, unless an ultimate user, must within 30 days after the receipt of such parts submit a written report to the address given in the certificate specifying the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. An ultimate user, for purposes of this paragraph, means any person who acquired such endangered species part or product for his own consumption or personal use (including as gifts), and not for resale.

(c) After January 31, 1984, no such purchaser may export; deliver, receive, carry or transport in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered species part or product even though such part or product was acquired under a certificate of exemption either prior to or subsequent to that date.

5. Section 222.11–9 is revised to read as follows:

§ 222.11–9 Duration of certificate of exemption.

A certificate of exemption is valid only if renewed in accordance with the procedures set forth in § 222.11–3 of this part. However, no renewal is valid for more than three years from the initial expiration date of the previous renewal of the certificate of exemption. A renewed certificate of exemption entitles the holder to engage in the business or activity specified in the certificate of exemption, within the limitations of the Act and the regulations contained in this subpart, for the period stated in the certificate of exemption, unless sooner terminated.

6. Section 222.12 is revised to read as follows:

§ 222.12 Locations covered by certificate of exemption.

The certificate of exemption covers the business or activity specified in the certificate of exemption at the address described therein. No certificate of exemption is required to cover a separate warehouse facility used by the certificate of exemption holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the certificate of exemption and which is served by such warehouse or storage facility.

§ 222.12–1 [Amended]

7. In § 222.12–1, remove the word "subsequent" from the last sentence.

§ 222.12–6 [Amended]

8. In § 222.12–6, remove the word "subsequent."

§ 222.12–7 [Amended]

9. In § 222.12–7, remove the word "subsequent" in the phrase "of a subsequent purchaser . . ."

10. Section 222.12–8 is revised to read as follows:

§ 222.12–8 Record of receipt and disposition.

(a) Each holder of a certificate of exemption must maintain records of all pre-Act endangered species parts he receives, sells, transfers, distributes or disposes of otherwise. Each purchaser of pre-Act endangered species parts, unless an ultimate user, must similarly maintain records of all such parts or products he receives.

(b) Such records as referred to in paragraph (a) of this section may consist of invoices or other commercial records which must be filed in an orderly manner separate from other commercial records maintained, and be readily available for inspection. Such records must (1) show the name of the purchaser, seller, or other transferor; (2) show the type, quantity, and identity of the part or product; (3) show the date of such sale or transfer; and (4) be retained, in accordance with the requirements of this subpart, for a period of not less than three years following the date of the sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a certificate of exemption.

(c)(1) Each certificate of exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (b) of this section, on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other record information the Assistant Administrator may specify from time to time.

(2) Quarterly reports are due on January 15, April 15, July 15 and October 15. The first report is due on January 15, 1985.

* * * * *

[FR Doc. 84–32583 Filed 12–13–84; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 49, No. 242
Friday, December 14, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide; Meeting

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Stevens Point, Wisconsin, is announcing a public information meeting to discuss its draft Natural Resource Management Guide.

DATES: Meeting on January 16, 1985, 10:00 a.m. to 12:00 p.m.

Comments must be received no later than February 15, 1985.

ADDRESSES: Meeting location at FmHA, 1257 Main Street, Stevens Point, Wisconsin 54481.

FOR FURTHER INFORMATION CONTACT: Written Comments and Further Information Will be Addressed to: State Director, FmHA, 1257 Main Street, Stevens Point, Wisconsin 54481 (715–341–5900).

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's Wisconsin 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 Wisconsin. 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: December 11, 1984.

David J. Howe,

Director Program Support Staff.

[FR Doc. 84–32685 Filed 12–13–84; 8:45 am]

BILLING CODE 3410–07–M

Federal Grain Inspection Service

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Gibson City Grain Inspection Department (IL), Indianapolis Grain Inspection & Weighing Service, Inc. (IN), and Wyoming Department of Agriculture (WY)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Correction of notice and extension of comment period.

SUMMARY: This notice corrects the November 28, 1984, **Federal Register** notice requesting comments from interested parties on the applicants for official agency designation in the areas currently assigned to Gibson City Grain Inspection Department, Indianapolis Grain Inspection & Weighing Service, Inc., and Wyoming Department of Agriculture. The notice is corrected to reflect that two applicants instead of one applied for designation in the Indianapolis area.

DATE: Comments to be postmarked on or before January 28, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUMMARY: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The October 1, 1984, issue of the **Federal Register** (49 FR 38683) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) [Act], in the areas currently assigned to the official agencies. Applications were to be postmarked by October 31, 1984.

The November 28, 1984, issue of the **Federal Register** (49 FR 46774) contained a notice requesting comments on the applicants for designation. Only one applicant was referenced for the area currently serviced by Indianapolis Grain Inspection & Weighing Service, Inc. However, an additional applicant for that area was inadvertently omitted. Dan W. Gross, doing business as Winchester Grain Inspection applied for designation in this entire area. Indianapolis Grain Inspection & Weighing Service, Inc., applied for renewal of designation.

As stated in the November 28, 1984, **Federal Register** notice, Donald Swanstrom, doing business as Gibson City Grain Inspection Department, and Wyoming Department of Agriculture, the only applicants for each respective designation, requested designation for the entire geographic area currently assigned to each of those agencies.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. In view of this correction, the comment period will be extended to terminate 45 days after publication of this notice. Accordingly, all comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice, and postmarked not later than January 28, 1985.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: December 10, 1984.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 84-32593 Filed 12-13-84; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-405-401]

Carbon Steel Plate From Finland; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that carbon steel plate from Finland is being sold, or is likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination and the ITC will determine, within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise, and to require a cash deposit or posting of a bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins, 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) 377-1756.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that carbon steel plate from Finland is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). We found that the foreign market value of carbon steel plate from Finland exceeded the United States price on 100 percent of the sales compared. These margins ranged from 4.6 to 45.9 percent. We made comparisons on over 62 percent of the sales. The weighted-average margin on all sales compared is 12.3 percent.

Case history

On February 10, 1984, we received a petition from United States Steel Corporation of Pittsburgh, Pennsylvania, filed on behalf of the U.S. industry producing carbon steel plate. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of carbon steel plate from Finland are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated the investigation on March 1, 1984 (49 FR 8973). On March, 26, 1984 (49 FR 13442), the ITC found that there is a reasonable indication that imports of carbon steel plate from Finland materially injure, or threaten material injury to, a United States industry.

We presented a questionnaire to counsel for Rautaruukki Oy (Rautaruukki) on March 12, 1984. Rautaruukki is the only known producer that exported the subject merchandise to the United States during the period of investigation. Due to the large number of sales transactions, we instructed Rautaruukki to report its home market and U.S. sales transactions in hard copy and on computer tape in the format outlined in our questionnaire. We received Rautaruukki's response to our questionnaire on April 30, 1984. We outlined several deficiencies in the computer response and requested that the company provide us additional information. Additional information supplied by respondent as of July 5, 1984, did not resolve difficulties with the tapes. In view of the lack of time to obtain and analyze a new computer tape, we used as "best information available" information submitted by the respondent in its hard copy listing of sales for our preliminary determination. On July 19, 1984, we made a preliminary determination that carbon steel plate from Finland was being, or was likely to be, sold in the United States at less than fair value (49 FR 29986). As required by the Act, we afforded interested parties an opportunity to submit oral and written views. On August 6, 1984, counsel for respondent requested an extension of our final determination date of October 2, 1984. We granted an extension until not later than December 7, 1984 (49 FR 45469). On August 10, 1984, representatives from Rautaruukki supplied us with the additional computer information that was needed to process the company's computer tapes and retrieve the home market and U.S. sales data requested in our questionnaire. During the week of September 5, 1984, we conducted a verification at the company's offices in Oulu and Helsinki, Finland.

On September 11, 1984, U.S. Steel amended its petition to include an allegation that "critical circumstances" exist with respect to imports of carbon steel plate from Finland. On October 12, 1984, we made a preliminary negative determination regarding the existence of critical circumstances (49 FR 40634). At the request of counsel for the respondent, we held a public hearing on September 21, 1984, to allow the parties an opportunity to address the issues arising in the investigation.

Scope of Investigation

The merchandise covered by this investigation is carbon steel plate. Carbon steel plate covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; 0.1875 inch or more in thickness and over 8 inches in width. In is classified under item numbers 607.6620 and 607.6625 of the *Tariff Schedules of the United States Annotated (TSUSA).*

Semi-finished products of solid rectangular cross section with a width at least four times the thickness and processed only through primary mill hot-rolling are not included. This investigation covers the period from September 1, 1983, through February 29, 1984.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value, as explained below.

United States Price

As provided for in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to related

purchasers prior to its importation into the United States.

We calculated the purchase price on the basis of the c. & f., packed price to an unrelated U.S. distributor. We made deductions for ocean freight charges.

Rautaruukki's computerized bookkeeping system did not include the actual dates of sale. Verification of selected invoices indicated that the actual dates of sale averaged two months prior to the dates reported in Rautaruukki's system. Thus, for purposes of establishing the dates of sale, we are using as best information available dates two months prior to those reported in the response.

Foreign Market Value

As provided for in section 773 of the Act, we based foreign market value on delivered, packed prices to unrelated home market purchasers. In accordance with section 771(16)(B) of the Act, we made comparisons of "such or similar" merchandise based on quality, width, thickness, and lenth categories, as determined by our Commerce Department industry expert. Since all sales to the United States were made to distributors, we limited our comparisons to home market sales to distributors. In calculating foreign market value, we made currency conversions from Finish Markka to U.S. dollars in accordance with § 353.56(a)(1) of our regulations, using the appropriate certified exchange rates.

We made deductions, where appropriate, for foreign inland freight, discounts, and rebates. We made adjustments where appropriate for credit expenses, advertising expenses attributable to a later sale of the merchandise by a purchaser, and claimed warranty expenses, which were directly related to the sales under consideration.

We disallowed the following deductions and adjustments claimed by Rautaruukki. We did not deduct a special discount to distributors because we were unable to verify payment of the amount claimed. We made no circumstance-of-sale adjustment for technical service expenses because Rautaruukki could not demonstrate that these expenses were directly related to the sales under consideration. We did not allow a claimed adjustment for small consignment surcharge because charges of this type could not be verified for home market sales of the merchandise under investigation. We limited the allowance for quantities to quantity rebates actually granted on home market sales since the respondent did not present cost justification for additional rebates (19 CFR 353.14(b)(2)).

Petitioner's Comments

Comment 1—Petitioner contends that respondent has not submitted the necessary information needed by the Department to make a final determination on whether sales are made at less than fair value.

DOC Position—Since our preliminary determination Rautaruukki has provided additional information which we determined forms the proper basis for our fair value comparisons. We based our calculations on the response and information developed during the verification of the response.

Comment 2—Petitioner contends that respondent failed to provide data regarding product comparability.

DOC Position—Based on information submitted by the respondent, we were able to make comparisons of "such or similar" merchandise based on quality, width, thickness, and length categories, as determined by our Commerce Department industry expert, for over 60 percent of the sales. The U.S. sales compared were those of ASTM A36 and ASTM A283, which comprised over 90 percent of the merchandise sold in the United States during the period of investigation. Because we did not have quantified adjustments for the differences in merchandise for the balance of U.S. sales, they were not used in making our fair value comparisons.

Respondent's Comments

Comment 1—Respondent contends that there are different terms and conditions of sale for home market purchasers, depending on their status as distributors or end-users. Therefore, because all U.S. sales are made through a distributor, comparison of U.S. price with foreign market value should be made at the same commercial level of trade.

DOC Position—We agree with respondent. We compared U.S. sales to sales to distributors in the home market.

Comment 2—Respondent argues that an adjustment is warranted to foreign market prices for rebates and discounts given to home market distributors.

DOC Position—We have granted adjustments to foreign market prices for those rebates and discounts which were verified as having actually been granted. See the previous section on foreign market value for an explanation of these adjustments.

Comment 3—Respondent contends that "second choice" material is the result of overrolling and differs from prime material only in that it is often available in off-gauge sizes.

DOC Position—The Department has verified that the price of "second choice" plate to distributors is lower than the price of plate made specifically to order. Respondent did not, however, quantify the differences in production costs attributable to "second choice" and prime material; therefore, we could not use these sales for our comparisons.

Final Determination of Critical Circumstances

Petitioner alleges that imports of carbon steel plate from Finland present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings. Our analysis indicated that imports from Finland decreased during the period February through July 1984.

Based on our review of the relevant factors, we find that there have not been massive imports of carbon steel plate from Finland over a relativelyshort period of time. Therefore, for the reason described above, we determine that critical circumstances do not exist with respect to carbon steel plate from Finland.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making this final determination by using standard verification procedures, which included on-site inspection of the manufacturer's facilities and examination of company records and selected original source documentation containing relevant information.

Suspension of Liquidation

In accordance with section 733(d) of the Act, on July 25, 1984, we directed the United States Customs Service to continue to suspend liquidation of all entries of carbon steel plate from Finland as described in the "Scope of Investigation" section of this notice. As of the date of publication of this notice in the Federal Register, the liquidation of all entries, or withdrawals from warehouse, for consumption, of this merchandise shall continue to be suspended. The Customs Service shall require a case deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margin is 12.3 percent.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry, within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess antidumping duties on carbon steel plate from Finland, as appropriate.

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc 84-32568 Filed 12-13-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-035]

Vitamin K From Spain; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of request by the Government of Spain, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on vitamin K from Spain would not cause, or threaten to cause, material injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise on or after June 21, 1982, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Alan Long or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On November 16, 1976, the Treasury Department published in the Federal Register a countervailing duty order on vitamin K from Spain (41 FR 50419).

On June 21, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Spanish government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On November 9, 1984, the ITC notified the Department of its determination (49 FR 43811) that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of vitamin K from Spain if the order were revoked. As a result, the Department is revoking the countervailing duty order concerning vitamin K from Spain with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 21, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: December 9, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-32619 Filed 12-13-84; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Cotton Textile Products From the Republic of Korea

December 11, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 20, 1984. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

A CITA directive dated December 29, 1983 (49 FR 492) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 314 (poplin and broadcloth) and 315 (printcloth), produced or manufactured in the Republic of Korea and exported during the agreement year which began on January 1, 1984. The limit established for Category 314 has been filled for the year; however, it has been determined that imports in the amount of 404,489 square yards are improperly charged to the limit for Category 314. It has been determined further that a portion of these charges, amounting to 138,889 square yards, should have been charged to the limit for Category 315. Accordingly, the letter which follows this notice directs the Commissioner of Customs to deduct 404,489 square yards from the imports charged to the limit for Category 314 and increase by 138,889 square yards the imports charged to

Category 315. This latter charge will fill the 1984 limit for Category 315.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), and November 9, 1984 (49 FR 44782).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 11, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury Washington, D.C.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982 between the Governments of the United States and the Republic of Korea, I request that, effective on December 20, 1984, you deduct 404,489 square yards from imports charged to the restraint limit established for cotton textile products in Category 314, produced or manufactured in Korea and exported during 1984.

I further request that, effective on December 20, 1984, you charge 138,889 square yards to the restraint limit established for cotton textile products in Category 315.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-32569 Filed 12-11-84; 10:57 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before January 14, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426-7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: December 11, 1984.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Elementary and Secondary Education

Type of review Requested: Revision
Title: Application for Assistance for Local Educational Agencies in Areas Affected by Federal Activities
Agency Form Number: ED 4019
Frequency: Annually
Affected Public: Individual households; State and Local Governments
Reporting Burden: Responses: 3,003,300; Burden Hours: 327,360
Recordkeeping Burden: Recordkeepers: 3,300; Burden Hours: 3,300

Abstract: This form reflects a correction of Table 8 and deletion of Table 11 of an application for local educational agencies requesting Federal funds to provide free public education for children with a parent residing or employed (or both) on Federal property, or for payments in lieu of taxes.

[FR Doc. 84-32615 Filed 12-13-84; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

Grant Applications; Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application Notice Establishing Closing Date for Transmittal of Fiscal Year 1985 New Grant Applications.

SUMMARY: Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program.

Grants for the Training Personnel for the Education of the Handicapped program are authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act.

(20 U.S.C. 1431, 1432, 1434)

The purpose of the program is to increase the quantity and improve the quality of personnel to educate handicapped children and youth.

Applications may be submitted by State educational agencies, institutions of higher education, and other appropriate nonprofit agencies.

Closing date for transmittal of applications: An application for a new award must be mailed or hand delivered on or before March 21, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Available funds: An applicant for a grant may propose a project period of up to 36 months. Generally, awards will be made for a period of 24 to 36 months. It is expected that funding will be available to award new grants at the funding levels indicated under the application notice for each priority. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Priorities for funding: The regulations provide that the Secretary, in any fiscal year, may select one or more of the ten published priorities, or any combination of priorities for competition. In fiscal year 1985, separate competitions will be held in the following selected priority areas included under § 318.11 of the regulations. Applications which do not address the selected priorities will not be considered.

84.029D—Preparation of Leadership Personnel

Program information: This priority supports doctoral and post-doctoral preservice preparation of professional personnel to conduct training of teacher trainers, researchers, administrators, and other specialists. Programs must meet state and professionally recognized standards for the training of personnel.

Available funds: About $1,000,000 of the funds made available for new Training Personnel for Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average grant is expected to be about $67,000.

84.029H—State Educational Agency Programs

Program information: This priority supports State educational agencies in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children and youth, or supervisors of such teachers. Projects must deal with highest priority Statewide training in the areas of need identified by the State comprehensive system of personnel development under 34 CFR 300.380–300.387. Only State educational agencies are eligible to submit applications under this priority.

Available funds: About $500,000 of the funds made available for new Training Personnel for Education of the Handicapped awards for fiscal year 1985 will be made available for this priority. The average grant is expected to be about $65,000.

Application forms: Application forms and program information packages for new applications are scheduled to be available for mailing on January 15, 1985. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4628), Washington, D.C. 20202. Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed 20 pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). The Secretary published final regulations for the program on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller, Director, Division of Personnel Preparation, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, D.C. 20202. Telephone: (202) 732–1069.

(20 U.S.C. 1431, 1432, 1434)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: December 6, 1984.

T.H. Bell,

Secretary of Education.

[FR Doc. 84-32616 Filed 12-13-84; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Transmittal of Applications for Fellowships for Fiscal Year 1985

Applications are invited for new projects for Fellowships in Handicapped Research under the National Institute of Handicapped Research (NIHR).

Authority for this program is contained in Section 202(d), of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 761a(d).

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before February 28, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133F, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as

proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

NIHR has reserved funds to award approximately 12 fellowships in 1985. It is anticipated that six Distinguished Fellowships with stipends of $30,000 each and six Merit Fellowships with stipends of $25,000 will be awarded. However, the Secretary may award more than six fellowships in one category if there are not sufficient applicants rated as Outstanding or Superior in the other category. All fellows will receive, in addition to the stipend, a flat rate allowance of $1,500 to be used for expenses in connection with the fellowship.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

All fellowships will be for a one-year period. NIHR anticipates that awards will be made by April 1, 1985 and that fellowship periods will begin between July 1, 1985 and September 30, 1985, as determined by NIHR and the individual fellow.

Program Information

The National Institute of Handicapped Research (NIHR) is authorized to support research and related activities under several program authorities. This notice requests applications under the Fellowship Program, which was established by NIHR in 1983. The purpose of this program is to build research capacity in the field and to allow the Secretary to obtain the services of highly qualified researchers to perform research activities contributing to the solution of the problems confronting disabled individuals.

Fellows may conduct research in any areas included in section 204 of Title II of the Rehabilitation Act, as amended. Under this program, fellowship awards will be made to highly qualified individuals whose training and experience indicate a potential for engaging in scientific research related to the rehabilitation of handicapped individuals.

NIHR intends to award both Distinguished and Merit Fellowships. Individuals with seven or more years of experience in relevant research areas may apply for Distinguished Fellowships. Highly qualified individuals with less experience are eligible for Merit Fellowships. (See 34 CFR 356.2(c)). Fellows may work at any setting which is appropriate to the conduct of the research.

Individuals applying for research fellowships will be evaluated on the basis of: Quality and level of formal education; work experience; recommendations of former or current supervisors and colleagues; and a research proposal submitted to NIHR. Fellowship applications will be evaluated in accordance with the peer review requirements governing NIHR's research fellowship program. Prospective applicants should consult the criteria by which the Secretary evaluates fellowship applications. These criteria are included in the application kits.

Fellows are required to submit a final report which contains, at a minimum, an analysis of the significance of the project and an assessment of the degree to which the objectives of the project have been achieved. Publication, distribution, and disposition of all manuscripts and other materials resulting from a fellowship must acknowledge assistance received from the Department of Education and from NIHR. Three copies of these publications or other materials must be furnished to NIHR.

Fellows may be required to attend one or more meetings, at the invitation and expense of the federal government, in connection with fellowship activities. Fellows are required to give a full-time level of efforts to the fellowship activity during the 12 month period.

Application Forms

Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit), Telephone (202) 732–1207. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. Request should refer to applications for Fellowships, 84.133F.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations. Applicants should note that proposals are limited to 12 pages for applications under this program (34 CFR 356.30).

In addition to the research proposal, applicants must also submit evidence of the quality and level of formal education, work experience, and recommendations of former or current supervisors and colleagues.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable Regulations

The following regulations are applicable to this program:

National Institute of Handicapped Research Regulations (34 CFR Part 356).

FOR FURTHER INFORMATION CONTACT: Ms. Rheable Edwards, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3518, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732–1200; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: December 11, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84–32654 Filed 12–13–84; 8:45 am]

BILLING CODE 4000–01–M

National Institute of Handicapped Research; Application for Noncompeting Continuation Grants for Fiscal Year 1985

Applications are invited for noncompeting continuation awards for

Fiscal Year 1985 for several research authorities administered by the National Institute of Handicapped Research.

Authority for these programs is contained in sections 204(a), 204(b)(1), 204(b)(2), and 204(b)(5) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(a), 762(b)(1), 762(b)(2), and 762(b)(5).

Under these programs, awards are issued to States and public or private agencies and organizations, including institutions of higher education.

The purpose of the awards is to provide continuation support for Research and Demonstration Projects, Research and Training Centers, Rehabilitation Engineering Centers, and Knowledge Dissemination and Utilization Projects.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for a noncompeting continuation award should be mailed or hand delivered no later than 90 days prior to the end of the current budget period or 30 days from the date of this notice, whichever is later.

If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds

At this time, the amount of the Fiscal Year 1985 appropriation is undetermined. Approximately $30,000,000 is currently expected to be available for noncompeting continuation grants in Fiscal Year 1985. Approximately 85 grants are expected to be awarded; the grants will vary in size, with an approximate range of $50,000 to $725,000, depending on the scope of the individual grant.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application Forms

Only current grantees are eligible to apply. Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grants under this notice.

Applications must be prepared and submitted in accordance with the instructions and forms included in application packages. Applicants are urged not to submit information that is not requested.

However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations. The Secretary urges that applicants limit the number of pages in their applications as stated in the application kit. (Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable Regulations

The following regulations are applicable to these programs:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350, 351, 352, 353, and 355).

FOR FURTHER INFORMATION CONTACT: National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732–1210; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: December 11, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84–32650 Filed 12–13–84; 8:45 am]

BILLING CODE 4000–01–M

National Institute of Handicapped Research; Application for Noncompeting Continuation Grants for Field-Initiated Research Grants for Fiscal Year 1985

Applications are invited for noncompeting continuation awards for Fiscal Year 1985 for the Field-Initiated Research program under the National Institute of Handicapped Research.

Authority for this program is contained in sections 204(b)(1) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(b)(1)).

Under these programs, awards are issued to States and public or private agencies and organizations, including institutions of higher education.

The purpose of the awards is to provide continuation support for Field-Initiated Research projects.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, applications for a noncompeting continuation award should be mailed or hand delivered by January 18, 1985.

If the application is late, the Department of Education may lack sufficient time to review it and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133M, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds

NIHR has reserved $3,778,966 to fund the continuation of these awards. At present, NIHR expects to award approximately 42 continuations under this program. It is anticipated that continuation grants will be for the same dollar amounts as the original grant award.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

(Approved by the Office of Management and Budget under Control Number 1820-0027)

Application Forms

Only current grantees are eligible to apply. Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grants under this notice.

Applications must be prepared and submitted in accordance with the instructions and forms included in application packages. Applicants are urged not to submit information that is not requested.

However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations. The Secretary urges that applicants limit the number of pages in their applications.

(Approved by the Office of Management and Budget under Control Number 1820-0027)

Applicable Regulations

The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350, 351, and 357).

FOR FURTHER INFORMATION CONTACT: Ms. Edythe Glazer, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Mailstop 3070-2305, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732-1182; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

(29 U.S.C. 760-762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: December 11, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84-32652 Filed 12-13-84; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research; Application for Innovation Grants for Fiscal Year 1985

Applications are invited for new projects for Innovation Grants for Fiscal Year 1985 under the National Institute of Handicapped Research.

Authority for this program is contained in section 204(a) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 and Pub. L. 98-221 (29 U.S.C. 762(a)).

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered by March 1, 1985. The National Institute of Handicapped Research (NIHR) may convene peer review panels and award grants from time to time during the year, so that applicants may submit applications at any time up to the closing date. However, early submission does not necessarily commit the Department of Education to review or fund any applications before the final closing date.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133C, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building Number 3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

NIHR expects to fund approximately 10 Innovation Grants at a maximum of $50,000 for one year. These grants will be for periods not to exceed one year. NIHR has reserved $500,000 to fund grants under this program. However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is

otherwise specified by statute or regulation.

Program Information

In Pub. L. 98–221, the 1984 amendments to the Rehabilitation Act, Congress established a program of small grants (maximum $50,000 funding level), in order to: Test new concepts and innovative ideas; demonstrate research results of high potential benefits; purchase and evaluate prototype aids and devices; develop unique rehabilitation training curricula; and respond to the special initiatives of the Director of NIHR. This provision is being implemented here for the first time.

The proposed regulations which would govern this program were published in the **Federal Register** on November 23, 1984 at 49 FR 46244–46249. NIHR assumes that revisions to the proposed regulations will be minimal and unlikely to affect the form or content of grant applications. Thus, this notice informs potential applicants that they may submit their applications based on the provisions of the proposed regulations. NIHR will allow additional time for potential applicants to revise their applications if there are significant changes in the final regulations which would affect the evalution of the applications.

These grants are for the purpose of conducting research, demonstrations, planning and feasibility studies, curriculum development projects, evaluation of aids and devices, unique programs to disseminate research findings or define the state-of-the-art in specific problem areas, and evaluations of techniques or programs related to the vocational and general rehabilitation of disabled individuals, expecially the most severely handicapped. These grants may be used to investigate problems and solutions related to disabled persons of all ages and with all types of disabilities.

Application Forms

Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit). Telephone (202) 732–1207. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY service. Requests should refer to applications for Innovation Grants, 84.133C.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwrok, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary suggests that applicants limit the number of pages in their applications to 20 pages for the project narritive and 50 pages for the total application.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable Regulations

The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350 and 351, and proposed Part 358 as published on November 23, 1984 in the **Federal Register** at 49 FR 46244–46249).

Applicants should prepare their applications based on proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762)

Dated: December 11, 1084.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84–32655 Filed 12–13–84; 8:45 am]

BILLING CODE 4000–01M

National Institute of Handicapped Research; Application for Special Projects and Demonstrations for Spinal Cord Injuries

Applications are invited for new projects for the Special Projects and Demonstrations for Spinal Cord Injuries program for Fiscal year 1985 under the National Institute of Handicapped Research.

Authority for this program is contained in section 311(a) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 777(a)).

Closing Date for Transmittal of Applications

Applications for new awards msut be mailed or hand delivered on or before April 15, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133N, 400 Maryland Avenue, SW., Washington, D.,C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commerical carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an applicaiotn is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applciant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

NIHR has an appropriation of $5,000,000 for this program. The Secretary expects to fund up to 17 projects, with the range of funding for

individual projects to be from $300,000–$500,000.

However, these estimates do not bind the Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Program Information

In Pub. L. 98–221, the 1984 amendments to the Rehabilitation Act, Congress transferred a program of model spinal cord injury (SCI) demonstration projects from the Rehabilitation Services Administration to NIHR. While projects have been funded under the Model Spinal Cord Injury Systems program since 1970, the program has evolved on the basis of experience and Congressional interest. In Fiscal Year 1984, seventeen projects were funded under this program.

This is a program of research as well as a demonstration effort, as evidenced by the Congressionally-mandated objectives of research and evaluation of new clinical methods and techniques, collection of data related to cost effectiveness, and evaluation of new and innovative methods of service delivery.

The preliminary results and benefits of the model system have been widely disseminated, and new clinical research results are disseminated through the medical and scientific literature and professional conferences. Criteria used in evaluating these programs have been adopted by the Commission on Accreditation of Rehabilitation Facilities (CARF) and the American Spinal Injury Association (ASIA) for establishing national standards for all accredited spinal cord injury rehabilitation programs.

The proposed regulations which would govern this program were published in the **Federal Register** on November 23, 1984 at 49 FR 46244–46249. NIHR assumes that revisions to the proposed regulations will be minimal and unlikely to affect the form or content of grant applications. Thus, this notice informs potential applicants that they may submit their applications based on the provisions of the proposed regulations. NIHR will allow additional time for potential applicants to revise their applications if there are significant changes in the final regulations which would affect the evaluation of the applications. Applicants should note the page limits which apply to applications submitted under this program; this information is included in the application kit.

Some changes in the proposed evaluation criteria would emphasize a new scope of work. This scope of work emphasizes collaborative research and investigator-initiated clinical research to solve the medical management and rehabilitation problems of spinal cord injury. The concept of a Model System will be retained to facilitate continued study of service delivery issues. The Special Projects and Demonstrations also coordinate work with the NIHR spinal cord injury Research and Training Centers and focus on research efforts of mutual and complementary interest.

NIHR intends to fund SCI projects this year which will be more comprehensive in scope and will include the added emphasis on collaborative clinical research and evaluation. These grants are for the purpsoe of providing model rehabilitation services to SCI patients in a multidisciplinary setting, demonstrating and evaluating the benefits of a service system, conducting research and demonstrations concerning new and innovative treatment methods, and contributing to a national analysis of data on system results.

Application Forms

Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue SW., Washington, DC 20202 (Attention: Peer Review Unit), Telephone (202) 732–1207. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. Requests should refer to applications for Spinal Cord Injury Systems grants, 84.133N.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program instruction is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable Regulations

The following regulations are applicable to these programs:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350 and 351, and proposed Part 359 as published on November 23, 1984 in the **Federal Register** at 49 FR 46244–46249).

Applicants should prepare their applications based on the proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications to the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, DC 20202. Telephone (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762).

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: December 11, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 84–32653 Filed 12–13–84; 8:45 am]

BILLING CODE 4000–01–M

National Institute of Handicapped Research; Application for Field-Initiated Research for Fiscal 1985

Applications are invited for new projects for Field-Initiated Research grants for Fiscal Year 1985 under the National Institute of Handicapped Research.

Authority for this program is contained in sections 204 (a), 204(b), (3–5), 204 (b) (7–9) and 204 (b) (11) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(a), 762 (b) (3–5), 762 (b) (7–9), and 762 (b) (11).

Closing Date for Transmittal of Applications

Applications for grant awards must be mailed or hand delivered on or before March 1, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133G, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

In Fiscal Year 1985, NIHR expects to fund approximately 22 new Field-Initiated Research grants with an average amount of $75,000 per year for up to three years, assuming a sufficient number of eligible applications and continued availability of funds.

However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Program Information

The National Institute of Handicapped Research (NIHR) is authorized to support research and related activities under several program authorities. This notice requests applications under the Field-Initiated Research program, a program initiated in 1984 to encourage eligible parties to originate valuable ideas for research projects to further the purposes specified in the Act.

In 1984, NIHR received 372 applications under this program; 104 of those applications were rated as eligible for funding by the scientific peer review process, and NIHR was able to fund 47 of those projects.

The purpose of the awards is for planning and conducting research and demonstration projects in areas which have a direct bearing on the development of methods, procedures, and devices to assist in the provision of vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps. Potential applicants are advised to pay close attention to the regulations and selection criteria Field-Initiated Research; this information is included in the application kits.

Application Forms

Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit), Telephone (202) 732–1207. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. Requests should refer to applications for Field-Initiated Research grants, 84.133G.

Applications must be prepared and submitted in accordance with the regulations, instuctions, and forms included in the program information packages. Applicants should pay particular attention to the page limits for applications under this program.

However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

(Approved by the Office of Management and Budget under control number 1820–0027.)

Applicable Regulations

The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Parts 350 and 357).

FOR FURTHER INFORMATION CONTACT: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: December 11, 1984.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 84–32651 Filed 12–13–84; 8:45 am]

BILLING CODE 4000–01–M

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Application Notice for Non-competing Continuation Awards under the Comprehensive Program for Fiscal Year 1985.

SUMMARY: Applications are invited for non-competing continuation awards under the Comprehensive Programs of the Fund for the Improvement of Postsecondary Education.

The Secretary issues awards to institutions of postsecondary education and other public and private educational institutions and agencies for the purpose of improving postsecondary education.

Authority for this program is contained in Title X of the Higher Education Act, as amended. (20 U.S.C. 1135)

Closing Date for Transmittal of Applications: To be assured of consideration for funding, an application for a non-competing continuation award for a grant originally funded in 1983 should be mailed or hand delivered by January 15, 1985. Non-competing continuation awards for grants originally funded in 1984 should be mailed or hand delivered by March 1, 1985.

If the application is late, the Department of Education may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

Applications Delivered by Mail: An application delivered by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.116C, Washington, D.C. 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a mail receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applicants are encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Attention: 84.116C, 7th and D Streets, SW., Regional Office Building 3, Room 5673, Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information: Program information will be mailed to eligible applicants. Institutions currently receiving funds that satisfy the requirements of 34 CFR 75.253 concerning the continuation of multi-year projects are eligible to apply for continuation awards.

Available Funds: The Department of Education Appropriations Act, 1985, appropriated $12,710,000 for the Fund for the Improvement of Postsecondary Education for fiscal year 1985. Approximately $6,000,000 will be available for approximately 107 continuation awards under the Comprehensive Program. The estimated size of the continuation awards is between $5,000 and $200,000 for a 12-month period. In past years, awards have averaged $70,000 for a 12-month period.

Application Forms: Application forms, included in the program information packages, will be sent directly to all potential applicants that are eligible for a continuation award.

The program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition. (Approved by the Office of Management and Budget under Control Number 1840-0514)

Applicable Regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

(2) The regulations in 34 CFR Part 630.

For Further Information Contact: Fund for the Improvement of Postsecondary Education, Comprehensive Program Continuation Grants (84.116C); Telephone: (202) 245-6091.

(Catalog of Federal Domestic Assistance No. 84.116C, Fund for the Improvement of Postsecondary Education)

(20 U.S.C. 1135)

Dated: December 10, 1984.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 84-32710 Filed 12-13-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Inventory of Current Reporting and Recordkeeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of inventory of current Department of Energy energy information reporting or recordkeeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of an inventory of current energy information collections for which EIA is responsible for clearance through the Office of Management and Budget (OMB). DOE management and procurement collections, which are the responsibility of the Office of Management and Administration, will no longer be included in these notices.

The listing that follows this notice includes each energy information collection approved as of October 1, 1984. Part I lists each requirement associated with a structured form, showing the current DOE control or form number, the title of the requirement, and OMB control number and approval expiration date. Part II lists those recordkeeping and reporting requirements not associated with structured forms, showing also the appropriate Code of Federal Regulations citations.

FOR FURTHER INFORMATION CONTACT: Carolyn Sinclair, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue SW., Washington, DC. 20585, (202) 252-2313.

Information on the availability of single, blank information copies of those collections utilizing structured forms can be obtained by contacting the National Energy Information Center, EI-22, Forrestal Building, U.S. Department of Energy, Washington, DC. 20585, (202) 252-8800.

SUPPLEMENTARY INFORMATION: In an effort to keep respondents, users, and other interested parties informed concerning the status of these information collections subject to clearance by the Office of Management and Budget pursuant to the Paperwork Reduction Act, the Energy Information Administration will publish in the **Federal Register**, for each subsequent quarter of the current fiscal year, a notice of change to this inventory.

Issued in Washington December 7, 1984.

Albert H. Linden, Jr.,

Deputy Administrator, Energy Information Administration.

PART I.—DOE ACTIVE INFORMATION COLLECTIONS (UTILIZING STRUCTURED FORMS)

DOE No.	Title	OMB control No.	Expiration date
	Civilian Radioactive Waste Management		
NWPA-830R-G	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Quarterly Report—Standard Remittance Advice.	19010260	Apr. 30, 1986.
	Conservation and Renewable Energy		
CE-189C	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization Corporate Recovered Materials Utilization—Corporate Reporting Form.	19040044	Mar. 31, 1985.

PART I.—DOE ACTIVE INFORMATION COLLECTIONS (UTILIZING STRUCTURED FORMS)—Continued

DOE No.	Title	OMB control No.	Expiration date
CE-189P	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Plant Reporting Form.	19040044	Do.
CE-189S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Sponsor Reporting Form.	19040044	Do.
	Economic Regulatory Administration		
ERA-166	Public Utility Regulatory Policies Act (PURPA) Annual Report on Electric and Gas Utilities	19030060	Dec. 31, 1984.
ERA-330R	Electric Utility Conservation Plans	19030078	Oct. 31, 1984.
ERA-424D	Tertiary Project Annual Prepaid Expenses Report Form	19030069	Mar. 31, 1987.
ERA-781R	Annual Report of International Electrical Export/Import Data	19030080	July 31, 1985.
	Energy Information Administration		
EIA-1	Weekly Coal Monitoring Report—General Industries (Standby Form)	19050112	Nov. 30, 1985.
EIA-3	Quarterly Coal Consumption Report—Manufacturing Plants	19050115	Dec. 31, 1985.
EIA-4	Weekly Coal Monitoring Report—Coke Plants (Standby Form)	19050113	Nov. 30, 1985.
EIA-5	Coke Plant Report—Quarterly	19050003	Dec. 31, 1985.
EIS-5A	Coke Plant Report—Annual Supplement	19050013	Jan. 31, 1986.
EIA-6	Coal Distribution Report	19050005	Mar. 31, 1986.
EIA-7A	Coal Production Report	19050004	Aug. 31, 1986.
EIA-7A (Supp)	Coal Production Report (Supplement)	19050150	Sept. 30, 1986.
EIA-14	Refiners' Monthly Cost Report	19050125	May 30, 1986.
EIA-20	Weekly Telephone Survey of Coal-Burning Electric Utilities (Standby Form)	19050114	Nov. 30, 1985.
EIA-23	Annual Survey of Domestic Oil and Gas Reserves	19050057	Dec. 31, 1985.
EIA-23P	Oil and Gas Well Operator List Update Report	19050134	May 30, 1985.
EIA-28	Financial Reporting System	19050149	Dec. 31, 1984.
EIA-63	Annual Solar Thermal Collector and Photovoltaic Module Manufacturing Survey	19050074	June 30, 1985.
EIA-64A	Annual Report of the Origin of Natural Gas Liquids Production	19050099	Sept. 30, 1986.
EIA-67	Foreign Crude Oil Cost Report	19050058	Feb. 28, 1986.
EIA-97	Boiler Order Report	19050123	Dec. 31, 1986.
EIA-101	Monthly Electric Bill Data	19050129	Nov. 30, 1984.
EIA-119A	Annual Projection of System Changes	19050148	Do.
EIA-141	National Survey of Fuel Purchases for Vehicles—Purchase Log and Supplementary Questionnaire	19050068	Jan. 31, 1986.
EIA-142	International Energy Agency Imports/Stocks-at-Sea Report	19050067	Mar. 31, 1985.
EIA-174	Sales of Liquefied Petroleum Gases	19050016	Dec. 31, 1985.
EIA-176	Annual Report of Natural Gas Supply and Disposition	19050147	Mar. 31, 1985.
EIA-182	Domestic Crude Oil First Purchase Report	19050143	June 30, 1985.
EIA-191	Underground Natural Gas Storage Report	19050026	Sept. 30, 1986.
EIA-213	Typical Net Monthly Bills	19050045	Nov. 30, 1986.
EIA-254	Quarterly Progress Report on Status of Reactor Construction	19010010	Oct. 31, 1984.
EIA-412	Annual Report of Public Electic Utilities	19050136	May 30, 1985.
EIA-429	National Survey of Fuel Purchases For Vehicles—Backgroung Questionnaire	19050086	Jan. 31, 1986.
EIA-457A	Residential Energy Consumption Survey—Housing Unit Record Sheet	19050092	Aug. 31, 1986.
EIA-457B	Residential Energy Consumption Survey—Household Questionnaire	19050092	Do.
EIA-457C	Residential Energy Consumption Survey—Rental Agents	19050092	Do.
EIA-457D	Residential Energy Consumption Survey—Quarterly Survey of Fuel Oil Households	19050092	Do.
EIA-457E	Residential Energy Consumption Survey—Electric Utilities	19050092	Do.
EIA-457F	Residential Energy Consumption Survey—Natural Gas Suppliers	19050092	Do.
EIA-457G	Residential Energy Consumption Survey—Fuel Oil Supplier Form	19050092	Do.
EIA-457H	Residential Energy Consumption Survey—Liquid Petroleum Gas Suppliers	19050092	Do.
EIA-491A	Survey of United States Uranium Marketing Activity (January Collection)	19050142	Nov. 10, 1985.
EIA-491B	Survey of United States Uranium Marketing Activity (July Collection)	19050142	Do.
EIA-627	Annual Quantity and Value of Natural Gas Report	19050122	Mar. 31, 1986.
EIA-739	Crude Watch Weekly Telephone Report	19050132	Feb. 22, 1985.
EIA-759	Monthly Power Plant Report	19050130	Feb. 28, 1986.
EIA-782A	Monthly Petroleum Product Sales Report	19050141	Aug. 31, 1985.
EIA-782B	Reseller/Retailer's Monthly Petroleum Product Sales Report	19050139	Dec. 31, 1986.
EIA-782C	Monthly Report of Petroleum Products Sold into States for Consumption	19050140	Aug. 31, 1985.
EIA-788C	Nonresidential Building Energy Consumption Survey—Energy Supplier Forms	19050145	May 30, 1985.
EIA-800	Weekly Refinery Report	19050069	Jan. 31, 1986.
EIA-801	Weekly Bulk Terminal Report	19050070	Do.
EIA-802	Weekly Product Pipeline Report	19050071	Do.
EIA-803	Weekly Crude Oil Stocks Report	19050073	Do.
EIA-804	Weekly Imports Report	19050072	Do.
EIA-810	Monthly Refinery Report	19050027	Do.
EIA-811	Monthly Bulk Terminal Report	19050028	Do.
EIA-812	Monthly Product Pipeline Report	19050029	Do.
EIA-813	Monthly Crude Oil Report	19050030	Do.
EIA-814	Monthly Imports Report	19050151	Do.
EIA-816	Monthly Natural Gas Liquids Report	19050109	Do.
EIA-817	Monthly Tanker and Barge Movement Report	19050019	Do.
EIA-820	Annual Refinery Report	19050087	Do.
EIA-821	Annual Fuel Oil and Kerosene Sales Report	19050018	Sept. 30, 1986.
EIA-826	Electric Utility Company Monthly Statement	19050144	Mar. 31, 1987.
EIA-851	Domestic Uranium Mining Production Report	19050152	Jan. 31, 1985.
EIA-854	U.S. Uranium Industry Financial Survey	19050154	Mar. 31, 1987.
EIA-856	Monthly Foreign Crude Oil Acquisition Report	19050156	Do.
	Federal Energy Regulatory Commission		
EIA-194	Monthly Alternate Fuel/Incremental Price Monitoring Report	19050083	Apr. 30, 1985.
EIA-767(1)	Steam-Electric Plant Operation and Design Report	19020034	Dec. 31, 1986.
FERC-1	Annual Report of Major Electric Utilities, Licensees, and Others	19020021	Sept. 30, 1987.
FERC-1-F	Annual Report of Nonmajor Public Utilities and Licensees	19020029	Do.
FERC-2	Annual Report of Major Natural Gas Companies	19020028	Do.
FERC-2A	Annual Report of Nonmajor Natural Gas Companies	19020030	Do.
FERC-6	Annual Report of Oil Pipeline Companies	19020022	Do.
FERC-11	Natural Gas Pipeline Company Monthly Statement	19020032	July 31, 1987.
FERC-15	Interstate Pipeline Annual Report of Gas Supply	19020037	Oct. 30, 1984.

PART I.—DOE ACTIVE INFORMATION COLLECTIONS (UTILIZING STRUCTURED FORMS)—Continued

DOE No.	Title	OMB control No.	Expiration date
FERC-16	Report of Gas Supply and Requirements	19020025	Oct. 31, 1985.
FERC-42	Application For Annual Or Basic Valuation	19020003	Do.
FERC-50	Alternate Fuel Demand Due to Natural Gas Curtailment	19020101	Mar. 31, 1985.
FERC-73	Service Life Data	19020019	Do.
FERC-80	Licensed Hydropower Development Recreation Report	19020106	Dec. 31, 1986.
FERC-121	Application for Determination of Maximum Lawful Price under the Natural Gas Policy Act of 1978	19020038	Mar. 31, 1985.
FERC-314A	Application For Small Producer Exemption	1902006	Do.
FERC-423	Monthly Report of Cost and Quality of Fuels for Electric Plants	19020024	Sept. 30, 1987.
FERC-542-PGA	Gas Pipeline Rates: Purchased Gas Adjustments (PGA) Filings	19020070	Dec. 31, 1984.
FERC-580	General Interrogatory Fuel Purchase Practices	19020137	Mar. 31, 1985.
FPC-8	Underground Gas Storage Report	19020026	Jan. 31, 1986.
FPC-14	Annual Report for Importers and Exporters of Natural Gas	19020027	Dec. 31, 1985.
ICC-ACV-1	Statement of Property Changes Other Than Land and Rights-Of-Way Pipeline Carriers	19020011	Mar. 31, 1985.
ICC-ACV-2	Statement Of Land and Rights Of Way Property Changes—Pipeline Carriers	19020018	Do.
ICC-ACV-3	Summary of Changes In Original Cost and Total Original Cost At End Of Period—Pipeline Carriers	19020010	Do.
ICC-ACV-4	Summary of Cost Reproduction New and Reproduction of New Less Depreciation—Pipeline Carriers	19020009	Do.
ICC-ACV-5	Inventory of Property Other Than Land and Rights-Of-Way	19020015	Do.
ICC-ACV-6	Inventory of Land and Rights-Of-Way	19020016	Do.
ICC-ACV-7	Summary of Original Cost of Inventory	19020017	Do.
ICC-ACV-8	Cost Data for Equipment and Tanks	19020014	Do.
ICC-ACV-9	Cost Data for Pipeline Construction	19020013	Do.
	Fossil Energy		
FE-748	Enhanced Oil Recovery Annual Report	19050135	May 31, 1985.
	International Affairs and Energy Emergencies		
EIA-767(2)	Steam Electric Plant Operation and Design Report	19010267	Dec. 31, 1986.
EP-400	Survey of Surplus Natural Gas Supplies	19030020	Sept. 30, 1986.
IE-411	Coordinated Regional Bulk Power Supply Program Report	19010286	Do.

PART II—DOE ACTIVE INFORMATION COLLECTIONS (NOT UTILIZING STRUCTURED FORMS)

DOE No.	Title	OMB Control No.	Expiration date	CFR citation
	Civilian Radioactive Waste Management			
NWPA-830R	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Contract.	19010260	Apr. 30, 1986	10 CFR 901.
NWPA-830R-A-F	Standard Contract for Disposal of Spent Nuclear Fuel and/or High Level Radioactive Waste—Annual Report.	19010260	....do	10 CFR 901.
	Economic Regulatory Administration			
ERA-329R	Regulatory Reporting and Recordkeeping Requirements Pursuant to 10 CFR 500, 501, 503, 504.	19030075	July 19, 1985	10 CFR 500, 501, 503, 504, 505, 508, 515.
ERA-746R	Import and Export of Natural Gas	19030081	....do	10 CFR 205, 590.
ERA-750R	Annual Compilation of Proposed and Final List of Utilities Covered by Public Utility Regulatory Policies Act and National Energy Conservation Policy Act.	19030070	Jan. 31, 1985	10 CFR 463.
ERA-766R	Recordkeeping Requirements of DOE's General Allocation and Price Rules	19030073	....do	10 CFR 210.1, 211.69, 213.6, 221.36.
	Federal Energy Regulatory Commission			
FERC-500	Major Hydroelectric License—Application	19020058	Dec. 31, 1984	18 CFR 4.40-.41, 4.50, 4.200-.202.
FERC-505	Application for Licenses for Water Power Projects 5MW or Less	19020115	Jan. 31, 1985	18 CFR 4.61, 4.71, 4.92-.93, 4.107-108, 4.112-.113, 4.201-.202.
FERC-510	Application for Surrender of License	19020068	July 31, 1985	18 CFR 6.1, 6.3.
FERC-511	Application for Transfer of License	19020069	....do	18 CFR 9.1, 9.2, 9.10.
FERC-512	Application for Preliminary Permit	19020073	June 30, 1985	18 CFR 4.31-.33, 4.81-.82.
FERC-515	Electric License—Declaration Of Intention	19020079	Aug. 31, 1985	18 CFR 24.1.
FERC-516	Electric Rate Schedule Filings	19020096	Nov. 30, 1985	18 CFR 35 Subpart A, 35.12-.16.
FERC-519	Electric Rates—Corporate Applications	19020082	Apr. 30, 1986	18 CFR 33.
FERC-520	Application for Authority to Hold Interlocking Directorate Positions	19020083	Oct. 31, 1985	18 CFR 45.
FERC-521	Payments for Benefits from Headwater Improvements	19020087	July 31, 1986	18 CFR 11.26, 11.31, 13.1.
FERC-523	Application For Authorization Of The Issuance Of Securities	19020043	Dec. 31, 1986	18 CFR 34.
FERC-525	Financial Audit	19020092	Mar. 31, 1986	18 CFR 101, 201.
FERC-530	Gas Producer Certificate: Abandonment/Termination	19020051	Nov. 30, 1984	18 CFR 157.30, 250.7.
FERC-531	Gas Producer Certificate: New Service	19020052	Apr. 30, 1986	18 CFR 2.75, 154.91, 157.23-.29, 157.40, 250.5, 250.10.
FERC-532	Gas Producer Rate: Rate Filing	19020055	Mar. 31, 1985	18 CFR 2.56(a), 154.91-.102, 250.9.
FERC-534	Applications for Production Related Costs	19020057	Apr. 30, 1986	18 CFR 270.203, 271.1103-.1105.
FERC-537	Gas Pipeline Certificate	19020060	June 30, 1985	18 CFR 2.79; 157.1, .5-.22, .100, .201-.218; 159.1, 284.107, .127, .221-.222.
FERC-538	Gas Pipeline Certificate: Initial Service	19020061	Mar. 31, 1985	18 CFR 156.3-.5.
FERC-539	Gas Pipeline Certificate: Import/Export Related	19020062	Apr. 30, 1985	18 CFR 153.2-.4, 153.11-.12.
FERC-541	Gas Pipeline Certificate: Curtailment Plan	19020066	Mar. 31, 1985	18 CFR 2.78, PT 281.
FERC-542	PGA Audits/Initial Rate/Rate Change and Tracking	19020070	Sept. 25, 1984	18 CFR 154.61-.65, 154.91.
FERC-542A	Tracking and Recovery of Alaska Natural Gas Transportation System	19020129	Dec. 31, 1984	18 CFR 154.201-.213.
FERC-547	Gas Pipeline Rates: Refund Obligation	19020084	May 31, 1985	18 CFR 273.301-.302.
FERC-548	Gas Pipeline Rate: Staff Adjustment Under Natural Gas Policy Act Section 502(c)	19020085	Nov. 30, 1985	18 CFR 281.204, 281.304, 282, 284.
FERC-549	Gas Pipeline Rates: Natural Gas Policy Act Title III Transactions	19020086	June 30, 1985	18 CFR 284 Subparts A, D, E, F, H; 284.105-.106, .123, .125, .221.
FERC-550	Oil Pipeline: Tariff Filings	19020089	May 31, 1986	18 CFR 341-346.
FERC-555	Records Retention Requirements	19020098	Nov. 30, 1986	18 CFR 125, 158, 160.1, 276.108, 277.210, 225, 356.

PART II—DOE ACTIVE INFORMATION COLLECTIONS (NOT UTILIZING STRUCTURED FORMS)—Continued

DOE No.	Title	OMB Control No.	Expiration date	CFR citation
FERC-556	Small Power Production and Cogeneration Facilities Application and Notice Requirements.	19020075	July 31, 1985	18 CFR 292.
FERC-557	PURPA Section 133: Cost of Retail Electric Service	19020042	Dec. 31, 1986	18 CFR 290.
FERC-559	Independent Producer Rate Change Or Initial Billing Statement	19020036	July 31, 1987	18 CFR 250.14.
FERC-561	Report of Interlocking Directorates	19020099	June 30, 1986	18 CFR 46.6.
FERC-566	Report of Utility's 20 Largest Purchasers	19020114	Mar. 31, 1985	18 CFR 46.3.
FERC-567	Annual Report of System Flow Diagrams	19020005	Sept. 30, 1987	18 CFR 260.8.
FERC-568	Well Category Determinations	19020112	Dec. 31, 1986	18 CFR 274.
FERC-569	Refund Obligations	19020111	Mar. 31, 1985	18 CFR 273.
FERC-570	Recordkeeping Requirements for Certain Sales of Natural Gas	19020124	Aug. 31, 1985	18 CFR 271.503, 271.603, 271.903.
FERC-571	Incremental Pricing Report	19020110	Dec. 31, 1984	18 CFR 282.
FERC-574	Gas Pipeline Certificate: Hinshaw Exemption	19020116	Feb. 28, 1987	18 CFR 152, 284.222.
FERC-576	Report on Service Interruptions on Pipeline Systems	19020004	Mar. 31, 1985	18 CFR 260.9.
FERC-577	Environmental Impact Statement	19020128	June 30, 1986	18 CFR 157.14, 2.80, 2.82.
FERC-579	State Implementation of PURPA 210—Cogeneration and Small Power Production	19020133	Aug. 31, 1985	18 CFR 292.401.
FERC-581	Management and Procurement Reporting and Recordkeeping Requirements	19020130	Mar. 31, 1987	
FERC-582	FERC Fees Filing Requirement and Waivers	19020132	Apr. 30, 1987	18 CFR 381.102.
FERC-583	Annual Charges for the Use of Government Dams and Other Structures and Administration of Part 1 of the Federal Power Act.	19020136	June 30, 1987	18 CFR 11.20, 11.24, 131.70.
	International Affairs and Energy Emergencies			
EP-417R	Power System Emergency Report	19030045	Feb. 28, 1986	10 CFR 205.350-.355.

[FR Doc. 84-32536 Filed 12-13-84; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP85-133-000]

ANR Pipeline Co.; Application

December 10, 1984.

Take notice that on November 27, 1984, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-133-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Michigan Consolidated Gas Company (MichCon) and the operation of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to transport up to 2,500 Mcf of natural gas per day (contract demand), on a firm basis, for MichCon. ANR indicates that it would receive the gas from MichCon at an existing interconnection between MichCon's facilities and ANR's Goodwell pipeline in Newaygo County, Michigan. ANR states that it would transport and redeliver such gas to MichCon at ANR's Woolfolk Station in Mecosta County, Michigan. ANR indicates that MichCon would purchase such gas from Jennings Petroleum Corporation. The transportation service for MichCon is proposed for a 5-year term commencing from the date of initial deliveries and thereafter is extendible from year to year for a total of 5 additional years unless cancelled by MichCon.

ANR further states that on March 22, 1984, the transportation service for MichCon was commenced pursuant to provisions of Part 284 of the Commission's Regulations under the Natural Gas Policy Act of 1978 (NGPA) and that ANR constructed a tap and side valve assembly at a cost of $8,083.00 pursuant to § 284.3(c) of the Commission's Regulations to accomplish the transportation service for ANR. ANR indicates that it is also requesting authorization for the continued operation of the tap facilities pursuant to section 7(c) of the Natural Gas Act.

ANR proposes to charge MichCon a monthly demand rate of $0.61 for each Mcf of contract demand.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will unnecessary for ANR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32636 Filed 12-13-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP82-288-002, and CP82-288-003; Docket Nos. CP84-15-000, and CP84-15-001]

ANR Pipeline Co. and Michigan Consolidated Gas Co.; Application and Petition To Amend

December 10, 1984.

Take notice that on October 7, 1983, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP82-288-002 a petition, as amended November 19, 1984, in Docket No. CP82-288-003 pursuant to section 7(c) of the Natural Gas Act to amend the Commission's order issued September 16, 1982, in Docket No. CP82-288-000 so as to authorize ANR to transport and/or exchange gas in accordance with an

amendment to its gas displacement and exchange agreement with Michigan Consolidated Gas Company (Mich Con) dated April 5, 1982. Take further notice that on October 7, 1983, Mich Con, 500 Griswold Avenue, Detroit, Michigan 48226, filed In Docket No. CP84–15–000 an application, as amended November 19, 1984, in Docket No. CP84–15–001 pursuant to section 311 of the Natural Gas Policy Act of 1978 and § 284.127 of the Commission's Regulations for authorization for Mich Con to provide firm transportation service for ANR for the term of the agreement with pregranted abandonment, and a petition pursuant to § 385.207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order as to the jurisdiction status of its utility division. The proposals are more fully set forth in the petition, applications, and amendments which are on file with the Commission and open to public inspection.

It is stated that in Docket No. CP82–288–000, ANR was authorized (1) to construct and operate 4.6 miles of 4½-inch O.D. pipeline and associated measurement facilities in Dickinson County, Michigan, and Marinette County, Wisconsin, (2) to displace various quantities of gas for Mich Con, and (3) to exchange natural gas with Mich Con, all in order to establish a new delivery point for Wisconsin Public Service Company (Wisconsin PSC). It is submitted that the pipeline and associated measurement facilities have been constructed and gas is being delivered to Wisconsin PSC at the new delivery point and that Mich Con has has provided gas transportation service for ANR under the self-implementing provisions of 18 CFR 284.222 as authorized in Docket No. CP80–340–000.

It is explained that on January 24, 1983, ANR and Mich Con amended their gas displacement and exchange agreement dated April 5, 1982, to provide alternative consideration for Mich Con which would allow Mich Con to charge ANR for transportation services in lieu of ANR's providing a displacement service. By its petition, ANR requests that the Commission authorize ANR to implement the provisions of the amended agreement.

It is asserted under the self-implementing provisions of § 284.222 of the Regulations Mich Con is authorized in Docket No. CP80–340–000 to provide service for ANR for two years. By its application, Mich Con requests that the Commission authorize it to provide the service on a firm basis for the term of the agreement with pregranted abandonment authorization. Mich Con also requests that at such time as the Commission issues authorization in this proceeding authorizing the proposals described herein, that it also, consistent with § 284.222(d)(2) of the Commission's Regulations, declare that participation in the exchange of gas with ANR would not impair the continued validity of its Utility Division's exclusion under section 1(c) of the Natural Gas Act and would not subject the Utility Division to the Natural Gas Act jurisdiction of the Commission except to the extent necessary to enforce the terms and conditions of the authorization.

Further, it is stated that pursuant to the amended agreement, Mich Con would transport a daily contract quantity of gas up to 2,650 dt equivalent or up to 967,250 dt equivalent of natural gas per year. It is indicated that the gas would be tranported between a point of interconnection near Mich Con's Vulcan City Gate Station located in Dickinson County, Michigan, and any of the following points of interconnection between the facilities of Mich Con and ANR: (1) the Menominee No. 2 meter station located in Menominee County, Michigan; (2) the Crystal Falls Meter Station located in Iron County, Michigan; and (3) the Willow Run Meter Station located in Washtenaw County, Michigan.

It is stated that in lieu of ANR's providing the certificated displacement service for Mich Con, ANR has agreed to pay Mich Con a transportation rate of 2.500 cents per dt for the year of service which began April 4, 1982, and ended March 31, 1983, and thereafter increase annually by 0.125 cent per dt through August 31, 1992. It is explained that the rate was filed by Mich Con in its Initial Full Report in Docket No. CP80–340–000 and that the primary term of the agreement expires August 31, 1992. Thus, it is stated that the requested authorization assures the availability of firm service to Wisconsin PSC at the new delivery point and assures Wisconsin PSC that continuity of service which would permit it to redeliver the gas from that delivery point on a firm basis.

Any person desiring to be heard or to make any protest with reference to said filings should on or before December 31, 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. 84–32637 Filed 12–13–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL85–12–000]

The City of Manti, UT, Applicant, v. The Utah Power & Light Co.; Application for Orders

December 11, 1984.

Take notice that on November 26, 1984 the City of Manti, Utah ("Manti") filed an application for orders pursuant to sections 210 and 211 of the Federal Power Act. In its application Manti requests that the Commission issue an order requiring Utah Power & Light Company to provide transmission service to Manti.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.314). All such motions or protests should be filed on or before January 10, 1985. Protests will be considered by the Commission in determing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–32638 Filed 12–13–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–96–000]

Ford Hydro L.P.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 11, 1984.

On November 19, 1984, Ford Hydro L. P. (Applicant) of P.O. Box 1940, Orofino, Idaho 83544 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the

Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,499 kilowatt hydroelectric facility (P. 7986) will be located on Jim Ford Creek near Weippe, Idaho.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32639 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-97-000]

Idaho Hydro, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 11, 1984.

On November 15, 1984, Idaho Hydro, Inc. (Applicant), of P.O. Box 1940, Orofino, Idaho 83544 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,200 kilowatt hydroelectric facility will be located at Silver Creek near the town of Golden, Idaho.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, contruction, operation, licensing and pollution abatement.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32640 Filed 12-13-84; 8:45]

BILLING CODE 6717-01-M

[Project No. 5386-001]

Modesto Irrigation District; Surrender of Preliminary Permit

December 11, 1984.

Take notice that Modesto Irrigation District, Permittee for the Independence Creek Upper and Lower Facilities Power Project, FERC No. 5386, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5386 was issued on June 14, 1984, and would have expired on May 31, 1986. The project would have been located on Independence Creek, in Inyo County, California.

The Permittee filed the request on November 19, 1984, and the preliminary permit for Project No. 5386 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32641 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-115-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Authorization

December 10, 1984.

Take notice that on November 16, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-115-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for an end-user under the certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport up to 3,000 Mcf of natural gas per day, on an interruptible basis, on behalf of Firestone Tire and Rubber Company (Firestone). It is stated that Panhandle would receive the gas at existing points of interconnection between Panhandle and Tuthill & Barbee in Woods, Woodward and Major Counties, Oklahoma. Panhandle states it would then transport and redeliver an equivalent amount of gas, less four percent for fuel, to Illinois Power Company (Illinois Power) at an existing point of receipt in Macon County, Illinois. It is explained that Illinois Power would then make the ultimate delivery to Firestone for its end-use at the Firestone plant in Decatur, Illinois. It is stated that the end-use of the gas would be for boiler fuel in the manufacturing process of tires. It is asserted that Panhandle would charge Firestone in accordance to Panhandle's currently effective OST tariff for contract service, a rate of 42.0 cents, plus 1.24 cents GRI surcharge, per million Btu for the transportation service. To the extent the total quantity of all transport gas delivered on any day exceeds the contract entitlement transportation quantity, it is stated, the rate applicable to such excess volume of transport gas would be the OST excess service rate, which is currently 87 cents, plus 1.24 cents GRI surcharge, per million Btu.

It is explained that the term of the transportation service would be from the date of initial transportation and

would remain in full force and effect for a primary term of six terms and successive terms of one month each, until the earlier of 18 months from the date of initial delivery or termination of authorizations for service hereunder pursuant to Subpart F of Part 157 of the Commission's Regulations, provided that each party may terminate the agreement at any earlier time by giving 30 days prior written notice to the other party. Termination would also be subject to final balancing of quantities in accordance with the provisions of the transportation agreement, it is submitted.

Panhandle also requests flexible authority to add or delete sources of supply or receipt/delivery points, if such altered service is on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket, and under the same terms and conditions authorized for the basic service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32642 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7212-004]

Town of Sultan, WA; Surrender of Preliminary Permit

December 11, 1984.

Take notice that the Town of Sultan, Washington, Permittee for the Tumwater Canyon Waterpower Project No. 7212 has requested that its preliminary permit be terminated. The preliminary permit was issued on March 16, 1984, and would have expired on April 30, 1986. The project would have been located on Wenatchee River in Chelan County, Washington.

The Permittee filed the request on October 16, 1984, and the preliminary permit for Project No. 7212 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following the that. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32643 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-103-000]

Transcontinental Gas Pipe Line Co.; Request Under Blanket Authorization

December 10, 1984.

Take notice that on November 9, 1984, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-103-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport end-user gas on behalf of Foster-Forbes Glass Container Division of National Can Corporation (Foster-Forbes), with "flexible authority" to add and/or delete sources of gas and/or receipt/delivery points, under the certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Transco proposes to transport up to 4,000 dt equivalent of gas per day for use in Foster-Forbes' plant in Millville, New Jersey for a term expiring June 30, 1985. It is stated that the natural gas to be transported would be purchased from GHR Energy Corporation (GHR Energy) and would be used, among other things, as fuel for melting furnaces at the Millville plant. It is indicated that Transco would receive the gas at an existing interconnection with GHR Transmission Company in the Agua Dulce Field, Nueces County, Texas, and would redeliver such gas to existing points of delivery between Transco and South Jersey Gas Company, the distribution company serving Foster-Forbes.

Transco states that it would charge the currently applicable transportation rate in accordance with its Rate Schedule T-11, FERC Gas Tariff, Second Revised Volume No. 1.

It is stated that National Can Corporation has entered into an agreement with Epple-Owen, Inc. (Epple-Owen), by which Epple-Owen receives a fee equal to ten percent of the net savings for natural gas purchases from GHR Energy arranged by Epple-Owen for the Millville plant, to a maximum of 5 cents per million Btu.

Transco also requests authorization to provide flexible authority on behalf of Foster-Forbes to add and/or delete sources of gas and/or receipt or delivery points. With respect to such flexible authority, Transco states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt or delivery points, to file with the Commission the following information:

(1) A copy of the gas purchase contract between Foster-Forbes and the seller;

(2) A statement as to whether the supply is attributable to gas under contract to and released by a pipeline or distributor, and if so, identification of the parties and specification of the current contract price;

(3) A statement of the Natural Gas Policy Act of 1978 (NGPA) pricing categories of the added supply, if released gas, and the volumes attributable to each category;

(4) If the supplier is a "producer or other seller in a first sale", a statement that the gas was not "committed or dedicated to interstate commerce on November 8, 1978" as such terms are used in § 157.209(e)(1)(i)(A) of the Regulations;

(5) Location of the receipt/delivery points being added or deleted;

(6) Where an intermediary participates in the transaction between the seller and end user, the information required by § 157.209(c)(ix) of the Regulations; and

(7) Identity of any other pipeline involved in the transportation.

Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end user, Foster-Forbes, for use at the same end-use location and would remain within daily and annual volumes levels proposed herein.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32644 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-111-000]

Trunkline Gas Co.; Application

December 10, 1984.

Take notice that on November 14, 1984, Trunkline Gas Company (Trunkline), 3000 Bissonnet, Houston, Texas 77001, filed in Docket No. CP85-111-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to the Superior Oil Company (Superior) a pipeline system which extends from a point near Lowry, Louisiana, to West Cameron Block 67, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon by sale to Superior approximately 31.6 miles of 12-inch pipeline extending from West Cameron Block 67, offshore Louisiana, to approximately 0.5 mile from Superior's Lowry gas plant, onshore Louisiana, and appurtenants, right-of-way easements, permits, and property interests related thereto.

Trunkline states that Superior would pay Trunkline the net book value of $11,112.00 for these facilities. By this sale, Trunkline states it is able to remove from its rate base facilities for which it has no current or future use. Trunkline also indicates it has been able to obtain take-or-pay and price concessions under a gas purchase agreement with Superior. Further, Trunkline states that all gas reserves attached to the system have been deleted.

Trunkline understands that Superior would assign this pipeline system to Superior Offshore Pipeline Company (SOPCO), a wholly-owned subsidiary of Superior. SOPCO is a natural gas company engaged in the transportation of natural gas in interstate commerce and currently owns and operates a pipeline system extending from approximately 23 miles offshore Louisiana to Superior's Lowry Gas Plant, it is indicated.

Trunkline states that Superior has advised that these facilities are required to eliminate potential bottlenecks on SOPCO's system and enhance the recovery of the remaining reserves in the West Cameron Block 71 Field.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32645 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-74-000]

Walt Walters, NRG/Recovery Group; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

December 11, 1984.

On November 2, 1984, Walt Walters, NRG/Recovery Group (Applicant), of 1616 Athens Street, Lakeland, Florida 33803 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lake County, Florida. The electric power production capacity will be 11 megawatts. The primary energy source will be biomass in the form of municipal solid wastes (woodchips). The facility will not use coal or oil. Natural gas will be used for ignition startup and emergency use and will not exceed 20% annually.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32646 Filed 12-13-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7239-001]

Waterfall Electric/Al Peters; Surrender of Preliminary Permit

December 11, 1984.

Take notice that the Waterfall Electric/Al Peters, Permittee for the South Fork Project No. 7239, has requested that its preliminary permit be terminated. The Preliminary Permit was issued on October 31, 1983, and would have expired on March 31, 1985. The project would have been located on South Fork John Day River, in Grant County, Oregon.

The Permittee filed the request on November 13, 1984, and the preliminary permit for Project No. 7239 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving

this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-32647 Filed 12-13-84; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2735-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 26, 1984 through November 30, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-AFS-J65132-WY, Rating EC2, Bighorn NF Land/Resource Mgmt. Plan, WY. Summary: EPA believes the proposed forest plan (Alternative A), with corrective measures, provides an environmentally acceptable forest management program. Commendable improvement in water quality and riparian habitat is planned. EPA is concerned with management of such activities as off-road vehicles, timber harvesting road construction, and mineral development in relation to water quality soils and riparian areas. To meet these concerns, EPA has requested further development of management direction and standards and guidelines, watershed planning activities, and clarification of the continuing inter-governmental consultation/coordination program.

ERP No. D-COE-F05050-00, Rating EC2, Mississippi River Lock/Dam 11 Hydropower Development, IA and WI. Summary: EPA's review of the DEIS for the proposed hydropower development surfaced two areas of environmental concern. The most significant environmental effects are the loss of 1.4 acres of environmentally important aquatic habitat (O'Leary Lake), and the potential loss of a great number of fish due to entrainment. EPA recommends the development of a plan to mitigate the loss of important aquatic habitat, and post-operational studies at the project are recommended to fully evaluate and correct, if necessary, entrainment effects.

ERP No. DS-COE-F36149-MN, Rating LO, East Grand Forks Flood Control Plan, MN. Summary: EPA has found the DEIS adequately assesses the potential environmental impact of the project. The selected plan, which includes both non-structural and structural flood control measures, is also the environmentally preferable plan.

ERP No. D-FHW-L40139-WA, Rating LO, WA-2/WA-28 Corridor Improvement, Rocky Reach Dam to East Wenatchee, WA. Summary: EPA's review concluded that the wetland impact and mitigation discussions are adequate.

ERP No. D-NPS-J01064-UT, Rating EU2, Tar Sands Triangle Oil/Gas Leases, Conversion to Combined Hydrocarbon Leases, UT. Summary: EPA identified unacceptable air quality standard violations and potential ground water quality degradation. EPA recommended more evaluation of ground water quality and alternative production levels.

ERP No. D-SFW-L64028-AK, Rating LO, Alaska Peninsula National Wildlife Refuge, Mgmt. Plan, AK. Summary: EPA requests that the FEIS clarify the extent of potential water quality impacts from oil and gas exploration and should also evaluate the mitigation that is necessary to avoid potential water quality standards violations.

ERP No. D-SFW-L64029-AK, Rating LO, Izembek Nat'l. Wildlife Mgmt. Plan, AK. Summary: EPA finds no significant impacts as no-action is proposed.

Final EISs

ERP No. F-AFS-J65104-00, Pike and San Isabel NFs/Comanche and Cimarron Nat'l. Grasslands Land/Resource Mgmt. Plan, CO and KS. Summary: EPA made no formal comments. Review of the FEIS was completed and the project found to be satisfactory.

ERP No. F-BLM-L61156-AK, Stesse Nat'l. Conservation Area Resource Mgmt. Plan, AK. Summary: EPA made no formal comments. Review of the FEIS has been completed and the project found to be satisfactory.

ERP No. F-BLM-L61162-AK, White Mtn. Nat'l. Recreation Area Resource Mgmt. Plan, AK. Summary: EPA made no formal comments. Review of the FEIS has been completed and the project found to be satisfactory.

ERP No. F-BLM-L65090-OR, John Day Resource Area, Resource Mgmt. Plan, OR. Summary: EPA made no formal comments. Review of the FEIS has been completed and the project found to be satisfactory.

ERP No. F-COE-F32132-OH, Lorain Harbor Commercial Navigational Improvement, OH. Summary: EPA has found the FEIS adequately assesses the potential environmental impact of the project. Previous concerns regarding the open-water disposal into Lake Erie of material excavated from three riverbank locations in the Federal channel were alleviated through additional evaluation. To further reduce any unforeseen, adverse environmental effects of open-water disposal, EPA recommends using rock and shale excavated during construction as a final cover at the disposal site to help prevent erosion and create fish habitat.

ERP No. F-COE-J02006-CO, Getty and Cities Service Shale Oil Projects, CO. Summary: EPA found the FEIS a significant improvement over the DEIS, although a number of unresolved issues remain. These include retorting technologies and associated waste streams, and lack of detail concerning disposal of retorted shale. Since oil shale is an emerging industry and much of the necessary information does not exist, EPA has requested that the COE commit to further NEPA analysis as data becomes available and that individual Section 404 permits be required for spent shale disposal piles.

ERP No. F-FHW-F40211-OH, Ohio Turnpike (I-76/I-80/I-90) Upgrading, OH. Summary: EPA found that FEIS adequately assesses the potential environmental impact of the project. EPA recommended that mitigation measures to reduce adverse noise levels and wetland losses be included in the implementation plan.

ERP No. FS-NHT-A52147-00, 1985 MY Light Trucks Corporate Average Fuel Economy Standards. Summary: EPA made no formal comments. Review of the FEIS has been completed and the project found to be satisfactory.

ERP No. F-NHT-A52157-00, 1986 MY Light Trucks Corporate Average Fuel Economy Standards. Summary: EPA made no formal comments. Review of the FEIS has been completed and the project found to be satisfactory.

ERP No. FS-NRC-A06162-PA, Three Mile Island Nuclear Station Unit 2, Revised Estimates of Occupational Radiation Doses, PA. Summary: EPA made no formal comments. EPA found the changes in the project to be acceptable.

Dated: December 11, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-32680 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2735-6]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed December 3, 1984 through December 7, 1984 Pursuant to 40 CFR 1506.9.

EIS No. 840547, FSuppl, FHW, ID, St. Joe River Road/ID FH-50 Improvement, Marble Creek to Avery, Shoshone County, Due: January 14, 1985, Contact: Allan Stockman (206) 696-7751.

EIS No. 840548, DSuppl, COE, VA, Norfolk Harbor and Channels Deepening and Dredged Material Disposal Site, Designation, Due: January 28, 1985, Contact: Richard Muller (804) 441-3767.

EIS No. 840549, DSuppl, COE, CA, Wildcat and San Pablo Creeks Flood Control Plan, Contra Costa County, Due; January 29, 1985, Contact: Mike Welsh (916) 440-2456.

EIS No. 840550, Final, FHW, TN, Briley Parkway Extension/Improvement, Centennial Boulevard to Knight road, Davidson County, Due: January 14, 1985, Contact: Edward Oakley (615) 251-5394.

EIS No. 840552, Final, COE, AL, MS, Alabama/Mississippi Hydrocarbon Resources Exploration and Production, Permit, Due: January 14, 1985, Contact: Clay Carter (205) 690-2658.

EIS No. 840554, Draft, AFS, CA, Dodge Ridge Ski Resort, Expansion, Stanilaus National Forest, Tuolumne County, Due; March 5, 1985, Contact: Edmund Rosenbaum (209) 965-3434.

EIS No. 840555, Final, NOA, PRO, Next Generation Weather Radar (NEXRAD) System, Construction and Operation, Due; January 21, 1985, Contact: John Porter (301) 427-7988.

EIS No. 840556, Final, FHW, IL, Staley Viaduct IL-121 Improvements, over the A.E. Staley Manufacturing Company and the Norfolk/Western Railroad Yard, Macon County, Due: January 14, 1985, Contact; Jay Miller (217) 492-4600.

EIS No. 840557, Final, BLM, CO, NM, UT, San Juan/San Miguel Area Resource Management Plan, Due: January 14, 1985, Contact: David Miller (303) 247-4082.

Amended Notice

EIS No. 840469, Draft, FHW, OR, Southeast Hubbard Road Extension, 122nd Avenue to US 212, Clackamas County, Due: December 16, 1984, Published FR: 10-26-84—Review extended.

Dated: December 11, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-32679 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

Intent To Prepare an Environmental Impact Statement for the Diamond-Chuitna Coal Mine, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent.

SUMMARY: *Purpose:* In accordance with section 102(2)(C) of the National Environmental Policy Act, EPA has identified a need to prepare an Environmental Impact Statement (EIS) and publishes this Notice of Intent in accordance with 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: William M. Riley, EIS Project Officer, Environmental Evaluation Branch (M/S 443), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1760.

SUPPLEMENTARY INFORMATION: The Environmental Impact Statement (EIS) will evaluate the impacts associated with the development of a 12 million ton per year coal strip mine on the northwest side of upper Cook Inlet, Alaska. The minesite is forty-five miles west of Anchorage and 12 miles from tidewater. The project would consist of an open pit mine and associated transportation, shipping and housing facilities. Recoverable coal reserves are estimated to be a minimum of 330 million short tons. Estimated project life is approximately 34 years. The coal is low sulphur, low ash, high moisture, and approximately 7,700 BTU per pound. The administrative actions which the EIS must address include issuing an EPA National Pollutant Discharge Elimination Systems (NPDES) permit. The alternatives to be evaluated include the "no action" alternative, various waste water discharge control strategies, and various reclamation techniques. The proposed project is a joint venture between the Diamond Shamrock Corporation and the Chuitna Coal Company.

Scoping: Scoping meetings for the purposes of identifying issues to be evaluated in the EIS will be held in Anchorage, Soldotna and Tyonek. Dates, locations and times of the meetings will be announced in local newspapers.

EPA anticipates that the Draft EIS will be available for public review in July, 1985. Interested persons are encouraged to submit their name and address to the Project Officer for inclusion on the distribution list for the Draft EIS and related public notices.

Dated: December 11, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-32678 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50613; PH-FRL 2717-4]

Issuance of Experimental Use Permits; Albany International Corp. et al.

Correction

In FR Doc. 84-29806, beginning on page 45062 in the issue of Wednesday, November 14, 1984, make the following correction: On page 45063, in the first column, the permit number in the first line of the first complete paragraph should read "*7946-EUP-5*".

BILLING CODE 1505-01-M

[OPTS-59174A FRL-2733-4]

Certain Chemicals; Approval of Test Marketing Exemptions

Correction

In FR Doc. 84-31974, beginning on page 47920 in the issue of Friday, December 7, 1984, the "OPTS" number should have read as it appears in the bracketed heading above.

BILLING CODE 1505-01-M

[OPTS-51549; FRL 2735-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of

May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six PMNs and provides a summary of each.

DATE: Close of Review Period:

PMN 85–236 and 85–237—February 27, 1985.

PMN 84–238, 85–239, 85–240, 85–241, 85–242, 85–243, and 85–244—March 2, 1985.

PMN 85–245, 85–246, 85–247, 85–248, 85–249, 85–250, and 85–251—March 3, 1985.

PMN 85–252, 85–253, 85–254 and 85–255—March 4, 1985.

PMN 84–256, 85–257, 85–258, 85–259, 85–260 and 85–261—March 5, 1985.

Written comments by:

PMN 85–236 and 85–237—January 28, 1985.

PMN 85–238, 85–239, 85–240, 85–241, 85–242, 85–243, and 85–244—January 31, 1985.

PMN 85–245, 85–246, 85–247, 85–248, 85–249, 85–250 and 85–251—February 1, 1985.

PMN 85–252, 85–253, 85–254 and 85–255—February 2, 1985.

PMN 85–256, 85–257, 85–258, 85–259, 85–260 and 85–261—February 3, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51549]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public reading Room E–107 at the above address.

PMN 85–236

Manufacturer. The Dow Chemical Company.

Chemical. (G) Substituted pyridine.

Use/Production. (G) Site-limited, chemical intermediate, contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: 250 mg/kg; Acute dermal: Between 250 and 500 mg/kg; Irritation: Skin—Moderate, Eye—Irritant; Inhalation: Between 399 and 486 parts million (ppm).

Exposure. Confidential.

Environmental release/Disposal. Release to air and land. Disposal by incineration.

PMN 85–237

Importer. General Electric Company.

Chemical. (S) Strontium, calcium, barium chloride phosphate; europium activated.

Use/Import. (S) Component of the suspension of light emitting materials (phosphors) utilized in the manufacturing of and present within fluorescent lamps. Import range: Confidential.

Toxicity Data. No data suibmitted.

Exposure. Processing and use: Dermal and inhalation.

Environmental Release/Disposal. Release to air and land. Disposal by publicly owned treatment works (POTW) and landfill.

PMN 85–238

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Electronic industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–239

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo tetrasubstituted naphthalenesulfonamide.

Use/Production. (G) Contained use in an article. Prod. Range: 450–600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal and inhalation, a total of 11 workers, up to 2.5 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. No release. Less than 0.5 to less than 25 Kg/batch disposed of by biological treatment system and less than 1 to less than 25 kg/batch incinerated.

PMN 85–240

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo disubstituted naphthol.

Use/Production. (G) Chemical intermediate. Prod. range: 250–350 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, a total of 6 workers, up to 2.0 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. No release. Disposed of by less than 0.5 kg/batch biological treatment with less than 2 to less than 5 kg/batch incinerated.

PMN 85–241

Manufacturer. Confidential.

Chemical. (G) Disubstituted benzenesulfonic acid derivative.

Use/Production. (G) Chemical intermediate. Prod. range: 240–320 kg/yr.

Toxicity Data. Acute oral: (Males and females)—>3,200 mg/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Moderate.

Exposure. Manufacture and use: Dermal and inhalation, a total of 7 workers, up to 1.0 hr/da, up to 4 da/yr.

Environmental Release/Disposal. No release. Less than 1 to less than 8 kg/batch incinerated.

PMN 85–242

Manufacturer. Confidential.

Chemical. (G) Tetrasubstituted phenylazonaphthalene.

Use/Production. (G) Chemical intermediate. Prod. range: 400–500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: Dermal and inhalation, a total of 5 workers, up to 1.9 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. No release. Less than 0.2 to less than 5 kg/batch incinerated.

PMN 85–243

Importer. Kay-Fries, Inc.

Chemical. (G) Linear saturated polyester resin containing hydroxyl groups.

Use/Importer. (S) Industrial coatings for building products, foods applications and decorative coating for metals. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: Dermal and inhalation, a total of 5–10 workers.

Environmental Release/Disposal. No release.

PMN 85–244

Manufacturer. Kay-Fries, Inc.

Chemical. (G) Branched polyester resin containing hydroxyl groups.

Use/Production. (S) Industrial appliance coating, general metal coating and an intermediate polyurethane manufacture. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal and inhalation, a total of 3 workers, up to 2 hrs/da, up to 23 da/yr.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

PMN 85–245

Manufacturer. Confidential.

Chemical. (G) Modified hydrocarbon resin.

Use/Production. (S) Industrial coatings and resin component in

production of ink vehicle varnishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 6 workers, up to 4 hrs/da, up to 43 da/yr.

Environmental Release/Disposal. 500 gms/day released to land. Disposal by sanitary landfill.

PMN 85–246

Manufacturer. Confidential.

Chemical. (G) Tetra—substituted—biphenol.

Use/Production. (G) Chemical intermediate—destructive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–247

Manufacturer. Quaker Chemical Company.

Chemical. (G) Bis-imidazolium dibromide.

Use/Production. (S) Industrial softener/debonder. Prod. range: Confidential.

Toxicity Data. Acute oral: >1.0 g/kg but <5.0 g/kg; Irritation: Skin—Corrosive, Eye—Corrosive.

Exposure. Manufacture and processing: Dermal, a total of 6 workers, up to 5 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 10 kg released to air with 50 kg to water. Disposal by POTW.

PMN 85–248

Manufacturer. Confidential.

Chemical. (G) Quinone-imine dye.

Use/Production. (G) Production of light sensitive film. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 gm/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Negative; Delayed hypersensitivity response: Moderate Cytogenicity study: Negative; Sister chromatid exchange assay: Negative; L5178Y TK±/Mouse Lymphoma: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–249

Manufacturer. Confidential.

Chemical. (G) Isobenzofuranone.

Use/Production. (G) Captive intermediate used in manufacturing a minor component for paper coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85–250

Importer. Badische Corporation.

Chemical. (G) Polyoxymethylene copolymer.

Use/Import. (G) Thermoplastic resin used in the following applications: Automotive and electromechanical engineering and miscellaneous materials. Import range: Confidential.

Toxicity Data. Acute oral: 0.0 mg/l Cytotoxicity: No cytotoxicity observed.

Exposure. Processing: inhalation, a total of 500 workers, up to 8 hrs/da, up to 200–250 da/yr, at 200-300 sites.

Environmental Release/Disposal. No release.

PMN 85–251

Manufacturer. Confidential.

Chemical. (G) Reaction product of polyalkylene oxide polyol, isocyanate and diol.

Use/Production. (G) Reactive elastomer. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–252

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyurethane polymer.

Use/Production. (S) Polyurethane polymer for use in compounded sealants. Prod. range: 50,000–250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal.

Environmental Release/Disposal. No release.

PMN 85–253

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Saturating resin for molded products. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85–254

Manufacturer. Confidential.

Chemical. (G) Amine salt of mono-, di-, and tri-substituted heterocyclic compound.

Use/Production. (G) Coatings additive. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85–255

Importer. Confidential.

Chemical. (G) Sulfonamide of mono-, di-, tri-, and tetra- substituted heterocyclic compound.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 85–256

Manufacturer. Confidential.

Chemical. Alcohol ether sulfate, ammonium salt.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal, a total of 1 worker, up to 2–3 hrs/da.

Environmental Release/Disposal. 25 kg/day released.

PMN 85–257

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: Dermal.

Environmental Release/Disposal. Confidential. Disposal by incineration and approved landfill.

PMN 85–258

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted carbopolycycle-carboxylic acid, salt.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 85–259

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted heteropolycycle.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 85–260

Manufacturer. Confidential.

Chemical. (G) Substituted phenylazo substituted carbopolycycle.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 85-261

Manufacturer. Confidential.

Chemical. (G) Heteropolycycle azo substituted heteromonocycle.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

Dated: December 10, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-32471 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59178; FRL-2736-3]

Certain Chemicals; Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: December 31, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-59178]" and the specific TME number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-4201, 401 M Street SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

TME 85-9

Close of Review Period. January 17, 1985.

Manufacturer. Quaker Chemical Corp.

Chemical. (G) Bis-imidazolium dibromide.

Use/Production. (S) Industrial softener/debonder. Prod. range: Confidential.

Toxicity Data. Acute oral: >1.0 g/kg but <5.0 g/kg; Irritation: Skin—Corrosive, Eye—Corrosive.

Exposure. Manufacture and processing: Dermal, a total of 6 workers, up to 5 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 10 to 50 kg released to air and water. Disposal by publicly owned treatment works (POTW), scrubbers and activated sludge waste water treatment.

TME 85-10

Close of Review Period. January 17, 1985.

Importer. Badische Corporation.

Chemical. (G) Polyoxymethylene copolymer.

Use/Import. (G) Used as an engineering plastic with a variety of end-use applications. Import range: Confidential.

Toxicity Data. Acute oral: 0.01 mg/l; Cytotoxicity: No cytotoxicity observed.

Exposure. Import and processing: Inhalation.

Environmental Release/Disposal. Minimal release.

Dated: December 10, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-32468 Filed 12-13-84; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53066]

Premanufacture Notices; Monthly Status Report for September 1984

Correction

In FR Doc. 84-29258, beginning on page 44664 in the issue of Thursday, November 8, 1984, make the following corrections:

1. On page 44665, in the table, PMN No. 84-1129, in the second column, the entry for Identity/generic name should have read "Acetic acid, ester with C_9-C_{11} iso alcohols, C_{10}-rich".

2. On page 44667, in the table:

a. In the twenty-fifth line of the column of PMN Nos., "84-1294" should have read "84-1204".

b. In PMN No. 84-1206, the entry in the Identity/generic name column should have read "Benzenemethanamine, 3-methoxy- ".

3. On page 44669, in the table:

a. In PMN No. 84-1081, in the Identity/generic name column, "coolymer" should have read "copolymer".

b. In PMN No. 84-68, the entry in the Identity/generic name column should have read "Generic name: Substituted anthraquinone aryl amine".

c. In PMN No. 84-467, the entry in the Identity/generic name column should have read "Generic name: Hydrogen 2-[alpha-(2-hydroxy-benzilidenehydrazino]-5-substituted, cuprate, sodium salt."

4. On page 44673, in the table, in PMN 83-1018, the entry in the Identity/generic name column should have read "Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylozo)phenyl]derivative."

5. On page 44674, in the table:

a. In PMN No. 84-343, the entry in the Identity/generic name column should have read "Poly[oxy(1-oxo-1,6-hexanediyl)], alpha-hydroxy-omega-hydroxy-, ester with 2,2'] exybis(methylene)]bis[2-(hydroxymethyl)-1, 3-propane-diol 2-propenoate."

b. In PMN 84-391, the entry in the Identity/generic name column should have read "Generic name: Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted)phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl) amino)]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene-disulfonato(7-)], pentasodium."

6. On page 44675, in the table, PMN No. 84-927, in the Identity/generic name column, "Carabopolycyclic" should have read "Carbopolycyclic".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD

San Marino Savings and Loan Assn.; San Marino, CA; Replacement of Conservator With Receiver

1Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, 12 U.S.C. 1464 (d)(6)(D) (1982), the Federal Home Loan Bank Board on December 7, 1984, replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as conservator for San Marino Savings and Loan Association, San Marino, California ("Association"), by the FSLIC as sole receiver for the Association.

Dated: December 11, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-32575 Filed 12-13-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 10, 1984.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 4 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C. 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Judith McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, transmittal letter, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer, Cynthia Glassman, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202-452-3829).

Proposal to Approve, Under OMB Delegated Authority, the Revision of Existing Report.

1. Report title: Quarterly Report of Condition for a New York State Investment Company and Its Domestic Subsidiaries

Agency form number: FR 2886a

OMB Docket number: To be assigned

Frequency: Quarterly

Reporters: New York State Investment Companies.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a) and 353 et seq.); data from schedule M are accorded confidential status (5 U.S.C. 552(b)(8)).

FR 2886 data are used by the New York State Banking Department for supervisory purposes, and by the Federal Reserve in constructing various statistical series, including money stock, bank credit, assets and liabilities of domestically chartered and foreign related banking institutions, nondeposit sources of funds for commercial bansk, and flow of funds.

Board of Governors of the Federal Reserve System, December 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32580 Filed 12-13-84; 8:45 am]

BILLING CODE 6210-01-M

Athens Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 4, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Athens Bancorp, Inc.*, Athens, Wisconsin; to become a bank holding company by acquiring 81.57 percent of the voting shares of The Bank of Athens, Athens, Wisconsin.

2. *Lafayette Bancorporation*, Lafayette, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Lafayette Bank and Trust Company, Lafayette, Indiana.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Rushford State Bancorp, Inc.*, Rushford, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Rushford State Bank, Rushford, Minnesota.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Nixon Financial Corporation,* Nixon, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Nixon Bancshares, Inc., Nixon, Texas, thereby indirectly acquiring Nixon State Bank, Nixon, Texas.

Board of Governors of the Federal Reserve System, December 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32576 Filed 12-13-84; 8:45 am]

BILLING CODE 6210-01-M

Comerica Inc.; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated,* Detroit, Michigan; to engage *de novo* through its subsidiary, Comerica Acceptance Corporation, Detroit, Michigan, in the business of acquiring and servicing retail installment contracts covering the sale of motor vehicles; and in the business of retail leasing of motor vehicles.

Board of Governors of the Federal Reserve System, December 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32577 Filed 12-13-84; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation,* New York, New York; to acquire Manufacturers Hanover Corporation (New York), thereby engaging in commercial finance and factoring.

Board of Governors of the Federal Reserve System, December 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32578 Filed 12-13-84; 8:45 am]

BILLING CODE 6210-01-M

Ranier International Bank; Renewal of Charter of Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the renewal of the corporate charter of a corporation doing business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Federal Reserve Bank listed. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than December 28, 1984.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Ranier International Bank,* Los Angeles, California; to renew its Edge Corporation charter. Ranier International Bank operates as a subsidiary of Ranier National Bank, Seattle, Washington. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 10, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-32579 Filed 12-13-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 7, 1984.

Office of the Secretary

Subject: Program Inspection of Interest Bearing Accounts of Office of Human Development Services and Public Health Service Grantees—New
Respondents: States
OMB Desk Officer: Robert J. Fishman

Health Care Financing Administration

Subject: Hospital and Hospital Health Care Complex Cost Reports HCFA 2552-84-Revision (0938-0050)
Responsents: Providers
OMB Desk Officer: Fay S. Iudicello

Human Development Services

Subject: Report on Voluntary Placement Assistance—New
Responsents: States
OMB Desk Officer: Robert J. Fishman

Public Health Service

Health Resources & Services Administration

Subject: Reporting Requirements for Limitations on Federal Participation of Capital Expenditures under Section 1122 of the SSA—Extension 0915-0057
Respondents: Businesses; Nonprofit organizations and small businesses
OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer)

Date: December 7, 1984.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-32429 Filed 12-13-84; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

[BERC-276-FN]

Medicare Program; Reissuance of the Wage Index in the 1981 Schedule of Limits on Hospital Per Diem Inpatient General Routine Operating Costs

Correction

In FR Doc. 84-30918, beginning on page 46495, in the issue of Monday, November 26, 1984, make the following corrections:

1. On page 46496, in column three, third full paragraph, line one, the last word should read "continuing".

2. In the fourth full paragraph, on the third line, the first word should read "approximate".

3. In the same paragraph, on the fifth line, "BLB" should read "BLS".

4. On page 46497, in column two, in the fourth full paragraph, on the eighth line, the date should read "July 1, 1981".

5. On the same page, same column, same paragraph, on line thirteen, insert "to issue" between "agency" and "a".

6. On page 46500, column two in table I-A, in the entry for Charlottesville, VA, the Wage index entry should read "^{2}. 9943",

7. In the entry for Hagerstown, MD, the Wage index entry should read "^{2}1. 0742", and

8. The Wage index entry for Jacksonville, NC should read "^{2}. 8936".

BILLING CODE 1505-01-M

Public Health Service

National Toxicology Program; Chemicals (8) Nominated for Toxicological Testing; Request for Comments

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: On October 25, 1984, the Chemical Evaluation Committee (CEC) of the National Toxicology Program (NTP) met to review eight chemicals nominated for toxicology testing and to recommend the types of testing to be performed. With this notice, the NTP solicits public comment on the eight chemicals listed herein.

FOR FURTHER INFORMATION CONTACT: For Further Information and Submission of Comments, Contact: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20205, (301) 496-3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the **Federal Register** and *NTP Technical Bulletin*. This is done to encourage individuals and groups to participate in the NTP chemical evaluation process thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study.

Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for an evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decision-making about testing. The NTP chemical selection process in summarized is the **Federal Register**, April 14, 1981 (46 FR 21818), and also in the NTP FY 1984 Annual Plan, pages 185-186.

Chemical	CAS No.	Committee recommendation
1. Carbenoxolone	5697-56-3	No testing.
2. Dimethyl-heptylpyran.	32904-22-6	Genotoxicity testing.
3. Emodin	518-82-1	Chemical disposition; Teratogenicity; Carcinogenicity.
4. 5-Methoxypsoralen	484-20-8	Oral photocarcinogenicity.
5. Phencyclidine	656-90-1	No testing.
6. 2,6-Xylidine	87-62-7	Inhalation carcinogenicity.
7. Malathion	121-75-5	Male reproductive effects.
8. Picloram	1918-02-1	No testing.

Three of the eight chemicals, 2,6-xylidine, malathion, and picloram, were previously selected for some type of testing by the NTP. 2,6-xylidine was judged to be positive in an NTP feeding carcinogenicity test in Charles River CD rats. When tested by the NTP, it was negative in the *Salmonella* assay, and positive for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells. Malathion was judged to be negative in NCI/NTP carcinogenicity studies in Osborne-Mendel rats, Fischer 344 rats and

B6C3F1 mice by the oral route. The NTP is currently testing malathion in the mouse lymphoma assay. Picloram yielded equivocal results in an NCI/NTP feeding carcinogenicity study on Osborne-Mendel rats and B6C3F1 mice. In studies conducted by the NTP, picloram was negative in the *Salmonella* assay, negative in *Drosophila* for sex-linked recessive lethal mutations, and positive for chromosomal aberrations and sister chromatid exchanges in Chinese hamster ovary cells.

The CEC also selected sixteen xerography chemicals for testing in the *Salmonella* assay. These compounds were nominated by the Environmental Protection Agency.

Interested parties are requested to submit pertinent information. The following types of data are of particular relevance:

(1) Completed, ongoing and/or planned toxicological testing in the private sector including detailed experimental protocols and, in the case of completed studies, resultant data.

(2) Modes of production, present production levels, and occupational exposure potential.

(3) Uses and resulting exposure levels, were known.

(4) Results of toxicological studies of structurally related compounds.

Please submit all information in writing by (thirty days after date of publication). Any submissions received after the above date will be accepted and utilized where possible.

Dated: December 10, 1984.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 84-32571 Filed 12-13-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1483]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: The Technical Suitability of Products Program, 24 CFR 200.929
Office: Housing
Form number: None
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit and Federal Agencies or Employees
Estimated burden hours: 7,680
Status: Extension
Contact: Donald R. Fairman, HUD, (202) 755-5718; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 3, 1984.

Proposal: Recertification and Housing Unit Evaluation Forms for the Housing Allowance Supply Experiment
Office: Housing
Form number: Form 10.05-1, A-140, 11.04-2; and HUD H-3-9
Frequency of submission: Annually
Affected public: Individuals or Households
Estimated burden hours: 4,200
Status: Reinstatement
Contact: Myra Newbill, HUD, (202) 755-7707; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 7, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-32667 Filed 12-13-84; 8:45 am]

BILLING CODE 4210-01-M

Office of the Under Secretary

[Docket No. N-84-1482]

Advisory Committee on Contract Document Reform; Meeting

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of meeting of the Advisory Committee on Contract Document Reform.

SUMMARY: The tenth meeting of the Committee on Contract Document Reform has been scheduled for Tuesday, January 22, 1985, at 9:30 a.m. in the Assistant Secretary for Public and Indian Housing Conference Room (4202) at the Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410.

The purpose of the meeting is to discuss and analyze suggested amendments to contract document clauses.

This meeting is open to the public. Any interested persons may attend, appear before, or file statements with the Committee. Oral statements may be made at the meeting at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Peter Tropp, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Telephone: (202) 755-5561. [This is not a toll-free number].

Dated: December 11, 1984.

John Knapp,

Acting Under Secretary, Department of Housing and Urban Development.

[FR Doc. 84-32668 Filed 12-13-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Preparation of a Roll of Eastern Creek Indian Descendants; Correction

December 7, 1984.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice; correction.

SUMMARY: This document is to correct an omission in the notice of the preparation of a roll of Eastern Creek Indian descendants that appeared at page 24178 in the **Federal Register** of Tuesday, June 12, 1984 (49 FR 24178). Under the heading of **SUPPLEMENTARY INFORMATION,** the actions the Secretary would follow to bring current the Eastern Creek Indian descendant payment roll prepared under the Act of September 21, 1968, should have included under paragraph (iii) not only deleting the names of 1968 enrollees who were deceased as of January 25, 1984, as published, but also "deleting the names of those persons who are enrolled as members of the Creek Nation of Oklahoma." The Judgment Plan prepared pursuant to the Judgment Funds Distribution Act and effective January 25, 1984, which directed the Secretary of the Interior to bring current the Eastern Creek Indian payment roll, provided for the removal of names of 1968 enrollees who were enrolled as members of the Creek Nation of Oklahoma. As a result of administrative oversight, the provision was not included in the notice published in the **Federal Register** of the roll preparation and the deadline for filing applications.

FOR FURTHER INFORMATION CONTACT: Rosella C. Garbow, Branch of Tribal Operations, Muskogee Area Office, Bureau of Indian Affairs, Federal Building, Muskogee, Oklahoma 74401, telephone number: (918) 687-2314 (FTS 736-2314).

SUPPLEMENTARY INFORMATION: A Judgment Plan prepared pursuant to the Judgment Funds Distribution Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466) was published in the **Federal Register** on Tuesday, February 28, 1984 (49 FR 7301). The Judgment Plan became effective on January 25, 1984, and authorized the use and distribution of judgment funds awarded the Creek Nation in Indian Claims Commission Dockets 169 and 272 and U.S. Court of Claims Dockets 277 and 309-74.

In accordance with the Judgment Plan, notice of the roll preparation and the deadline for filing applications appeared at page 24178 in the **Federal Register** on Tuesday, June 12, 1984 (49 FR 24178). A notice to correct the deadline date for filing application forms shown under **DATE** to January 24, 1985, appeared at page 27821 on Friday, July 6, 1984 (49 FR 27821).

For the purpose of distributing the apportioned share of the funds to the Eastern Creek Indian descendant group, the Secretary has been directed to bring current to the effective date of the Judgment Plan, January 25, 1984, the descent payment roll prepared pursuant to the Act of September 21, 1968 (82 Stat. 855). Because more than one roll was prepared under the Act of September 21, 1968, as a matter of clarification and supplementary information, the roll being updated is the descendant payment roll of persons designated as Eastern Creek who were eligible to share in the distribution of Creek judgment funds in Docket 21. The descendant payment roll being updated does not include those Creek descendants eligible to share in Docket 21 who established eligibility solely through an ancestor who was a member of the Creek Nation of Oklahoma. The intent is to bring current the Eastern Creek Indian descendant payment roll prepared under the Act of September 21, 1968, for purpose of distributing the judgment funds apportioned to the Eastern Creek Indian descendant group under the Judgment Plan effective January 25, 1984.

It should also be emphasized that persons who shared in the distribution of the Eastern Creek portion of judgment funds awarded the Creek Nation of Indians in Indian Claims Commission Docket 275 under a Judgment Plan effective June 15, 1978, are required to file or have filed on their behalf application forms to establish eligibility to share in the distribution of judgment funds under the Judgment Plan effective January 25, 1984, if their names did not appear on the 1968 roll, that is, the roll prepared pursuant to the Act of September 21, 1968. This category of persons is compromised primarily of children born after the 1968 Act, although there may be some adults who for whatever reasons were not enrolled under the Act of September 21, 1968, but who were enrolled under the Judgment Plan effective June 15, 1978. Individuals may believe because they or their children have shared in a payment as Eastern Creek Indian descendants, they do not have to file application forms. However, if their names or the names of their children did not appear on the descendant payment roll of persons designated as Eastern Creek prepared under the Act of September 21, 1968, application forms must be filed with the Area Director, Muskogee Area Office, Bureau of Indian Affairs 74401, and must be received by the Area Director no later than close of business on January 24, 1985, in order to establish eligibility to share in the distribution of judgment funds under the Judgment Plan effective January 25, 1984.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

John W. Fritz,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 84-32618 Filed 12-13-84; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[N-40994]

Realty Action; Sale of Public Land in Elko County, NV

The following described land has been identified as suitable for disposal by non-competitive public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, at no less than the fair market value:

Mount Diablo Meridian

T. 47 N., R. 64 E.,
Sec. 1, E½NW¼SW¼NW¼.

The area described above aggregates 1.25 acres, more or less.

The above described land will be offered as a non-competitive public sale to the RFK Corporation, an adjoining landowner. All but approximately .55 acres of the parcel are encumbered by rights-of-way held by NDOT and Elko County for streets and highways. RFK Corporation has requested the sale as a result of action taken by the Nevada Department of Transportation (NDOT) to reduce the width of their right-of-way for U.S. Highway 93. Prior to NDOT's reduction, RFK's parcel was contiguous to the U.S. Highway 93 right-of-way. As a result of the right-of-way width reduction a small piece of vacant public land was created between the highway right-of-way and RFK's property. Acquistion of the parcel would allow RFK Corporation to obtain highway right-of-way frontage recently lost as a result of partial relinquishment of U.S. Highway 93. Sale of the tract would eliminate from Federal ownership lands

that have a high potential for unauthorized use.

The public lands are being offered as a direct sale to assure land use compatibility with the adjoining private lands. The subject land is not required for any Federal purpose. The sale is consistent with Bureau planning and is in response to RFK Corporation's request. The public interest would be served by offering the land for sale. The parcel because of its location is difficult and uneconomic to manage as part of the public lands. Should RFK Corporation decline to purchase the parcel at the appraised fair market value, it will be offered under competitive sale procedures at a later date. The competitive procedures would be detailed in a sales brochure which would be sent to all interested parties prior to the scheduled sale date.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect or mine and remove the minerals. A more detailed description of the reservation, which will be incorporated into the patent document, is available for review at this BLM office. (The purchaser may request conveyance of the available Federally owned mineral interest under section 209 of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2757, 43 U.S.C. 1719).

And will be subject to:

1. Those rights for highway purposes which have been granted to the Nevada Highway Department, its successors or assigns by Permit Nos. CC–023091, Nev–08440 and Nev–042807, under the Act of November 9, 1921, 42 Stat. 212–216, 23 U.S.C. Sec. 18.

2. Those rights for public streets and roads which have been granted to Elko County, its successors or assigns by Permit No. N–39777.

Upon publication of the Notice of Realty Action in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a notice of termination of segregation, or 270 days from the date this Notice is published in the **Federal Register**, whichever occurs first.

The land will not be offered for sale any sooner than 60 days after the publication of this Notice in the **Federal Register** and for a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Elko District Office, Bureau of Land Mangement, P.O. Box 831, Elko, Nevada, 89801. Any adverse comments will be forwarded to and evaluated by the Nevada State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: December 4, 1984.

Merle Good,

Acting District Manager.

[FR Doc. 84–32832 Filed 12–13–84; 8:45 am]

BILLING CODE 4310–HC–M

Colorado; Final Resource Management Plan/Environmental Impact Statement for the San Juan-San Miguel Planning Area

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability of Final Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the San Juan-San Miguel Planning Area, Montrose District, Colorado.

SUMMARY: The purpose of this notice is to announce the availability of the Final RMP/EIS for the San Juan-San Miguel Planning Area in southwestern Colorado. The RMP/EIS analyzes the potential impacts of managing a multiple use program on approximately 994,000 acres of public land for approximately the next 10 years. A 30-day protest period will be provided as required by BLM planning regulations (1610.5–2).

DATE: The protest period will end on January 14, 1985.

ADDRESS: Protests should be sent to: BLM Director, Bureau of Land Management, 18th and C Streets, NW, Washington, D.C. 20240, prior to January 14, 1985.

FOR FURTHER INFORMATION CONTACT: David J. Miller, Area Manager, Bureau of Land Management, San Juan Resource Area, Federal Building, Room 102, 701 Camino del Rio, Durango, Colorado 81301, telephone (303) 247–4082.

SUPPLEMENTARY INFORMATION: Approval of the RMP will constitute designation of an Area of Critical Environmental Concern (ACEC): Approximately 156,000 acres of public land west of Cortez, Colorado, in Montezuma and Dolores counties. The area contains important cultural, mineral, recreation, and range resources (see FRMP/EIS, Chapter 1, Fig. 1–1, for boundary). This area represents the focus of the northern Anasazi development, with more than 100 archaeological sites per square mile in many places, and represents the highest known site density of any area in the nation. The total number of sites on public land is estimated at 20,000. Large oil, gas and CO_2 reserves are also contained here. A major CO_2 development field is in place and has a project life of more than 30 years. Multiple resource uses will be provided, while emphasizing the cultural and mineral values. Site-specific management guidance is contained in Emphasis Area "L" (ACEC, see Appendix 5 of the RMP).

Specific areas within the ACEC will have management constraints designed to protect sensitive environmental resources. Proposed management constraints include: Cross, Cahone, and Squaw/Papoose canyons would be closed to off-road vehicles. They would also be managed under visual resource management Class II guidelines.

Current restrictions related to hard-rock mining and no-surface occupancy for oil and gas leasing in Sand and East Rock canyons; Cannonball, Lowry, and Dominguez-Escalante ruins; McLean Basin Towers; and Painted Hand Petroglyphs would be continued after designation.

No-surface occupancy for oil and gas in Cross, Cahone, and Squaw/Papoose canyons and Painted Hand Ruin is proposed. Public access into Mockingbird Mesa and Sand, East Rock, and Squaw/Papoose canyons would be limited to foot or horse only. Vehicle access in these areas would be restricted to authorized vehicles.

With the exception of the wilderness recommendations, all parts of the proposed resource management plan may be protested. Protests should be sent to the BLM Director, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240, by January 14, 1985, which is the end of the protest period, and should include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts being protested.

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the

date the issue or issues were discussed for the records.

A short concise statement explaining why the protesting party disagrees with the BLM Colorado State Director's decision. No sooner than the end of the 30-day protest period, and following the consistency review of the Governors of Colorado and New Mexico, the proposed resource management plan—excluding any portions under protest or found inconsistent—shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The resource management plan/record of decision shall be published in 1985.

Dated: December 4, 1984.

Kannon Richards,

State Director.

[FR Doc. 84-32321 Filed 12-13-84; 8:45 am]

BILLING CODE 4310-JB-M

Powder River Resource Management Plan; Montana; Final Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of availability of final environmental impact statement (FEIS) and protest period.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of Interior, Bureau of Land Management, has prepared a final Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Powder River Resource Area which is now available to the public.

DATE: Portions of this plan are protestable during a 30-day period ending January 15, 1985. Protests should be sent to the Director (202), Bureau of Land Management, 1800 "C" Street, NW., Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION: The Powder River final RMP/EIS has been prepared for the Powder River Resource Area, Miles City District, Bureau of Land Management. The Resource Area contains 1,080,675 acres of public land and 4,103,700 acres of federal mineral estate. The Powder River Resource Area encompasses Powder River, Carter, and Treasure Counties and portions of Rosebud, Big Horn, and Custer Counties in southeastern Montana.

The final RMP/EIS provides a framework for managing and allocating public land and resources in the resource area during the next 10 to 15 years. The final RMP/EIS primarily focuses on resolving four key resource management issues. These issues are coal development; vegetation utilization among livestock, wildlife, and watershed; land pattern adjustment; and wilderness suitability of two wilderness study areas.

A total of five alternatives are considered in detail. One represents no action, which means a continuation of present management direction. The other four provide a range of themes from favoring resource protection to favoring resource production. The proposed plan, which is the preferred alternative, incorporates portions of the four alternatives.

With the exception of the wilderness recommendations, all parts of this final RMP/EIS may be protested. A final legislative EIS dealing with wilderness recommendations for Zook Creek and Buffalo Creek Wilderness Study Areas, will be made available in mid-1985.

Protests should include the following information: (1) Name, mailing address, telephone number, and interest of the person filing the protest, (2) a statement of the issue or issues being protested, (3) a statement of the part or parts of the final RMP/EIS being protested, (4) a copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record, and (5) a short, concise statement explaining why the BLM Miles City District Manager's decision is wrong.

At the end of the 30-day protest period, the RMP, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. The approval process and the final RMP shall be published in summary form with the Record of Decision in mid-1985.

Public Participation: Copies will also be available at each public library located in the Powder River Resource Area. Public reading copies of the final RMP/EIS will be available at the following locations:

Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240;

Public Affairs Office, Montana State Office, BLM, 222 North 32nd Street, Billings, Montana 59107; or

Miles City District Office, BLM, Garryowen Road, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Jay Guerin, Project Manager, BLM, P.O. Box 940, Miles City, Montana 59301. Telephone (406) 232-4331.

Dean Stepanek,

State Director.

November 30, 1984.

[FR Doc. 84-31986 Filed 12-13-84; 8:45 am]

BILLING CODE 4310-DN-M

Garnet Resource Management Plan; Availability; Butte District, MT; Environmental Impact Statement and Public Hearing

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of availability of Draft Resource Management Plan/Environmental Impact Statement and public hearing.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(C) of the National Environmental Policy Act of 1969, a draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the Garnet Resource Area. The RMP/EIS addresses future management options for approximately 145,660 surface acres and 213,385 acres of Federal mineral estate administered by the Bureau of Land Management in western Montana. The affected counties are Missoula, Granite and Powell. This planning document also incorporates land use planning guidance previously found in five separate Management Framework Plans (MFP): The Blackfoot, Hoodoo, Salmon Lake, Avon, and Philipsburg MFPs.

Public Participation: Copies of the draft RMP/EIS are available from the Butte District Office, 106 N. Parkmont, P.O. Box 3388, Butte, Montana 59702, phone (406) 494-5059 and Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801, phone (406) 329-3914. Public reading copies are available for review at the following locations:

Office of Public Affairs, Location Building, 18th and C Streets, NW., Washington, DC 20240;

BLM, Montana State Office, Public Affairs Office, 222 N. 32nd Street, Billings, Montana 59107; or

BLM, Butte District Office, 106 N. Parkmont, Butte, Montana 59702.

The draft RMP/EIS will be available for review from December 14, 1984, to March 13, 1985. Written comments should be sent to: Project Manager, Garnet RMP, BLM, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, Montana 59801.

Oral or written comments also will be received at a formal public hearing to be held on Wednesday, February 13, 1985, from 3:00–5:00 p.m. and from 8:00–9:00 p.m. at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana. In conjunction with this hearing, there will be an open house at the Garnet Resource Area Office on the same day as the hearing, running from 10:00 a.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m., to provide an opportunity for informal discussions with the resource specialist who participated in the development of the draft RMP/EIS. All comments received during the review period, whether written or oral, concerning the adequacy of the draft RMP/EIS will be considered in the preparation of the final RMP/EIS for the Garnet Resource Area.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS analyzes five alternatives with one representing a continuation of present management direction (no action). The other four alternatives provide a range of choices from those emphasizing resource protection to those emphasizing resource production.

Each alternative focuses on five broad issues and the decisions needed to address each issue. The broad issues involve the management of renewable resources, such as timber and livestock forage; special attention resources, including wilderness and wildlife habitat; nonrenewable resources, such as energy and minerals; land ownership and administration, including withdrawals and access; and recreation, cultural, and aesthetic resources.

One Area of Critical Environmental Concern (ACEC) is being proposed in the draft RMP/EIS. This area is referred to as Limestone Cliffs and consists of 20 acres located in T. 11 N., R. 13 W., M.P.M., Section 4, SE¼SE¼SE¼ and Section 9, NE¼NE¼NE¼. The site encompasses a unique geologic (limestone) feature which has been intensively studied and mapped by high schools and universities throughout the Northwest. This area would be closed to motorized vehicle use except along Rattler Gulch Road. Also, there would be no timber harvested and a withdrawal from mineral entry would be pursued.

FOR FURTHER INFORMATION CONTACT: Project Manager, Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801. Telephone: (406) 329–3914.

Dean Stepanek,

State Director.

November 30, 1984.

[FR Doc. 84–31937 Filed 12–13–84; 8:45 am]

BILLING CODE 4310–DN–M

Minerals Management Service

Development Operations Coordination Document; Walter Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4145, Blocks 5 and 6, Sabine Pass Area, and Lease OCS–G 3956, Block 7, Sabine 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 Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on December 6, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional 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). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office Located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. 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) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 6, 1984.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 84–32574 Filed 12–13–84; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations; Cascades Inc., et al.

This is to provide notice, as required by section 10524(b)(1) of the Interstate Commerce Act, 49 U.S.C. 10524(b)(1), that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation and address of its principal office is Cascades Inc., 404 Marie-Victorin Street, C.P. 30, Kingsey-Falls, Quebec, Canada J0A 1B0.

2. Wholly-owned subsidiaries of Cascades Inc. which will participate in the operations and their provinces of incorporation are:

(a) Recuperation Cascades Inc., incorporated in the province of Quebec, dominion of Canada, 4534 St. Joseph Blvd., Drummondville, Quebec, Canada J2B 6V7.

(b) Les Materiaux Cascades Inc., incorporated in the province of Quebec, dominion of Canada, 161 St. Paul Street, Louisville, Quebec, Canada J5V 2G9.

(c) Plastiques Cascades (1983) Inc., incorporated in the province of Quebec, dominion of Canada, 455 Marie-Victorin Street, Kingsey-Falls, Quebec, Canada J0A 1B0.

(d) Air Cascades Inc., incorporated in the province of Quebec, dominion of Canada, 404 Marie-Victorin Street, Kingsey-Falls, Quebec, Canada J0A 1B0.

(e) Cascades (East-Augus) Inc., incorporated in the province of Quebec, dominion of Canada, 248 Warner Street, East-Angus, Quebec, Canada J0B 1R0.

(f) Papier Kingsey-Falls Inc., incorporated in the province of Quebec, dominion of Canada, 408 Marie-Victorin Street, Kingsey-Falls, Quebec, Canada J0A 1B0.

(g) Cascades (Jonquiere) Inc., incorporated in the province of Quebec, dominion of Canada, 4010 St. Andre Street, Jonquiere, Quebec, Canada G7Z 1A2.

(h) Desencrage Cascades Inc., incorporated in the province of Quebec, dominion of Canada, 739 St. Augustin, Breakeyville, Quebec, Canada G0S 1E0.

(i) Indusfoam Canada Inc., incorporated in the province of Quebec, dominion of Canada, 999 Farrell Street, Drummondville, Quebec, Canada J2C 5P6.

1. *Parent corporation and address of principal office:* Lone Star Steel Company, a Texas corporation, 2200 W. Mockingbird Lane, P.O. Box 35888, Dallas, Texas 75235.

2. *Wholly-owned subsidiaries which will participate in the operations.*

(a) Texas and Northern Motor Transport Company, a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(b) Texas and Northern Railway Company, a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(c) T & N Lone Star Warehouse Company, a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(c–2) T & N Lone Star Warehouse d/b/a Iberia Scrap & Salvage.

(c–3) T & N Lone Star Warehouse d/b/a Southwest Scrap & Salvage.

(c–4) T & N Lone Star Warehouse d/b/a Raw Materials Division.

(d) Lesco Transportation Co., Inc., a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(e) Lesco Trucking Company, Inc., a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(f) T & N Fabricators, Inc., a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(g) Fort Collins Pipe Company, a Colorado corporation, 10731 Rockwall Road, Dallas, Texas 75238.

(h) T & N Industries, Inc., a Texas corporation, 10731 Rockwall Road, Dallas, Texas 75238.

1. Parent corporation and address of principal office: RPM, INC., P. O. Box 777, Medina, Ohio 44258.

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

a. EUCLID CHEMICAL COMPANY, INC., Ohio;

b. REDWOOD TRANSPORT, INC., Ohio;

c. MAMECO INTERNATIONAL, INC., Ohio;

d. REPUBLIC POWDERED METALS, INC., Ohio;

e. TALSOL CORPORATION, Ohio;

f. TROPICAL INDUSTRIAL COATINGS, INC., Ohio;

g. THE DEAN & BARRY COMPANY, Ohio;

h. BONDEX INTERNATIONAL, INC., Missouri;

i. AGR COMPANY, North Carolina;

j. ALOX CORPORATION, New York;

k. H. BEHLEN & BROTHERS, INC., New York;

l. FLOQUIL-POLLY S COLOR CORPORATION, New York;

m. MOHAWK FINISHING PRODUCTS, INC., New York;

n. RICHARD E. THIBAUT, INC., New Jersey;

o. GATES ENGINEERING CO., INC., Delaware;

p. HAARTZ-MASON, INC., Massachusetts;

q. DESIGN/CRAFT FABRIC CORPORATION, Illinois;

r. PROKO INDUSTRIES, INC., Texas; and

s. TESTOR CORPORATION, Illinois.

James H. Bayne,

Secretary.

[FR Doc. 84–32587 Filed 12–13–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-208)]

Rail Carriers; Burlington Northern Railroad Co., Abandonment in Reno, Rice, and Ellsworth Counties, KS; Findings

The Commission has found that the public convenience and necessity permit Burlington Northern Railroad Company to abandon its 57.26-mile line of railroad between milepost 551.34 near Medora and milepost 608.60 near Ellsworth, in Reno, Rice, and Ellsworth Counties, KS. 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 financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in boldface in 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(b).

James H. Bayne,

Secretary.

[FR Doc. 84–32586 Filed 12–13–84; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30561]

Rail Carriers; Consolidated Rail Corp., Trackage Rights Exemption in Boyd, Watson and Jeffersonville, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Consolidated Rail Corporation from the requirements of prior approval under 49 U.S.C. 11343 in connection with its acquisition of overhead trackage rights over 5.93 miles of Baltimore and Ohio Railroad Company tracks in Boyd, Watson and Jeffersonville, IN.

DATES: The exemption will be effective on January 14, 1985. Petitions for reconsideration must be filed by January 3, 1985. Petitions for stay must be filed by December 24, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30561 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representataive: Becky J. Bucari, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423 or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 5, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 84-32589 Filed 12-13-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DOCKET No. 84-21]

Bio-Fine Pharmaceuticals, Inc.; Importation and Manufacture of Controlled Substances; Rescheduling of Hearing

On May 1, 1984 at 49 FR 18631 notice was given that Bio-Fine Pharmaceuticals, Inc., 3600 Cambridge, Las Vegas, Nevada 89109, had made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of several basic class controlled substances, all of which were listed in Schedule II of the Controlled Substances Act of 1970. On May 3, 1984 at 49 FR 18909, notice was given that Bio-Fine Pharmaceuticals, Inc. had also made application to the Drug Enforcement Administration for registration as an importer of two basic class controlled substances, both listed in Schedule II of the Controlled Substances Act. Opportunity was given for the filing of comments and objections to said applications and for the filing of requests for hearing with respect to them.

On June 18, 1984 at 49 FR 24955, notice was given that requests for hearing had been filed on behalf of Penick Corporation, McNeilab. Inc., and Mallinckrodt, Inc. with respect to both applications. The matter was placed on the docket of the administrative law judge of the Drug Enforcement Administration and an initial hearing session was set for July 24, 1984.

On July 16, 1984, a Motion For Continuance and an accompanying affidavit were filed with the administrative law judge by counsel for the applicant, Bio-Fine Pharmaceuticals, Inc., requesting that the scheduled hearing session be continued until after mid-November 1984. The Motion was granted by the administrative law judge on July 17, 1984.

Notice is now hereby given pursuant to 21 CFR 1301.43 and 1311.42 that the initial hearing session in this matter be held on Wednesday, January 30, 1985, commencing at 10:00 a.m. in Room 1213, Drug Enforcement Administration, 1405 I Street NW., Washington, DC. The proceedings on that day will be limited to a preliminary discussion to identify proper parties and issues, and to determine procedures and set dates and locations for further proceedings.

No further filing need be made at this time by any entity which has previously indicated its intention to participate in these proceedings.

Dated: December 7, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-32609 Filed 12-13-84; 8:45 am]

BILLING CODE 4410-09-M

Albert Morgenthaler, D.O.; Revocation of Registration

On October 24, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Albert Morgenthaler, D.O., 935 Burns Drive, S.W., Atlanta, Georgia 30310, seeking to revoke DEA Certificate of Registration Am9146146 previously issued to Dr. Morgenthaler. The statutory predicate for the Order to Show Cause under 21 U.S. 824(a)(3) was the suspension of the medical license or Dr. Morgenthaler by the Composite Board of Medical Examiners of the State of Georgia for one year effective June 21, 1984. Dr. Morgenthaler was sent the Order to Show Cause, registered mail, return receipt requested. It was received on October 29, 1984. No response has been received from the doctor or his counsel. The Administrator therefore finds, pursuant to 21 CFR 1301.54(e), that Dr. Morgenthaler has waived his opportunity for a hearing. Since the opportunity for a hearing has been waived in this matter, the Administrator of the Drug Enforcement Administration enters this final order on the record as it appears.

The Administrator finds that on July 5, 1983, the Composite Board of Medical Examiners for the State of Georgia summarily suspended Dr. Morgenthaler's license to practice medicine in that state. This action was based on practices which the Board determined to be detrimental to the public health, safety, and welfare; mainly, the prescribing of methaqualone and Tuinal in excessive quantities and frequency, and below minimal standards of prevailing medical practice. On August 1, 1983, the Superior Court of Fulton County issued a temporary restraining order reinstating the medical license of Dr. Morgenthaler with the provision that the doctor was prohibited from prescribing, ordering, dispensing or possessing controlled substances. Subsequently, a hearing was held before a Hearing Officer appointed by the Composite State Board of Medical Examiners. As a result of this hearing, the Composite State Board of Medical Examiners entered a final order, effective June 21, 1984, suspending Dr. Morgenthaler's license to practice medicine in the State of Georgia for a period of one year to be followed by a period of probation of two years during which the doctor will not be allowed to possess, dispense, distribute, order or prescribe any controlled substances. Dr. Morgenthaler is without authority to prescribe, administer, dispense or possess controlled substances in the State of Georgia. The Administrator has consistently held that when a registrant is without authority to handle controlled substances under the law of the state in which he is registered, DEA is without lawful authority to maintain a registration. See *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984); *Leonard F. Faymore, D.O., et al.*, Docket No. 82-1, 48 FR 32886 (1983); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983).

The Administrator notes that the activities which the Composite Board of Medical Examiners cited as the basis for their action against Dr. Morgenthaler's license involve the doctor's activities while employed by Physician's Consulting Services, P.C. a/k/a Physical Examinations, P.C. This practice was a stress clinic from which substantial quantities of controlled substances were prescribed. A review of prescription records at three pharmacies revealed that during the period January, 1982 to November, 1982, Dr. Morgenthaler issued 1,523 prescriptions for methaqualone, a Schedule II controlled substance at that time, but since transferred to Schedule I. The same review revealed 325 prescriptions written by Dr. Morgenthaler for the Schedule II drug Tuinal for the period January, 1982 to June, 1983. A lengthy list of patients for whom the doctor prescribed methaqualone, Tuinal and other controlled substances led the Hearing Officer for the Board to conclude that there was a pattern and practice to the prescribing of controlled substances outside of the scope of legitimate medical practice.

In consideration of the foregoing, and having a lawful basis for such action, it is the decision of the Administrator that Dr. Morgenthaler's registration should be revoked. Accordingly, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), the Administrator hereby orders that DEA Certificate of Registration AM9146146 previously issued to Albert Morgenthaler be, and it

is hereby revoked. Any pending applications for renewal of that Certificate of Registration are hereby denied. Since Dr. Morganthaler cannot lawfully handle controlled substances in the State of Georgia, this order is effective immediately.

Dated: December 10, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-32608 Filed 12-13-84; 8:45 am]

BILLING CODE 4410-09-M

Gilberto Vila-Balzac, M.D.; Revocation of Registration

On October 24, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Gilberto Vila-Balzac, M.D., 4612 Vermack Avenue, Dunwoody, Georgia 30338, seeking to revoke DEA Certificate of Registration AV8789452 previously issued to Dr. Vila-Balzac. The statutory predicate for the Order to Show Cause under 21 U.S.C. 824(a)(3) was the suspension of the medical license of Dr. Vila-Balzac by the Composite Board of Medical Examiners of the State of Georgia for three years effective June 21, 1984. Dr. Vila-Balzac, through counsel, submitted a letter dated November 26, 1984, to the Administrative Law Judge. The letter acknowledged the suspension of Dr. Vila-Balzac's medical license and stated that the statements in the Order to Show Cause were not disputed. Dr. Vila-Balzac specifically waived his right to a hearing. The letter further states that although Dr. Vila-Balzac is not authorized to prescribe, administer or dispense controlled substances in the State of Georgia, he is authorized to do so in the State of Colorado where he is currently residing. The DEA Certificate of Registration which is the subject of the Order to Show Cause was issued to Dr. Vila-Balzac in Georgia. Therefore, his licensure status in the State of Colorado has no effect upon these proceedings. Since Dr. Vila-Balzac has waived his opportunity for a hearing in this matter, the Administrator of the Drug Enforcement Administration enters this final order on the record as it appears.

The Administrator finds that on July 5, 1983, the Composite Board of Medical Examiners for the State of Georgia summarily suspended Dr. Vila-Balzac's license to practice medicine in that state. This action was based on practices which the Board determined to be detrimental to the public health, safety and welfare; mainly, the prescribing of methaqualone and Tuinal in excessive quantities and frequency, and below minimal standards of prevailing medical practice. On July 7, 1983, the Superior Court of Fulton County issued a temporary restraining order reinstating the medical license of Dr. Vila-Balzac with the provision that the doctor was prohibited from prescribing, ordering, dispensing or possessing controlled substances. Subsequently, a hearing was held before a Hearing Officer appointed by the Composite State Board of Medical Examiners. As a result of this hearing, the Composite State Board of Medical Examiners entered a final order, effective June 21, 1984, suspending Dr. Vila-Balzac's license to practice medicine in the State of Georgia for a period of three years, to be followed by a period of probation of three years during which the doctor will not be allowed to possess, dispense, distribute, order or prescribe any controlled substances. Dr. Vila-Balzac is without authority to prescribe, administer, dispense or possess controlled substances in the State of Georgia. The Administrator has consistently held that when a registrant is without authority to handle controlled substances under the law of the state in which he is registered, DEA is without lawful authority to maintain a registration. See, *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984); *Leonard F. Faymore, D.O., et al.*, Docket No. 82-1, 48 FR 32886 (1983); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983). The Administrator finds the doctor's comments concerning his state licensure in the State of Colorado to be irrelevant to these proceedings.

The Administrator notes that the activities which the Composite Board of Medical Examiners cited as the basis for their action against Dr. Vila-Balzac's license involve the doctor's medical practice at Physician's Consulting Services, P.C. a/k/a Physical Examinations, P.C. This practice was a stress clinic from which substantial quantities of controlled substances were prescribed. A review of prescription records at three pharmacies revealed that during the period January, 1982 to November, 1982, Dr. Vila-Balzac issued 1,870 prescriptions for methaqualone, then a Schedule II controlled substance but since transferred to Schedule I. The same review revealed 853 prescriptions written by Dr. Vila-Balzac for the Schedule II drug Tuinal for the period January, 1982 to June, 1983. A lengthy list of patients for whom the doctor prescribed methaqualone, Tuinal and other controlled substances led the Hearing Officer for the Board to conclude that there was a pattern and practice to the prescribing of controlled substances outside of the scope of legitimate medical practice.

In consideration of the foregoing, and having a lawful basis for such action, it is the decision of the Administrator that Dr. Vila-Balzac's registration should be revoked. Accordingly, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), the Administrator hereby orders that DEA Certificate of Registration AV8789452, previously issued to Gilberto Vila-Balzac be, and it is hereby revoked. Any pending applications for renewal of that Certificate of Registration are hereby denied. Since Dr. Vila-Balzac cannot lawfully handle controlled substances in the State of Georgia, this order is effective immediately.

Dated: December 10, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-32610 Filed 12-13-84; 8:45 am]

BILLING CODE 4410-09-M

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 FR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the Federal Register (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Occupational Safety and Health Act of 1970.

On May 29, 1971, OSHA promulgated its original General Industry Occupational Safety and Health Standards as 29 CFR Part 1910 (36 FR 10466). The standards did not include Thiram (tetramethyl thiuram disulfide).

The State proposed adoption of a standard to control the use of the chemical used as a repellant in reforestation. A public hearing was held on September 29, 1977 when temporary rules were adopted. A second public hearing was held on January 4, 1978 to adopt a permanent standard. Subsequently, the Thiram standard was finally adopted on March 6, 1978. It appeared in the **Federal Register** (44 FR 71469) on December 11, 1979.

By letter dated July 6, 1983 from Roy G. Green, Director to James W. Lake, Regional Administrator, the State submitted for approval a revision to the Air Contaminant standard, OAR 437–22–017, Table G–1, pertaining to thiram to relect the permissible exposure limit adopted in the previously approved standard in OAR 437, Division 130—Thiram. Table G–1 is amended from 5 mg/M^3 to .15 mg/M^3 for thiram. The rule revision became effective on May 25, 1983.

2. *Division.* Having reviewed the State submission, it has been determined that the standard change does not establish a new requirement but instead makes the State air contaminant table consistent with the previsously approved requirement in the specific thiram standard. The State standard, therefore, remains at least as effective as Federal requirements.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N–3476, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is one for which there is no comparable Federal standard and therefore the State standard exceeds the Federal standards.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 14, 1984.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 13th day of September 1983.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 84–32673 Filed 12–13–84; 8:45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Occupational Safety and Health Act of 1970.

On May 29, 1971, OSHA promulgated its original General Industry Occupational Safety and Health Standards as 29 CFR Part 1910 (36 FR 10466). Included in these standards were regulations covering coal tar pitch volatiles under 29 CFR 1910.1002. OSHA amended this standard in the **Federal Register** (48 FR 2764) on January 21, 1983. The amendment indicated that asphalt fumes named in the standard are excluded from the class of chemical known as coal tar pitch volatiles.

By letter dated July 6, 1983 from Roy G. Green, Director, to James W. Lake, Regional Administrator, the State submitted for approval new rules for the revised Federal standard. Changes were made in OAR 437, Chapter 22–017, Table G–1, which adopted the provision excluding asphalt fumes from the list of chemical compounds under coal tar pitch volatiles. Notices of Proposed Amendment of Rules were mailed on January 13, 1983 and again on April 5, 1983 to those on the Workers' Compensation Board mailing list which was established pursuant to OAR 436–90–505 and to other interested parties. No written comments or requests for a public hearing regarding the amendment of the coal tar pitch standard were received. The rules were adopted on May 25, 1983.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State adopted a provision substantively identical to the Federal which accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N–3476, 200 Constitution Avenue NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective December 14, 1984.

(Sec. 18, Pub. L. 91–596, 34 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 13th day of September 1983.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 84–32674 Filed 12–13–84; 8:45 am]

BILLING CODE 4510–26–M

Virginia State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribed procedures under section 18 of the Occupational Safety and Health Act of

1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of all Federal standards as State standards after comments and public hearings except for those standards found in 29 CFR Parts 1915, 1917, 1918 and 1919 (shipyards, marine terminals, longshoring and gear certification).

A notice of approval was published in the **Federal Register** dated March 17, 1978 (43 FR 11274). Section 1952.370 of Subpart EE sets forth the State's schedule for the adoption of Federal standards. By letters dated August 29, 1984 from Commissioner Eva S. Teig, Virginia Department of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted state standards comparable to: (1) Amendments, corrections and revisions to 29 CFR 1910.6–.262 as published in the **Federal Register** dated February 10, 1984 (49 FR 5321) pertaining to the revocation of advisory and repetitive standards; (2) amendments, corrections and revisions to 29 CFR 1910.177(a)–(g) as published in the **Federal Register** dated February 3, 1984 (49 FR 4350) pertaining to the servicing of single-piece and multi-piece rim wheels; (3) revocation of 29 CFR 1910.411 as published in the **Federal Register** dated January 6, 1984 (49 FR 881) pertaining to medical requirements in commercial diving operations; and (4) adoption of 29 CFR 1910.1200 as published in the **Federal Register** dated November 25, 1983 (48 FR 53340) pertaining to hazard communication.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, PA 19104; and Office of the Commissioner of Labor and Industry, 205 North Fourth Street, Richmond, VA 23241.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 14, 1984.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Philadelphia, PA this 5th day of November 1984.

James W. Stanley,

Deputy Regional Administrator.

[FR Doc. 84–32672 Filed 12–13–84; 8:45 am]

BILLING CODE 4510–26–M

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F of Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as those which are presently or will, in the future, be promulgated under section 6 of the Occupational Safety and Health Act of 1970. A public hearing to consider the adoption of permanent rules for the use of thiram was held on April 21, 1981 for the purpose of affording interested persons an opportunity to present written and oral data statements and arguments concerning the proposed adoption. After hearing testimony, considering the evidence, and reviewing the need for such a proposed standard, this standard was adopted on July 27, 1981 upon the ruling of an Order of Adoption with the Code Reviser's Office.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that there is no direct comparison, and the State standard does not overlap or diminish the requirements of other State standards which are comparable to Federal. The State standard does not change the threshold exposure limit to the substance thiram in the previously approved State standards for air contaminants, which was the same as Federal. The standard was placed in effect August 22, 1981. OSHA received no comments which indicated significant objection to the State standard either as to its effectiveness or as to its conformance with the product clause requirements of section 18(c)(2) of the Act. (A different State standard applicable to a product which is distributed or used in interstate commerce must be required by compelling local conditions and not unduly burden interstate commerce.) OSHA, therefore, approves the standard. However, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, 909 First Ave., Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N3476, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the

Washington State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standard is one for which there is no comparable Federal standard and therefore the State standard exceeds the Federal standard.

2. The standard was adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 14, 1984.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 2d day of February, 1982.

James W. Lake,

Regional Administrator.

[FR Doc. 84-32675 Filed 12-13-84; 8:45 am]

BILLING CODE 4510-26

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-4880 et al.]

Proposed Exemptions; Northwestern Ohio Building and Construction Trades, 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 Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Northwestern Ohio Building and Construction Trades and Employer Construction Industry Investment Plan (the Program) Located in Toledo, Ohio

[Application Nos. D-4880 and D-4881]

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 restiuctions 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 participation by employee benefit plans in construction loans through the Program where such loans are already committed to by certain lending institutions to parties in interest with respect to such plans, provided that the terms of the loans are not less favorable to the plans than those terms available in transactions with unrelated parties; and provided that the terms and conditions, as decribed herein, are complied with during the operation of the Program.

Summary of Facts and Representations

1. The Northwestern Ohio Building and Construction Trades Council (the Council) is a confederation of local building and construction trade unions which represent building and construction tradesmen working in northwestern Ohio. The local unions are affiliates of members of the AFL-CIO Building Trades Department. The Northwestern Ohio Council of Construction Employers (the Employers) is a confederation of employers engaged in the building and construction industry in the same geographic area.

The Council and the Employers, on behalf of the local unions and employer's associations within their respective groups, desire to establish a construction industry investment program for the benefit of the employee pension benefit plans and welfare plans which they or their members co-sponsor. The plans are qualified under section 401 of the Code and comply with the requirements of the Labor Management Relations Act of 1947, particularly section 302 of such statute.

2. Under this program, the Council and the Employers will establish a foundation to be known as The Northwestern Ohio Building and Construction Trades Foundation (the Foundation). The Foundation will be a non-profit unincorporated association organized under and governed by the laws of Ohio. The Foundation will provide that any employee benefit plan qualified under section 401 of the Code, and co-sponsored by the Council or any local union affiliated with it or the Employers may elect to participate in the Foundation. The Foundation will be administered by a Board of Trustees (the Trustees). Every plan participating in the Foundation will be entitled to two Trustees on the Foundation's Board, one appointed by the union co-sponsor of the plan and the other by the employer association co-sponsor of the plan. The Trustees will be required and directed by the Foundation agreement to establish and administer the Program.

3. Pursuant to the terms of the Foundation documents, the Trustees will

contact every bank, savings and loan association and insurance company (as defined in Part B of Prohibited Transaction Exemption 76–1 (PTE 76–1, 41 FR 12740, pg. 12743, March 6, 1976) in the jurisdiction covered by the plans participating in the Program (the Northwestern Ohio quadrant), and request such institutions to allow the plans to participate in construction loans of $400,000 or more in which such lending institutions have made a legally enforceable commitment.[1] The applicants represent that it is not feasible to include small construction loans for homes, remodeling or minor additions, i.e. $25,000, $50,000, in the Program. The applicant represents that more than 80% of the construction loans originated will be at or above the $400,000 threshold. All institutions agreeing to participate in the Program will agree to notify the Trustees (or Administrative Manager) of the Program of all applications for construction loans which have been approved by the institution and agreed to be submitted by the borrower, and supply the Trustees with any requested data and information concerning the loans. The applicant represents that all lending institutions will affirmatively recommend that borrowers consent to the submission of the loan documents to the Program. In this regard the applicant represents that the borrower refusal rate will constitute 10% to 15% of all transactions. The Trustees of the Program will notify the trustees or other designated representatives of every participating plan of all information received by them. The fiduciaries of the participating plans will then determine whether they intend to participate in a specific construction loan and if so, the amount of their participation.

The Trustees of the Program will accumulate the responses from all of the participating plans and will then advise the lending institution of its desire to participate in a loan, and, if so, the amount of the participation. The amount of the participation will be the amount of the aggregate participations made by the individual employee benefit plans. Each said loan will be deemed and construed to constitute a separate and distinct legal transaction and will be documented as a separate trust. The Trustees will maintain their books and records of account accordingly.

4. Each participating plan will then, within a certain period following its decision to particpate in the loan, forward the amount of its participation to the lending institution. The lending institution will keep all such advances invested in certain designated short-term instruments until the lending institution funds the construction loan. The earnings on such advances will be a part of the plan's funding of the loan, and any excess amounts will be remitted by the institution to the participating plans.

5. The Trustees of the Program will keep proper books and records to account for all advances made by participating plans. All returns of principal and/or interest received by the lending institution from a construction mortgage loan in which a plan participates will be returned to the trustees of the participating plan(s) within five days after receipt. Periodically, the Trustees of the Program will report to the trustees of the participating plans and to the affiliated local unions and management associations on their operations. No Trustee will receive any compensation for his services to the Foundation or the Plan. The Trustees may incur reasonable expenses for necessary professional services to implement and operate the Program, and may obtain from the lead mortgage lenders and/or the participating plans reimbursement for reasonable expenses actually incurred. No part of the principal or income of any investment will be received or retained by the Foundation or its Trustees.

6. Because some construction loans may be made to parties in interest with respect to participating plans, such as contributing employers, the applicant seeks an exemption from section 406(a) of the Act for the transactions. The applicant represents that because the Program documents will provide that independent plan trustees or other fiduciaries will have sole and exclusive authority with regard to a plan's decision to participate in a loan, no relief from section 406(b) of the Act for Program transactions is requested.[2]

7. The applicant represents that lending institutions will have made a formal and legally binding commitment to make the construction loan before the opportunity for participation by employee benefit plans is distributed through the Program. The applicants represent that the Foundation will receive from all cooperating lending institutions all qualified loan commitments for consideration, and will not participate in a loan unless it is at or above the prevailing market rate of interest and value for comparable loans. In no event will participating plans either individually or in the aggregate acquire more than a 50% participation in any one loan.

8. The applicant represents that participating plans will invest ab initio together with a lending institution and will not be purchasing participation interests from such lending institution. As well, the applicant represents that participating plans will receive their pro rata share of the points charged by the lending institution to the extent such points represent a return on the loan and not compensation and/or reimbursement to the lending institution for actual expenses incurred and/or services rendered in servicing the construction mortgage loan. The plans pro rata share will be the ratio of the amount of the plan's funding participation to the total amount of the loan. To the extent such above transactions, or any other transactions between the plans and the lending institutions, constitute violtions of section 406 of the Act, the Department is not proposing relief for such transactions.

9. The applicant represents that in the event of a default by a borrower the lead lender, i.e. a lending institution, will have responsibility to enforce the rights of all of the lenders, including participation interest holders, under the loan. The applicant further represents that all of the loans subject to the Program will remain in the portfolio of the lead lender financial institution and thus not be transferred to other lenders.

10. The applicant represents that before a plan participates in a construction loan, the Foundation and each participating plan will receive from the lead lender a written commitment for permanent financing from a person other than the participating plan or another plan which is part of the Program to enable full repayment of the loan upon completion of construction. In

[1] Pt B of PTE 76–1 provides, in general, exemptive relief from section 406(a) of the Act for construction loans made by a multiple employer plan to a participating employer if, inter alia, the decision to make the loan is made on behalf of the plan by a bank, savings and loan association or insurance company as described in that exemption.

[2] In this exemption the Department expresses no opinion as to whether transactions involving construction loans to parties in interest will involve transactions as described in section 406(b) of the Act. As well, the Department is not expressing an opinion as to whether the structure, maintenance, and operation of the Program, including the participation with the lending institutions in construction loans to non-parties in interest, will violate provisions of Part 4 of Title I of the Act. The Department notes, as stated in the preamble to Part B of PTE 76–1, 41 FR 12743, that a loan made to a non-party in interest may give rise to a prohibited transaction if, for example, the loan is made in the context of an arrangement for a specific participating employer to furnish a portion of the construction, and such employer has a controlling influence over the plan's decision to make the loan.

addition, the Foundation will not accept loan participations by any plan which would, as to any individual loan participation, exceed 10% of the assets of the plan, or in the aggregate with all other construction loan participations, exceed 25% of the assets of the plan. Further, the Foundation and each participating plan will maintain or cause to be maintained for a period of six years from the date of each loan participation such records as are necessary to enable the Department, the Internal Revenue Service, the plan's participants and beneficiaries, any employer of plan participants and beneficiaries, or any employee organization whose members are covered by the plan to determine whether all conditions of the exemption have been met.[3]

[3] The Department notes the applicant's October 27, 1983, representation to the Securities and Exchange Commission whereby the applicant states that the Foundation will allow participating plans to "focus a portion of their funds on investments that would benefit both their members and the local community. Rather than investing in anonymous corporations or other more traditional investment media the plans hope to encourage new construction within their jurisdictions and create jobs for their members. By creating an umbrella organization such as the Foundation, the plans can contribute to the financing of a larger number of projects, and involve themselves in more extensive projects." The Department notes that to the extent the fiduciaries of the participating plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which violations if present would not be provided relief by this exemption.

In this regard, section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his plan. Because construction loans are investments which would be selected, if at all, in preference to alternative investments, a loan would not be prudent if it provided a plan with less return, in comparison to risk, than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in construction loans, a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make a loan may not be influenced by a desire to stimulate the housing industry and generate employment, unless the loan, when judged soley on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See Advisory Opinion 81-12A, January 13, 1981.)

11. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because (a) independent plan trustees and fiduciaries will have sole and exclusive authority to cause a plan to participate in a loan; (b) the lending institutions will have made a legally enforceable commitment to make a construction loan before plans consider participation in the loan; and (c) no more than 10% of the assets of any participating plan may be invested in any individual loan participation and no more than 25% of a plan's assets may be invested in construction loans in the aggregate.

Notice to Interested Persons: Notice to interested persons will be provided within 30 days of the date of publication of this notice in the **Federal Register.** Notice will include a copy of this notice as published in the **Federal Register** and a statement informing interested persons of their right to comment. Comments to the Department are due within 60 days of the date of publication of this notice.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Texland Petroleum, Inc. Profit Sharing Plan (the Plan) Located in Fort Worth, Texas

[Application No. D-5322]

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, effective December 1, 1983, to the sale of water rights in a parcel of real property by the Plan to Texland Petroleum, Inc. (the Employer), the sponsor of the Plan, provided that the terms and conditions of the sale are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If granted, this exemption will be effective from December 1, 1983.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 43 participants. As of November 30, 1983, the Plan had total assets of $840,129. Until November 30, 1983, Messrs. W.E. Rector and R.J. Schumacher, officers and/or shareholders of the Employer, served as trustees of the Plan and had investment discretion with regard to Plan assets. Effective December 1, 1983, the prior trustees' powers, duties and responsibilities were transferred to the successor trustee of the Plan, the First State Bank, Abilene, Texas (the Bank).

2. The Employer is in the business of exploration and production of oil and gas. As of November, 1982, the Employer had a net worth of approximately $17 million. The Employer employs a method of oil production which requires large quantities of water. In July, 1981, the Plan purchased from an unrelated party a 640 acre parcel of land (the Property) located in Terry County, Texas for $175,000. The Property was acquired by the Plan to enable the Employer to secure water rights to it. The Employer began purchasing water from the Plan in September, 1981.[4] Sales of water by the Plan to the Employer have continued for subsequent Plan years. In this regard the applicant represents that it has filed Internal Revenue Service Form 5330 and has paid the applicable excise tax for the past sale of water through November 30, 1983.

3. Effective December 1, 1983, the Plan entered into an egreement (the Agreement) with the Employer granting the Employer the right to continue to purchase water from the Plan with respect to the Property for a five year term. The applicant seeks an exemption for the sale of the water to the Employer from December 1, 1983. The principal provisions of the Agreement are (a) the Employer will pay the Plan $4,000 a month for the entire duration of the Agreement regardless of whether any water is withdrawn from the Property; (b) the Employer, as grantee, will be given, after advising the Plan, the right to drill wells at its sole cost and expense for the production of water on the land; (c) the Employer will have no right to terminate the contract although the Plan has, upon 30 days notice, the unilateral right to terminate the Agreement; (d) the Agreement will be reviewed by the Bank at the midpoint of the term of the Agreement and the payments may be adjusted upward to be not less than the market value for water supplied under comparable conditions; (e) the Agreement is renegotiable at the end of

[4] The Department expresses no opinion herein whether the Plan's acquisition of the Property violates any provisions of Part 4 of Title I of the Act.

its term; and (f) the Employer agree to indemnify and hold the Plan harmless against any and all liabilities resulting from any act, omission or neglect of the Employer.

4. Prior to the execution of the Agreement, the Bank, as fiduciary for the Plan, determined that the execution of the Agreement and continued holding of the Property and utilization of it for the sale of water rights was appropriate and in the best interests of the Plan. As of December 1, 1983, the Bank had no commercial relationships with the Employer except for a checking account with an average balance less than $1,000. The only other relationship between the parties is that Mr. Schumacher, the former trustee and 50% shareholder of the Employer is on the board of directors of Independent Bankshares, Inc. (Bankshares), a bank holding company on behalf of seven banks, including the Bank. Mr. Schumacher also owns 2.6% of the stock of Bankshares. The applicant represents that Mr. Schumacher is one of 26 directors and 13 advisory directors of Bankshares. The applicant further states that Mr. Schumacher is not related to any other director, employee, or shareholder of the Bank or Bankshares, and Bankshares is a public company listed on the over the counter market with a great diversity of ownership. The Bank represents that Mr. Schumacher had no control or influence over the Bank's decision as fiduciary that the continued holding of the Property and the execution of the Agreement was appropriate and in the best interests of the Plan.

5. The Bank has substantial experience in managing pension and profit sharing plans as it manages assets of approximately 150 employee benefit plans with assets of approximately $17,400,000. In reaching its determination with regard to the Agreement, the Bank reviewed all available information with regard to the transaction. In this regard, the Bank examined the review of the transaction by Mr. W.D. Young, an independent landman with over 30 years of experience in the oil and gas business, who opined that the Agreement is very favorable to the Plan. The Bank further examined the need for water in the area and its effect on the investment, the mix of Plan assets, the Plan's liquidity requirements, and the level of risk involved in the transaction. In this regard, the Bank determined that the transaction bears a low level of risk which will as well provide the Plan with a high rate of return over the term of the Agreement. The Bank further relies on Mr. Young's representation that there is no ready market for water in the area and the Plan could not get a better price for the water rights. The Bank specifically determined that the price of the water under the Agreement is reasonable and fair based upon an evaluation of the cost of the land and water rights, and other current projects where the Employer is purchasing water from a third party. The Bank states that the terms of the Agreement such as the guarantee of it for five years, the right of the Plan to terminate the Agreement and the midpoint price review provide significant protections to the Plan. As well, the Bank, as the trustee of the Plan, will be responsible for monitoring the terms of the Agreement, and for the enforcement on behalf of the Plan of the Employer's obligations under the Agreement.

6. With regard to the continued holding of the Property and its utilization for the sale of water, the Bank determined that such action was appropriate and it the best interests of the Plan because of the high rate of return generated by the sale of water and the fact that no commercial development of the Property is appropriate or feasible at the current time. The Bank accordingly represents that a sale of the Property at this time is not a feasible alternative.

7. The Bank will be responsible for negotiating and approving the terms of any renewal of the Agreement on behalf of the Plan. In this regard, the Bank will have complete authority to negotiate the terms of any renewal of the Agreement and determine whether the execution of such a renewal contract is in the best interests of the Plan. The Bank represents that a renewal of the Agreement will be on terms and conditions which reflect the fair market value of the water rights at the time such renewal is entered into. The Bank will have sole discretion and responsibility to determine such terms and conditions. The Bank represents that it expects a renewal will be for a five year term and that such renewal contract will provide for a mid-point review of the contract price. The Bank will monitor and enforce on behalf of the Plan the Employer's obligations under any renewal of the Agreement.

8. In summary, the applicant represents that the Agreement satisfies the statutory criteria of section 408(a) of the Act because (a) the Agreement was approved prior to its execution by the Bank, an independent fiduciary on behalf of the Plan, and will be monitored by the Bank on behalf of the Plan; (2) the Bank has determined that the Agreement is appropriate and in the best interests of the Plan because, among other things, the transaction bears a low level of risk and yields a high rate of return to the Plan; (3) the Bank has determined that the continued holding of the Property and utilization for the sale of water rights is appropriate and in the best interests of the Plan; and (4) the Bank will determine whether the Agreement should be renewed and will determine the terms and conditions of any such renewal.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local Union No. 198 Education Trust Fund (the Fund) Located in Baton Rouge, Louisiana

[Application No. L-5431]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act shall not apply to the sale of a building (the Building) by the Fund to United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local Union No. 198 (Local 198), an employee organization whose members are covered by the Fund, provided that the Fund received no less than the fair market value of the Building on the date of sale.

Effective Date: If the proposed exemption is granted, it will be effective August 12, 1982.

Summary of Facts and Representations

1. The Fund is a collectively bargained multiemployer plan established in accordance with section 302 of the Labor-Management Relations Act of 1947, as amended. The Fund provides apprenticeship training and other educational benefits to pipefitters and plumbers working in the construction industry and in the commercial/residential plumbing industry for employers who are signatory to or bound by collective bargaining agreements with Local 198.

As of August 31, 1982, the Fund had approximately 3,000 participants and $93,000 in assets. Current estimated

annual contributions to the Fund exceed $344,000. There are ten trustees (the Trustees) for the Fund, five of whom represent the employers contributing to the Fund (the Employer Trustees) and five of whom represent Local 198 (the Union Trustees).

2. From 1978 through 1980 there was a construction boom in the Baton Rouge area which increased the need for additional apprentices. The Fund geared up to meet forecasted needs for apprenticeship training and, with the increases, there was severe overcrowding in the existing classrooms and welding school. The Building, which is used for a welding school, was constructed by the Fund in 1980 at a cost of $398,244.30. The site of the Building is a parcel of real property (the Land) which the Fund had been leasing, and continues to lease, from Local 198.[5]

In 1981, economic conditions worsened, employment dropped, and the size of the apprenticeship class diminished. Expenses for the Building continued, but the income level projected, based on larger numbers of apprentices, was not achieved. In a 1982 report to the Fund, Martin E. Segal Company indicated that economic conditions in Baton Rouge at that time were not expected to improve and that the Fund needed to examine alternatives available to bring expenses in line with income. By mid-1982, the Fund was heavily in debt. It owed $320,898.05 in principal and accrued interest to American Band & Trust Company on the Building mortgage, and the note evidencing the debt was a demand note. In addition, the Fund was indebted to Louisiana National Bank on a demand note, the principal and accrued interest of which totaled $114,884.31, for sums borrowed to pay past administrative expenses of the Fund. The Fund also owed $1,350 for an appraisal of the Building and $22,800 for current administrative expenses.

3. The trustees met on August 12, 1982, to try to resolve the financial problems of the Fund. There were eight Trustees present at the meeting, three Employer Trustees and five Union Trustees. Following a discussion of the situation, one of the Employer Trustees, made a motion, which was seconded by another Employer Trustee, to sell the Building to Local 198 in exchange for a payment of approximately $450,000 by Local 198 to be used to eliminate the Fund's debts. The transfer was conditioned upon the Fund receiving fair market value for the Building based on an independent appraisal, the Fund and Local 198 entering into a lease agreement for the lease of the Building and the Land which would be encompassed by PTE 78–6, and the Fund and Local 198 obtaining an administrative exemption from the Department for the sale of the Building. All of the three Employer Trustees present voted in favor of the motion. Three of the Union Trustees abstained from voting on the motion on advice of counsel because they were elected officials of Local 198.[6] The other two Union Trustees present, who were not elected officials of Local 198, voted in favor of the motion.

On September 10, 1982, the Executive Board of Local 198 resolved to pay off all debts of the Fund, totaling $459,932.36, in return for transfer of the title of the Building from the Fund to Local 198. The building had been appraised on August 30, 1982, by J.M. Powell, Jr., SRPA, of Powell & Company in Baton Rouge, for $360,000. Mr. Powell subsequently valued the Fund's leasehold interest in the Land at $17,200. Thus, the value of the Fund's interest in the Building and Land was established through an independent appraisal at $377,200, and the Fund received in excess of $459,000 from Local 198. Although the $459,932.36 had already been used to pay the Fund's debts, title to the Building has not been tranferred to Local 198 pending receipt of an administrative exemption from the Department.

4. The Trustees represent that the sale of the Building to Local 198 enables the Fund to extricate itself from serious financial problems. Without a sale of the Building, the Fund would have been forced to cease its training programs and use all income to liquidate its debts. The Trustee sought and obtained an independent appraisal of the Building to ensure that the Fund received consideration which was at least as much as the fair market value of the Building. Although some of the Union Trustees recused themselves from voting on the motion to sell the Building in order not to engage in an act of self-dealing, the entire Board of Trustees represents that the sale of the building is in the best interests of the Fund and its participants.

Following transfer of the Building to Local 198, it is proposed that the Fund will enter into a lease with Local 198 for the building and the Land. It is represented that any such lease will be in full compliance for exemptive relief under the provisions of PTE 78–6. Currently, the Fund continues to utilize the Building and the Land. All payments under the lease for the Land have been suspended by mutual agreement of the Fund and Local 198.

5. In summary, the applicants represent that the transaction satisfies the statutory criteria contained in section 408 (a) of the Act because: (a) the Building is a one-time cash transaction; (b) the Building and the Fund's leasehold interest in the Land were appraised for a total of $377,200, yet the Fund received $459,932.36 from Local 198; (c) the sale of the Building enables the Fund to continue its primary purpose of providing training for apprentices and upgrading programs for journeymen; (d) The Fund will be able to continue using the Building under the terms of a lease which will meet all the conditions for exemptive relief contained in PTE 78–6; and (e) the Trustees have determined that the sale of the Building is in the best interests of the Fund and its participants.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicants and the Department within 30 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 Comments and requests for a hearing are due within 60 days of the date of publication in the **Federal Register.**

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

BDP International, Inc. Profit Sharing Plan and Trust (the Plan) Located in Philadelphia, Pennsylvania

[Application No. D–5433]

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)

[5] The applicants represent that the lease of the Land is encompassed by Prohibited Transactions Exemption 78–6 (PTE 78–6), 43 FR 23025. The Department expresses no opinion as to whether the lease of the Land meets the conditions of, and is encompassed by, PTE 78–6.

[6] The three Union Trustees who did not vote on the motion held the position of president, business manager and business agent of Local 198.

through (E) of the Code shall not apply to the proposed sale of certain real property by the Plan to a partnership, which is a party in interest with respect to the Plan provided all of the terms of the sale are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the sale is consummated.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with an estimated 94 participants. The Plan had total assets of $2,259,779 as of October 31, 1983. The trustees of the Plan are Richard J. Bolte, Gerald P. Donahue and William C. Person (the Trustees). The Trustees are also principal shareholders of BDP International, Inc. (the Employer).

2. The Employer is a customs house broker engaged in overseas shipping. The Trustees and Mr. Daniel A. Mullen, an officer of the Employer, constitute all of the shareholders of the Employer. The Trustees and Mr. Mullen propose to form a general partnership under the laws of Pennsylvania (the Partnership) for the purpose of purchasing a certain tract of unimproved land known as Lot No. 1, Lester Industrial Center, located at 4th and Massasoit Streets, Delaware County, Pennsylvania (the Property). The Property is currently owned by the Plan. It was purchased by the Plan as an investment on August 3, 1981 for the amount of $150,000, plus settlement charges and realty transfer taxes totalling $2,500. The applicant represents that at a meeting of the Trustees on January 28, 1981, if was decided that the purchase of the Property would diversify the Plan's investment portfolio and could be held for appreciation. The Trustees determined that the purchase price of the Property was reasonable in view of its growth potential, and that its purchase would be a suitable investment for the Plan. The applicant further represents that the purchase of the Property was not motivated by any intention to benefit a particular Plan participant or group of participants, nor the Employer.

3. It is proposed that the Partnership purchase the Property for the amount of $200,000. An independent appraisal of the Property was performed by John J. Coyle, 3rd, MAI, SRPA of Northland Appraisal Company located in Sharon Hill, Pennsylvania. The appraisal established the fair market value of the Property at $200,000 as of August 17, 1984. The purchase price will be made in cash at the time of settlement.

4. Following the Partnership's purchase of the Property, it plans to construct a warehouse and office building which will then be leased to the Employer for use as an air freight terminal and corporate headquarters.

5. Central Penn National Bank (the Bank) has been appointed independent fiduciary for the proposed transaction. The Bank represents that it has no existing business relationship with the Employer. The Bank has substantial expertise in the area of real estate and has conferred with counsel who is knowledgeable about the rules, requirements and regulations contained in the Act. The Bank has reviewed the proposed transaction and has determined that the sale of the Property is in the best interest of the Plan and its participants and beneficiaries because:

(a) The Plan will not incur any expenses with respect to the sale of the Property. Therefore, the proceeds received by the Plan would be greater than those obtainable from an independent third party due to the absence of sales brokerage commissions and other costs which the Plan would pay in a standard commercial sales transaction;

(b) The Property's potential for appreciation is not significant. Although the Property has had a moderate appreciation in value since its original purchase by the Plan, it has not increased in value from February 1983 to August 1984. Also, because of its geographic location in a HUD designated flood plain and its size, the Property has limited use for development;

(c) The proposed sales price is very favorable to the Plan. The Bank bases this determination upon its own inspection of the Property and a discussion with a local real estate developer, who indicated that it is very possible that the Property, if sold on the open market, would command a price less than the $200,000 the Partnership will pay;

(d) The sale of the Property will permit the Plan to invest the cash proceeds in other investments that would earn a higher and safer rate of return; and

(e) The sale of the Property will enhance the liquidity of the Plan and enable it to dispose of a non-income producing asset.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The sale of the Property would be a one-time cash transaction;

(b) The Plan would receive fair market value for its asset;

(c) The Plan's liquidity will be enhanced; and

(c) The Plan's independent fiduciary has determined that the sale of the Property is the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Intercontinental Monetary Corp. Pension Plan (Pension Plan) and Profit Sharing Plan (Profit Sharing Plan; Collectively, the Plans) Located in New York, New York

[Application No. D-5443]

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 Plans of third party promissory notes secured by letters of credit (the Notes) to Intercontinental Monetary Corporation (IMC), the sponsor of the Plans, provided that the sales price is not less than the consideration obtainable if the Plans sold the Notes to unrelated parties.

Summary of Facts and Representations

1. The Pension Plan and Profit Sharing Plan are respectively a defined benefit plan and a defined contribution plan with 8 participants in each plan. As of June 30, 1983, the Profit Sharing Plan had total assets of $319,797 of which $281,122 were represented by the then market value of the Notes. As of the same date, the Pension Plan had total assets of $151,539 of which $145,549 were represented by the then market value of the Notes. The trustees of each Plan are Messrs. Edgar R. Eisner and Laurence H. Friedman who are officers of IMC. The trustees have investment discretion with respect to the Plan's assets.

2. IMC is a corporation primarily engaged in purchasing promissory notes guaranteed by letters of credit and offering these instruments for sale primarily in the European market. The net worth of IMC is in excess of $1 million.

3. Since 1981, the Plans have purchased the Notes from unrelated parties. The obligors on the Notes are individuals who are unrelated parties

with respect to the Plans. The Notes are secured by letters of credit issued by financial institutions which are unrelated parties with respect to the Plans. The Pension Plan holds eleven Notes ranging in maturity amounts of $2,633 to $24,983, and the Profit Sharing Plan holds thirteen Notes ranging in maturity amounts of $7,900 to $31,600. Each Note bears a specific rate of interest and have terms ranging from one to approximately four years.

4. The applicant requests an exemption to sell the Notes for cash at their fair market values to IMC. The sales price of the Notes which will be paid by IMC will be the fair market values of the instruments calculated on the basis of the London Interbank Offered Rate (the LIBOR Rate). The LIBOR Rate is published periodically throughout each business day and is readily determinable from daily financial publications such as *The Wall Street Journal*. The LIBOR Rate will be used to determine the fair market value of each of the Notes in the following manner: (1) the LIBOR Rate operative at the time of purchase for instruments of the same maturity as the given instrument will be determined; (2) a margin of 1% will be added to the LIBOR Rate which is the standard industry sales margin for sales of similar negotiable instruments; and (3) the LIBOR Rate, as adjusted, will be used as an interest factor in making an actuarial calculation of the present value of the instrument given its maturity date and maturity amount.

5. The applicant represents that the prices to be realized by the Plans for the Notes will be the maximum prices which the Plans would realize on a sale of the Notes in the open market to any other potential buyer. IMC represents that it sells Notes using the same valuation procedure as that proposed for the sale of the Notes by the Plans and therefore states that it will not realize any profit upon a resale of the Notes. In this regard, IMC represents that it generally acquires Notes on a negotiated basis with syndicators and limited partnerships which seek financing through the sale of promissory notes backed by letters of credit. IMC is generally able to negotiate the acquisition of Notes based upon the prevailing prime rate or a flat figure which is greater than the LIBOR Rate plus 1% discount rate. Such an acquisition of a Note at a price which has been discounted by a higher interest rate than the LIBOR Rate plus 1% of such rate enables IMC to make a profit upon a subsequent resale of a Note.

6. The applicant represents that institutional investors (generally European banks) purchase Notes at prices determined by discounting the maturity value of Notes by the LIBOR Rate plus 1% of such rate. In this regard, Bayerische Landesbank—New York Branch, an internationally known financial institution completely independent of IMC, represents that they purchase Notes at prices determined by discounting the maturity value of Notes by the LIBOR Rate plus 1% of such rate. The applicant represents that the sale of the Notes will enable the Plans to reinvest the proceeds in other income-producing assets.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (1) the sales will be one-time transactions for cash; (2) the Plans will be able to dispose of third party obligations which constitute a substantial percentage of each Plan's assets; (3) the Plans will sell the Notes at the highest prices which can be realized from a sale of the Notes on the open market to any other potential buyer; (4) the Plans will not incur any expenses with regard to the sale; and (5) the trustees represent that the proposed transactions are in the best interests of the Plans.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Kerr Glass Manufacturing Corporation Retirement Trust Fund (the Plans) Located in Los Angeles, California

[Application No. D–5454]

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 continuation, past June 30, 1984, of a lease (the Amended Lease) of certain improved real property (the Real Property) between the Plans and Kerr Glass Manufacturing Corporation (the Employer), provided the terms and conditions of the Amended Lease are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

Effective Date of Exemption: If granted, this exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Employer is incorporated under the laws of the State of Delaware with its principal executive offices in Los Angeles, California. The Employer is a leading manufacturer of glass products and packaging products.

2. The Plans consist of nine employee pension plans. As of December 31, 1982, the Plans had approximately 7,468 participants and net assets of $53,461,392. Between 2.3 and 2.6 percent of each Plan's assets are invested in a master trust fund of which Fulton Bank (Fulton) of Lancaster, Pennsylvania serves as trustee. The remainder of the Plans' assets are held in another master trust fund that is trusteed by a major bank and in several group annuity contracts issued by major insurance companies. Each trustee has limited discretionary authority to make investment decisions over the assets of the Plans it manages.

3. On December 20, 1970, Fulton purchased the Real Property from the Employer on behalf of the Plans. The Real Property, which is located at 1650 Manheim Pike, Lancaster, Pennsylvania, consists of a 3.67 acre parcel of land on which is situated a two-story office building known as the Lancaster Building. The Real Property constitutes the sole asset of the Plans that is held by Fulton. Subsequent to the purchase, the Employer entered into a triple net lease agreement under which it leased back the Real Property from the Plans for a twenty year term (the Current Lease).[7] The Real Property represents the Employer's primary research and development center.

4. The Employer requests an exemption to permit the continuation of the Current Lease but in an amended form. The Amended Lease, which became effective on July 1, 1984 was entered into by the parties on May 17, 1984. The Amended Lease is a triple net lease with a stated term ending December 31, 1990. It provides for a monthly rental of $15,293. It also features a rental adjustment on January 1, 1988 that will be based on the fair market rental value of the Real Property as determined by an independent appraiser selected by Fulton, the independent fiduciary for the Plans with

[7] Although the exemption application states that the Current Lease is statutorily exempt by reason of section 414(c)(2) of the Act, the Department expresses no opinion on whether the provisions contained in that section are met.

respect to the proposed transaction. The Amended Lease requires the Employer to pay all taxes, repairs, maintenance expenses on the Real Property and to insure the premises in favor of the Plans. It further requires the Employer to indemnify and hold Fulton harmless from all suits, claims and demands of any nature arising during the lease term.

5. The monthly rental due under the Amended Lease is based on the fair market rental value of the Real Property as determined by Mr. Daniel B. Wagner (Mr. Wagner) in an appraisal report dated March 12, 1984. Mr. Wagner is an independent MAI real estate appraiser who maintains his office at 126 S. Duke Street, York, Pennsylvania. In addition to computing the fair market rental value of the Real Property, Mr. Wagner has assessed the fair market value of the unencumbered fee simple interest in the Real Property at $1.5 million as of March 12, 1984.

6. Because the Employer indicates it may vacate the premises before the original termination date of the Amended Lease, negotiations for the sale of the Real Property to an unrelated party have begun. However, the Employer's obligations under the Amended Lease will continue until the 1990 expiration date or until Fulton terminates the lease at any time prior thereto on 90 days' notice to the Employer. The Employer has no right to terminate the Amended Lease and its obligations thereunder at any time prior to the lease expiration date.

7. The interests of the Plans under the Amended Lease are represented by Fulton which is totally independent of the parties involved in the transaction. As the independent fiduciary, Fulton believes the Amended Lease is an appropriate investment for the Plans and in the best interests of their participants and beneficiaries. Fulton represents that it has reviewed and evaluated the Amended Lease and it believes the rental payments due thereunder are at least as favorable as or exceed those obtainable from an unrelated party. It is also Fulton's opinion that rental payments to the Plans have and continue to meet those obtainable from an unrelated party and yield the Plans a favorable rate of return.

In light of this analysis, Fulton concludes that it is appropriate for the Plans to retain the Real Property. Specifically, Fulton represents that the Real Property has a favorable location, the potential for appreciation and it is particularly desirable for occupation by the Employer. Fulton states that in its opinion, the Real Property would be marketable in the event the Amended Lease is terminated and it reaffirms its unilateral right to end the lease upon giving the Employer 90 days' notice.

With respect to the Employer's proposal to relocate its business premises and employees, Fulton states that it is aware of the Employer's intentions. Nevertheless, it believes the negotiations that are presently underway to sell the Real Property to an unrelated party are in the best interests of the Plans and protective of their participants and beneficiaries.

Fulton agrees to monitor on behalf of the Plans the performance of the Employer under the Amended Lease and to represent the Plans in the enforcement of the lease terms and conditions. In particular, Fulton will undertake the ongoing responsibilities of monitoring the Employer's compliance with all the terms and conditions of the Amended Lease including collecting rental payments, as well as representing the Plans in any appropriate enforcement proceeding (including the institution of suit) in the event that the Employer defaults or breaches the Amended Lease.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) the Amended Lease is a triple net lease requiring the Employer to pay the costs of repair and maintenance and all taxes and insurance on the Real Property; (b) Fulton has evaluated the Amended Lease on behalf of the Plans and has determined that it is a desirable investment for the Plans; (c) the Amended Lease involves a low percentage of the total net assets of the Plans; (d) the interests of the Plans under the Amended Lease will continue to be represented by Fulton, who will administer, monitor and enforce performance of the terms and conditions of the Amended Lease on behalf of the Plans; (e) Fulton, having reviewed all the terms of the Amended Lease, approves of the Amended Lease as protective of and in the best interests of the participants and beneficiaries of the Plans.

Notice to Interested Persons: Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 45 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/or to request a hearing. Comments are due within 75 days of the date of publication of the proposed exemption.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Pension Plan for Employees of American Petrofina, Incorporated and Certain Subsidiaries (the API Plan) and Cosden Oil & Chemical Company Pension Plan (the Cosden Plan, Collectively the Plan), Located in Dallas, Texas

[Application Nos. D–5464 and D–5465]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 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 lease, entered into on July 12, 1984, by Trust Pipe Line Company (the TPLC Lease), a title holding company all of whose shares are owned by the Plans, with Cosden Oil & Chemical Company (Cosden), the sponsor of the Cosden Plan; (2) the leases, entered into on July 12, 1984, by River Pipe Line Company (the RPLC Leases), a title holding company all of whose shares are owned by the Plans, with Cosden; and (3) the guarantee of the TPLC Lease and the RPLC Leases (the Leases) by American Petrofina, Incorporated (API), the sponsor of the API Plan and parent corporation of Cosden, provided that the terms and conditions of the Leases are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

Effective Date: The effective date of this exemption, if granted, will be July 12, 1984.

Summary of Facts and Representations

1. The Plans are defined benefit pension plans. As of December 21, 1983, the API Plan had 1,972 participants and $72,259,972.08 in total assets. As of December 31, 1983, the Cosden Plan had 869 participants and $27,137,246.49 in total assets. Cosden and API are engaged in the exploration, production and refining of crude oil and natural gas. Cosden is a wholly-owned subsidiary of API. The Plans are administered by a six member administrative committee appointed by the Boards of Directors of API and Cosden. All of the assets of the

Plans are held in trust by InterFirst Bank Dallas, N.A. (the Bank).

2. Trust Pipe Line Company (TPLC) is a Texas corporation organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to the Plans. The Internal Revenue Service has issued a determination letter indicating that TPLC is exempt from federal income tax as an organization described in section 501(c)(2) of the Code. TPLC holds title to various pipeline facilities which distribute petroleum products along a route from Cosden's refinery at Big Spring, Texas to TPLC's pump station at Wichita Falls, Texas, which were leased under four separate leases (the Old TPLC Leases) to Cosden. The applicant represents that under section 414(c) of the Act the Old TPLC Leases, all of which originated prior to 1974, did not constitute prohibited transactions.[8] As of May 22, 1984, there were 30,000 shares of TPLC common stock outstanding, 8,209 of which were owned beneficially by the API Plan and 21,791 of which were owned beneficially by the Cosden Plan.

3. River Pipe Line Company (RPLC) is a Texas corporation organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to the Plans. The Internal Revenue Service has issued a determination letter indicating that RPLC is exempt from federal income tax as an organization described in section 501(c)(2) of the Code. RPLC holds title to various pipeline facilities which distribute petroleum products along a route from TPLC's pump station at Wichita Falls, Texas to RPLC's products terminal at Duncan, Oklahoma, which are leased under two separate leases (the Old RPLC Leases) to Cosden. The applicant represents that under section 414(c) of the Act, the Old RPLC Leases, both of which originated prior to 1974, did not constitute prohibited transactions.[9] As of May 22, 1984, there were 1,000 shares of RPLC common stock outstanding, 637 of which were owned beneficially by the API Plan and 363 of which were owned beneficially by the Cosden Plan.

4. On July 12, 1984, TPLC entered into the TPLC Lease with Cosden, effective July 1, 1984.[10] The TPLC Lease covers the same pipeline and facilities as the four Old TPLC Leases. The term of the TPLC Lease is twenty years. The initial rent of $667,944 per annum is payable in semi-annual installments of $333,972 on December 31 and June 30. The rental rate shall be adjusted each July 1 for the year then commencing by the percentage by which the General Price Index (GPI) as published by the Department of Commerce for the quarter ending as of the immediately preceding March 31 exceeds the GPI for the quarter ending March 31, 1984, provided that the annual rental, as adjusted, shall never be less than $667,944. Rental payments are due regardless of any loss or failure of title to the pipeline or any part thereof, regardless of whether the pipeline or any portion thereof is wholly or partially destroyed and regardless of whether or not Cosden actually uses the pipeline. The TPLC Lease is a triple net lease with Cosden responsible for all taxes and all operating, maintenance, repair and insurance costs. In addition, Cosden will hold TPLC harmless from all claims and causes of action arising out of or in connection with the use, maintenance or operation of the pipeline. API joined in the execution of the TPLC Lease and guarantees that Cosden will perform all of its obligations under the TPLC Lease.

5. On July 12, 1984, RPLC entered into the RPLC Leases with Cosden effective July 1, 1984.[11] The RPLC Leases cover the same pipeline and facilities as the Old RPLC Leases. The term of the RPLC Leases is twenty years. The initial aggregrate rent of $144,000 per annum is payable in semi-annual installments of $72,000 on December 31 and June 30. The RPLC Leases are subject to the same terms, conditions and guarantees, including the rental adjustments, as the TPLC Lease (discussed in representation 4 above).

6. The Bank has accepted appointment as independent fiduciary on behalf of the Plan with respect to the Leases. The Bank reviewed the Leases prior to their execution and directed Wayne Bartlett, the President of both RPLC and TPLC, to execute the Leases on behalf of TPLC and RPLC. The Bank further represents that it will monitor and enforce the terms and conditions of the Leases on behalf of the Plans. The Bank has made the following disclosure with respect to business relationships of the Bank and its parent company, InterFirst Corporation with API and Cosden: (a) both API and Cosden maintain demand deposits with the Bank. As of June 19, 1984, their combined deposits of $1,917,953 amounted to an insignificant percentage of the more than $7,700,000 on deposit with the Bank; (b) API had outstanding loans of $10,000,000 from the Bank as of June 19, 1984. Cosden had no outstanding loans from the Bank as of that date. The loans to API represented an insignificant percentage of the more than $6,200,000,000 in loans outstanding by the Bank; (c) the Bank's commingled investment funds own no shares of API. The Bank does beneficially own shares in API and API's parent company as trustee of three other employee benefit plans sponsored by API. Neither the Bank nor its parent company own stock in API or affiliated companies in their own investment portfolio; (d) neither the Bank nor its parent company have any joint operating agreements or joint investments with API or Cosden which require the operating expertise or are managed by any of the above named parties; and (e) there are no interlocking directors or officers.

7. Prior to the execution of the Leases, the Bank obtained the expertise of Dowdle Fairchild & Ancell, Inc., Petroleum Consultants and Crichfield Associates, Inc., Pipeline Consultants. The Bank represents that neither firm has any depositor, creditor or stockholder relationship with the Bank, its parent company, API or Cosden nor have they ever performed services for any of the above named parties. The two consulting firms (the Consultants) submitted joint reports dated May, 1984, and July, 1984. The Consultants established the value of the facilities of TPLC and RPLC (the Pipelines) using the ICC Fair Value and the FERC Original Cost valuation methodologies. The value of TPLC's facilities is $5,775,966 and the value of RPLC's facilities is $1,039,839 under the ICC Fair Value method and $5,057,587 and $1,025,682 respectively under the FERC Original Cost method.

8. The Bank, acting as independent fiduciary on behalf of the Plans, considered the reports of the Consultants, the findings of the Bank's in-house experts, the responsibility of a potential lessee to bear all of the increasingly significant costs of maintaining the Pipelines (which in some places are 27 years old) and that the Pipelines go to places that only API or Cosden wish to go and concluded that without executing the Leases, any sale or lease of the Pipelines to unrelated parties would be very difficult. The Bank represents that based

[8] In this proposed exemption, the Department expresses no opinion as to the applicability of section 414(c) of the Act to the Old TPLC Leases.

[9] In this proposed exemption, the Department expresses no opinion as to the applicability of section 414(c) of the act to the Old RPLC Leases.

[10] Cosden represents that it will report and pay the excise tax due with respect to the use of the TPLC pipeline and facilities for the period after June 30, 1984 and prior to July 12, 1984.

[11] Cosden represents that it will report and pay the excise tax due with respect to the use of the RPLC pipeline and facilities for the period after June 30, 1984 and prior to July 12, 1984.

on all available information and considering fair market value to be what a willing buyer would pay for the shares of TPLC and RPLC stock, it determined that the fair market value of the shares was $4,500,000. The shares constitute approximately 2% of the assets of the API Plan and approximately 11% of the Cosden Plan.

The Bank further concluded that the rental rates under the Leases represent fair market value rent and that the Leases are in the best interests and protective of the Plans and their participants and beneficiaries for the following reasons: (a) the Pipelines have produced a superior rate of return for the Plans providing between 20% and 100% of the cash flow required by the Plans to pay their recurring monthly benefit obligations; (b) the Plans' collective investments in the Pipelines is $3,374,873 and they have realized a combined average annual return on equity of 20.7% per year since 1963; (c) the rental escalator insures that the rental payments will be fair market value rent over the entire term of the Leases and is both more favorable to the Plans than the industry norms and more advantageous than what the Plans would have been able to obtain from unrelated lessees; (d) the rate of return from the Leases is superior to alternative investment rates of return even when computed without considering possible escalation of the rentals under the Leases; (e) whether measured against cost or against the fair market value (which, considering anticipated declines in west Texas oil production and the advanced age of the Pipelines, is likely to decrease despite general inflationary economic trends), the rate of return appears to have the potential of increasing steadily over the term of the Leases; (f) the rent is payable without regard to whether API or Cosden discontinues use of the Pipelines during a certain period or altogether; (g) the Leases require Cosden to bear all expenses in connection with the operation and maintenance of the Pipelines and to pay all taxes and insurance costs; (h) API has guaranteed Cosden's obligations under the Leases; and (i) the shares of TPLC and RPLC represent only a small fraction of the assets of either Plan.

9. In summary, the applicant represents that the Leases met the statutory criteria of section 408(a) of the Act because (a) the Leases were approved by the Bank, acting as independent fiduciary on behalf of the Plans; (b) the Bank, after considering the report of the Consultants and their own in-house experts, determined that the Leases are in the best interests of the Plans, their participants and beneficiaries; (c) the Bank has determined that the Leases provide a superior rate of return to that available from alternative investments; and (d) the Bank will monitor and enforce the terms and conditions of the Leases on behalf of the Plans.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Drs. Kaufman, Yosowitz & Gableman, Inc. Money Purchase Pension Retirement Plan & Trust (the Plan) Located in Cleveland Heights, Ohio

[Application No. D-5518]

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 loan of $500,000 by the Plan to Drs. Kaufman, Yoswitz & Gableman, Inc. (the Employer), provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan, which was established effective March 1, 1979, has eleven participants and total assets of $2,827,973 as of September 21, 1984. The trustees (the Trustees) of the Plan are Drs. Richard S. Kaufman, Gerald M. Yosowitz and Edward H. Gableman, all of whom are shareholders of the Employer. The assets of the Plan are held primarily in a John Hancock Group Annuity Contract and in cash or cash equivalent funds. The Employer provides radiology, physical therapy and thermography services in the suburban Cleveland area.

2. The Plan and the Employer have agreed to enter into a loan agreement in which the Employer will borrow $500,000 from the Plan. The total amount of the loan will not exceed 25% of the Plan's assets on the date of disbursement of the loan, and funds for the loan will come from the cash equivalent funds held by the Plan. The applicant represents that the Plan will not incur any negative market value adjustment or other penalty as a result of liquidating assets to make this loan. The proceeds from the loan will be used by the Employer to purchase $300,000 of land in Commerce Park on Mercantile Road in Beachwood, Ohio on which the Employer will construct a building (the Building) which will serve as the corporate headquarters for the Employer. The remaining $200,000 will be used by the Employer for improvements to the Building. The balance of the project will be financed by $50,000 contributions by each of the shareholders of the Employer and by loans obtained from an area bank or savings and loan. The total cost of the project is estimated to be $2,250,000.

3. The loan will be payable in 120 equal monthly installments with interest at the annual rate of 1½% in excess of the prime rate of Central National Bank of Cleveland, Ohio, adjusted every three years. The applicant represents that this interest rate compares very favorably with the return available on comparable investments and would currently result in an annual interest rate of 14.5%. The loan will be secured by a letter of credit issued by Central National Bank equal to 150% of the total amount of the outstanding loan balance. In addition, the trustees will appoint Gerald D. Facciani as an independent fiduciary for the Plan to determine the prudence of the loan, to administer and enforce the terms of the loan agreement and, if necessary, to draw down on the letter of credit on behalf of the Plan. Mr. Facciani represents that as an actuary he understands his duties, responsibilities and liabilities as an independent fiduciary under the Act.

4. The letter of credit may be drawn against by Mr. Facciani upon certification by him that the loan is due and payable because of either the occurrence of an event of default under the loan agreement or the receipt of a proposed notice of termination of the letter of credit from Central National Bank. An event of default will occur if the Employer fails to pay interest or principal on the loan within 30 days after the due date, upon proof of any false or misleading statements made by the Employer under the representations and warranties or covenants of the loan trust agreement and on the filing of bankruptcy. Under the letter of credit agreement, Central National Bank will reserve the right to terminate the letter of credit 60 days written notice to Mr. Facciani. If such a notice is given and substitute letters of credit are not

obtained or the Employer does not repay all amounts of principal and interest outstanding under the loan within 30 days prior to the expiration of the letter of credit, Mr. Facciani will demand full payment of all principal and interest owing under the loan agreement and draw down on the letter of credit before it terminates so that the Plan's interests will be protected.

7. The terms of the loan trust agreement provide that Mr. Facciani will hold the promissory note evidencing the loan on behalf of the Plan, and will pay over to the Trustees any amounts of principal and interest received from the Employer and any amounts drawn down under the Central National Bank letter of credit. Mr. Facciani is authorized to enforce the provisions of the loan agreement and to collect the proceeds from the letter of credit as required to protect the interests of the Plan and its participants and beneficiaries. The loan trust agreement will terminate upon the repayment of the loan or the payment of the proceeds from the letter of credit. Mr. Facciani will have control and authority only with respect to the Plan assets subject to the loan agreement.

8. Mr. Facciani represents that he has reviewed various documents relating to the proposed loan and to the financial condition of the Employer. Those documents included among others the loan agreement and note, the loan trust agreement, the letter of credit agreement, and audited financial statement of the Employer. In addition, Mr. Facciani has reviewed the documents establishing the Plan, current financial statements of the Plan and the allocation of Plan assets between the John Hancock Group Annuity Contract, and other types of investments.

Based upon Mr. Facciani's review of the documents referred to above and other information provided by the Plan, he has determined that the terms of the proposed loan are consistent with those customarily found in commercial loan arrangements and are no less favorable to the Plan than the Plan might obtain in a loan to an unrelated party. He has also determined that the proposed loan would be an appropriate investment for the Plan and in the interests of the Plan's participants and beneficiaries. Mr. Facciani will review these determinations prior to making the disbursement under the loan agreement and will not make such disbursement unless he finds it to be appropriate and in the interest of the Plan. Mr. Facciani represents that in making these determinations he has reviewed the Plan's investment portfolio for cash flow needs, liquidity to pay benefits and the prudence of the investment. Mr. Facciani will also confirm that payments are made on a timely basis to the Plan, that the value of the collateral securing the loan is at least 150% of the outstanding balance of the loan and that adequate insurance is maintained by the Employer on the Building with the Plan named as loss payee.

9. The Employer represents that it does not control, is not controlled by, and is not under common control with, Mr. Facciani and is not otherwise affiliated with Mr. Facciani. No shareholder of the Employer has any ownership interest with Mr. Facciani, nor does any shareholder or relative of a shareholder hold a position as a director or management official of any business owned by Mr. Facciani. However, Mr. Facciani is president and sole owner of Professional Plan Administrator, Inc. of Cleveland, Ohio, which provides fee-for-service consulting and administration services on behalf of the Plan. It is estimated that over the last five years, such fees for services paid by the Employer to Professional Plan Administrators have represented approximately .4% of Professional Plan Administrators' gross income for that year. The applicant represents that Mr. Facciani will be totally independent of the Employer with regard to this matter, and that the Employer will not be in a position, by virtue of any past or existing business relationship, to influence the actions or decisions of Mr. Facciani in connection with the proposed loan arrangements. Mr. Facciani is also totally independent of Central National Bank.

10. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The loan terms and conditions will be monitored by Mr. Facciani;

(b) The loan will be secured by the letter of credit from Central National Bank, which will be called in the event of default, or if Central National Bank notifies Mr. Facciani of its intent not to renew and a substitute letter of credit is not obtained; and

(c) Mr. Facciani, as independent fiduciary to the Plan, has determined that the transaction is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Call-Chronicle Newspaper, Inc. Pension Plan and Trust (the Pension Plan) and Call-Chronicle Newspaper, Inc. Stock Savings Plan and Trust (the Stock Plan) (Collectively, the Plans) Located in Allentown, Pennsylvania

[Application Nos. D-5752 and D-5753]

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: (1) the sale by the Plans of their respective holdings of the capital stock of Call-Chronicle Newspapers, Inc. (CCN) to the Times Mirror Company (Times Mirror), which on the date of sale will become the employer whose employees are covered by the Plans; and (2) the extension of credit pursuant to the sale by the Plans to Times Mirror, provided that the terms of the sale and extension of credit are no less favorable to each of the Plans than those terms obtainable in arm's length transactions with unrelated parties.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 15, 1984.

Summary of Facts and Representations

1. CCN is a Pennsylvania corporation which publishes the Call-Chronicle newspaper from its principal place of business located in Allentown, Pennsylvania. As of August 24, 1984, the authorized capital stock of CCN consisted of: (1) 1,675,000 shares of Class A non-voting stock, of which 1,420,000 shares were issued and outstanding; (2) 200,000 shares of Class B voting stock, of which 160,000 shares were issued and outstanding; and (3) 125,000 shares of Class D non-voting stock, none of which were issued or outstanding. CCN stock is closely held and there is not now, nor has there ever been, a public market for CCN stock. Mr. Donald P. Miller, who is Chairman of the Board of Directors of CCN, holds the single largest block, i.e., 116,000 shares, of Class B voting stock of CCN. The net worth of CCN as of June 30, 1984, was $19,154,321.

2. The Pension Plan is a qualified pension plan with 772 participants and total assets as of June 30, 1984 of $9,565,373. Of that amount, $1,064,400, or

approximately 11% of the Pension Plan's assets, is represented by 40,000 shares of non-voting Class A stock of CCN held by the Pension Plan. The 40,000 shares of CCN stock represent approximately 2.5% of the total outstanding stock of CCN.

The trustees of the Pension Plan (the Pension Trustees) are Mr. Frederick R. Dieter who is Treasurer of CCN and Administrator of the Pension Plan, Ms. Geraldine A. Kotz who is Classified Advertising Manager of CCN, and Mr. George Y. Nehrbas who is Secretary of CCN and editorial page editor of the Call-Chronicle newspaper.

3. The Stock Plan is a qualified employee stock ownership plan with 511 participants and total assets as of June 30, 1984, of $14,943,338. Of that amount, $14,917,033, or more than 99% of the Stock Plan's assets, is represented by 560,580 shares of non-voting Class A stock of CCN held by the Stock Plan. The 560,580 shares of CCN stock represent approximately 35.5% of the total outstanding stock of CCN. The last purchases of CCN stock by the Stock Plan were for $26.61 per share on July 27, 1984 (250 shares) and $23.73 per share on February 21, 1983 (16,559 shares).

The trustees of the Stock Plan (the Stock Trustees) are Mr. Bernard C. Stinner who is Publisher and President of CCN and Administrator of the Stock Plan, Mr. William J. Gernerd who is a reporter for the Call-Chronicle newspaper, and Ms. Carol G. Voorhees who is Employee Relations Director of CCN.

4. Times Mirror and its subsidiaries are engaged principally in newspaper publishing, newsprint and forest product operations, book publishing, information services, broadcast television, and cable television. Other operations include magazine publishing and art and graphic products. The common stock of Times Mirror is publicly traded, principally on the New York Stock Exchange. As of December 31, 1983, Times Mirror had a net worth of $1,120,389,000.

5. On August 24, 1984, Times Mirror entered into a stock purchase agreement (the Agreement) with all stockholders of CCN who held 2,000 or more CCN shares. Acquisition of the CCN shares by Times Mirror is scheduled to be consummated on December 15, 1984 (the Closing Date). Closing under the Agreement is conditioned upon receipt of an administrative exemption from the Department for the transactions discussed herein. Although Times Mirror will be a party in interest to the Plans upon consummation of the sale of the CCN stock, Times Mirror is not currently a party in interest to either of the Plans.

The Agreement terms were negotiated for CCN stockholders by Messrs. Donald P. Miller, Richard J. Hummel, and Bernard C. Stinner, all of whom are members of the Board of Directors of CCN, and all of whom own individually more than 2,000 shares of CCN stock. Although the Plans were not separately represented in the negotiations, it is asserted that the negotiations were conducted so as to obtain the most favorable terms which could be negotiated for all CCN stockholders, including the Plans.

6. The Agreement provides that Times Mirror will acquire all the CCN capital stock issued and outstanding on the Closing Date for a total payment of $68.35443 for each share of CCN stock transferred to Times Mirror. A check will be delivered on the Closing Date by Times Mirror to each stockholder who is a party to the Agreement in an amount equal to $26.35443 multiplied by the total number of shares of CCN stock held by the stockholder. In addition, each such stockholder will receive three promissory notes (the Notes) from Times Mirror. The first Note will provide for the payment on the fifth anniversary of the Closing Date the principal amount of $10, multiplied by the total number of shares of CCN stock held by the stockholder; the second Note will provide for the payment on the tenth anniversary of the Closing Date the principal amount of $10, multiplied by the total number of CCN stock shares held by the stockholder; and the third Note will provide for the payment on the fifteenth anniversary of the Closing Date the principal amount of $22, multiplied by the total number of CCN stock shares held by the stockholder. The Notes will bear interest at the rate of 10% per annum, with interest payments being made on June 30 and December 31 of 1985 and in each year thereafter until the Notes have been paid in full.

7. Dividends on the 40,000 shares of CCN stock held by the Pension Plan total $48,000 annually. During the initial five-year period following the proposed sale of the CCN stock, the Pension Plan will receive $168,000 in interest payments on the Notes and, if the $1,054,177 cash received from Times Mirror in the sale is invested at a conservative yield of 10%, $105,417 could be earned. Thus, the total earnings from the proposed sale of the stock are estimated to bring the Pension Plan an annual cash flow in the first five years of some $273,417, compared with the $48,000 now earned on the CCN stock.

Similarly, the Stock Plan receives $672,696 in dividends on its 560,580 shares of CCN stock. An annual yield of $2,354,436 will be realized during the initial five-year period from interest on the Notes and, if the $14,773,766 in cash received from Times Mirror is invested at a 10% rate of return, another $1,477,376 could be earned. The total estimated earnings to the Stock Plan for the first five years following the sale are, therefore, $3,831,812, as compared with the $672,696 currently earned on the CCN stock.

8. The Agreement provides for indemnification of Times Mirror if certain representations, warranties or agreements of the CCN stockholders are incorrect or are breached. Times Mirror has subsequently waived its right to seek indemnification against either of the Plans except as to the warranties of each of the Plans relating to the ownership and transferability of the CCN shares held by each of the Plans.

9. Between the date of the Agreement and the Closing Date, CCN will repurchase all outstanding shares of CCN stock held by persons who hold individually less than 2,000 shares each. All such stockholders, who hold only Class A non-voting stock, will receive from CCN $68.35 per share in cash. This amount per share will be paid by CCN to 33 individuals whose holdings of Class A non-voting stock aggregate 31,080 shares, or less than 2% of the total CCN stock presently outstanding. These 33 individuals are not parties to the Agreement and will not receive any of the Notes.

It was the determination of the parties to the Agreement that rather than issuing the Notice to such a relatively large number of people who hold less than 2% of the CCN stock, it is preferable for CCN to repurchase their shares for cash prior to consummation of the acquisition by Times Mirror. The remaining 29 stockholders who are parties to the Agreement hold 1,548,920 shares of CCN stock, or approximately 98% of the presently outstanding shares.

10. There are consulting agreements between CCN and Messrs. Donald P. Miller and Richard J. Hummel and there is an employment agreement between CCN and Mr. Barnard C. Stinner, all of which agreements were disclosed in the Agreement. The consulting agreement with Mr. Miller was excecuted on October 24, 1983, and the agreements with Messrs. Hummel and Stinner were executed on April 23, 1984. It is represented that these agreements were not part of the negotiations between CCN and Times Mirror and they also were not designed to provide Messrs. Miller, Hummel and Stinner with an additional inducement to sell the CCN stock held by each of them. Actual negotiations for the sale of the CCN

stock to Times Mirror did not commence until May, 1984.

11. PaineWebber, Incorporated (PaineWebber) was retained by the Trustees to provide an opinion as to the fairness of the Times Mirror offer to purchase the CCN stock. PaineWebber reviewed the Agreement and various business, financial and other information with respect to CCN. In addition, PaineWebber discussed the business, operations and prospects of CCN with its management. PaineWebber also reviewed data it deemed relevant concerning Time Mirror.

In arriving at its opinion, PaineWebber reviewed publicly available information concerning certain other companies which engage in businesses PaineWebber believes to be comparable to the operations of CCN and compared CCN from a financial point of view with these other companies. PaineWebber also reviewed values paid in certain other publicly disclosed merger transactions in relation to the offer from Times Mirror and certain information concerning debt securities of Times Mirror.

Based upon the foregoing reviews, such other factors considered by PaineWebber to be relevant, and PaineWebber's general knowledge of and experience in the valuation of businesses and securities, PaineWebber opined that the consideration, i.e., the cash and Notes, offered by Times Mirror for the acquisition of CCN stock is fair to the Plans from a financial point of view and falls within the range of values which would represent fair market value in an arm's length transaction.

12. Union Bank and Trust Company of Eastern Pennsylvania (the Bank) has been retained to serve as an independent fiduciary on behalf of the Plans with regard to the proposed sale of their CCN stock. The Bank will also monitor payments of interest and principal under the Notes and will take any action deemed necessary to protect the respective interests of the Plans under the Notes. The Bank has no relationship with either CCN or Times Mirror.

The Bank has considered the opinion rendered by PaineWebber as well as information submitted by Beyer-Barber, Inc., independent consulting actuaries, with respect to the Plans' portfolios. The Bank also reviewed the financial statements of the Plans and has evaluated the expected cash flow from the present portfolio and from the cash and Notes to be received from Times Mirror for the sale of the CCN stock. The Bank concluded that the cash available to the Plans prior to the maturity date of each of the three Notes is adequate to meet the estimated and foreseeable cash needs of each of the Plans.

The Bank reviewed and evaluated all of the foregoing information and documentation solely from the standpoint of the best interests of each of the Plans and their respective participants and beneficiaries. The Bank determined that the terms of the proposed sale of CCN stock of Times Mirror are favorable to each of the Plans and that it is advisable and in the best interests of each of the Plans and their respective participants and beneficiaries to sell and deliver to Times Mirror the shares of CCN stock held by each of the Plans.

13. With regard to the future of the Stock Plan, no decisions have yet been made. As presently structured, it is designed to invest primarily in employer securities, but will be selling all of its CCN stock in the proposed transaction. Decisions regarding the future of the Stock Plan will be made by the appropriate personnel of Times Mirror having responsibility for the implementation and administration of the employee benefit plans of Times Mirror and its subsidiaries. Such decisions will be made subsequent to the Closing Date when Times Mirror receives title to the CCN stock.

14. In summary, the applicants represent that the proposed transactions satisfy the exemption criteria set forth in section 408(a) of the Act because: (a) the sale of the CCN stock, including the stock held by the Plans, was negotiated on an arm's-length basis between unrelated parties; (b) the Plans will receive the same consideration in the same form as all other stockholders holding 2,000 or more CCN shares will receive for their stock; (c) the sale of the CCN stock for cash and the Notes will have a positive effect on the cash flow of each of the Plans; (d) the Bank will monitor the payments of principal and interest under the Notes and will take any action necessary to enforce the rights of each of the Plans under the Notes; and (e) the Bank and the Trustees determined that the sale, and the extension of credit pursuant to the sale, of the CCN stock held by the Plans is advisable and in the best interests of each of the Plans and their respective participants and beneficiaries.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

United Mine Workers of America 1950 Benefit Plan and Trust Located in Washington, D.C.

[Application No. L-5777]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) of the Act shall not apply effective October 1, 1984, to the final and binding resolution by the trustees (the Trustees) of the United Mine Workers of America 1950 Benefit Plan and Trust (the 1950 Benefit Plan) of certain disputes (the Disputes) arising in connection with the provision of health and other benefits provided under certain individuals employer maintaned welfare plans (the Employer Plans) established pursuant to collective bargaining under the National Bituminous Coal Wage Agreements (the Agreements), and to the receipts of monies from the 1950 Benefit Plan as payment for providing these services, provided that such Trustees maintain and make available to the Department and the parties to the Agreements, upon request, records adequate to ascertain both the cost of rendering such services and the portion of such costs which may be attributed to the resolution of each of the three types of Disputes which the Trustees may consider.

Summary of Facts and Representations

1. Prior to December 1974, all pension, health and death benefits for employees of signatory employers to the Agreements were provided by the United Mine Workers Welfare and Retirement Fund of 1950. The 1974 National Bituminous Coal Wage Agreement (the 1974 Agreement) established several plans for the payment of pension and welfare benefits. The 1950 Benefits Plan was established to provide health, life insurance and death benefits for those employees and their spouses and dependents who retired before January 1, 1976. A separate welfare benefit plan (the 1974 Benefit Plan) was established to provide comparable benefits for active miners and those retired miners who retired after December 31, 1975. Both the 1950 Benefit Plan and the 1974 Benefit Plan were multiemployer welfare benefit plans within the meaning of section 3(1) of the Act. Both plans were administered pursuant to section 302(c)(5) of the Labor Management Relations Act of 1947 (29

U.S.C. 186(c)(5)). Additionally, both plans were administered by a three member board of trustees which consisted of the same three individuals.[12]

2. In 1978, the manner in which health, life insurance and death benefits were to be provided was modified by the 1978 National Bituminous Coal Wage Agreement (the 1978 Agreement). Pursuant to the 1978 Agreement, each signatory employer member (the Employer(s)) of the Bituminous Coal Operators Association, Inc. (the Association) would establish one of the Employer Plans through one or more insurance carriers. The Employer Plans cover the Employer's active employees and those pensioners under the 1974 Benefit Plan whose last classified employment was with such Employer. The 1974 Benefit Plan would continue to provide the stated welfare benefits only to pensioners, including their respective spouses and dependents, who would not otherwise be covered under the Employer Plans because their former Employer is no longer in business.

3. The applicants represent that the 1950 Benefit Plan, the 1974 Benefit Plan, and the Employer Plans contain identical eligibility criteria and benefit coverages. The bargaining parties sought to assure uniform application of the eligibility criteria and consistent interpretation of the benefit coverage provisions between all the above described welfare benefit plans. By the 1978 Agreement, the United Mine Workers of America (the Union) and the Employers, as settlors of the 1950 Benefit Plan, amended such plan to enable the Trustees to participate in the resolution of the Disputes which arose under either the 1950 Benefit Plan or the Employer Plans. Specifically, such change allowed the Trustees to participate in the resolution of the Disputes which included the following: generic disputes relating to the nature of benefits to be provided under identical language of the 1950 Benefit Plan and the Employer Plans; generic disputes involving the eligibility criteria shared by the Employer Plans; and eligibility disputes involving individual participants in the Employer Plans.

4. In November 1978, the Trustees requested an exemption that would allow the Trustees to offer their opinion to assist in the resolution of the Disputes. On May 8, 1979, the Department granted prohibited transaction exemption (PTE) 79–17 (44 FR 38981) which permitted such action by the Trustees. PTE 79–17 was effective until the date of the termination of the 1978 Agreement. The Department imposed this time limit because future collective bargaining agreements between the Union and the Employers might have altered the arrangement for providing benefits in such a way as to make PTE 79–17 unnecessary.

5. The 1981 National Bituminous Coal Wage Agreement (the 1981 Agreement), effective June 7, 1981, did not materially alter the arrangement for providing benefits as set forth in the 1978 Agreement with one exception. Such exception was that while the 1978 Agreement was silent on the effect of the Trustee's decisions in settling the Disputes, the 1981 Agreement provided that the decisions by the Trustees in settling the Disputes would be final and binding. In August of 1981, the trustees again requested an exemption that would allow the Trustees to make final and binding decisions in the resolution of the Disputes. On April 9, 1982, the Department granted exemption PTE 82–65 (47 FR 15458) which permitted such action by the Trustees. PTE 82–65 was effective until the date of termination of the 1981 Agreement. The Department again imposed a time limit thus continuing to adopt the logic used in the previous grant of relief; i.e., future collective bargaining agreements might alter the manner in which benefits were to be provided and therefore make exemptive relief unnecessary.

6. A successor agreement, the 1984 Agreement, which was to be effective October 1, 1984, has recently been ratified. The 1984 Agreement does not materially alter those existing arrangements for benefit and eligibility dispute resolution by the Trustees. By its express terms, the 1984 Agreement provides that the Union and the Employers desire that the Trustees "continue to resolve disputes arising under the provisions of the Employer Plans that prevent payment of fees determined to be excessive." Accordingly, the Trustees are requesting an exemption which would permit them to continue the final and binding resolution of the Disputes and to receive monies from the 1950 Benefit Plan as payment for providing these services. The Trustees are fiduciaries with respect to the 1950 Benefit Plan as defined in section 3(21)(A) of the Act, and parties in interest with respect to the 1950 Benefit Plan as defined in section 3(14)(A) and (B) of the Act. The Union is a party in interest with respect to the 1950 Benefit as defined in section 3(14)(D) of the Act. The Employers are parties in interest with respect to the 1950 Benefit Plan as defined in section 3(14)(C) of the Act. To the extent that the Trustees resolve disputes in connection with the Employer Plans, such action may be causing the Trustees to render services to the Union or to the Employers, or to both. The rendering of such services and the receipt of a fee from the 1950 Benefit Plan for such services may constitute prohibited transactions as described in section 406(a) and possibly 406(b)(1) of the Act.

7. The applicant represents that the procedure for resolving the Disputes is administratively feasible because the Trustees now have over five years experience in interpreting the common provisions of the several plans and more than 600 opinions on which to rely as precedent. Also, because approximately 58 percent of all disputes resolved under the previously granted exemptions involved "generic" questions, and because the Trustees' written opinions have been widely distributed to Union officials and the Employers, the Trustees have minimized their involvement with recurring questions. The refinements to the procedure resulting from the Agreements have served to clarify the role of the Trustees and deliniate their responsibilities. The exemption would be in the interest of the participants and beneficiaries of the 1950 Benefit Plan because the Trustee's opinions in resolving the Disputes will provide a tangible benefit in the interpretation of such plan because the coverage under the Employer Plans is intended to be consistent with the coverage under the 1950 Benefit Plan. The exemption would be protective of the rights of participants and beneficiaries of the 1950 Benefit Plan because the relief to be granted will be conditioned on the maintenance of records by the Trustees and the Department's right to review such records at any time. Additionally, Article XI of the trust agreement governing the operation of the 1950 Benefit Plan provides that "The Trustees shall provide the Employers and the Union with such . . . information and/or documentation as the Employers or the Union may reasonably request, within a reasonable time from when such request shall be made." The applicnt represents that the above language would be interpreted by the Trustees as authorizing access by the Union or the Employers to the records of expenses incurred in resolving the Disputes referred to in the application. Finally, the trust agreement, as amended by the 1984 Agreement, authorizes the Union and the Association to audit the operation of the 1950 Benefit Plan one

[12] The recently ratified 1984 National Bituminus Coal Wage Agreement (the 1984 Agreement) has expanded the number of trustees under the 1950 and 1974 Benefit Plans to five members.

time during the term of such agreement. In light of the above provisions, the Trustees represent that the Union and the Association will have the same right as the Department to inspect the cost records of the benefit resolution procedure.

Through August 30, 1984, the cost of resolving 397 disputes under PTE 82–65 has been $51,968.16, consisting of allocated staff and Trustee salaries and fringe benefits. Based on the number of disputes processed, the average cost has been $131 per dispute. Because the Trustees do not devote full time to their duties under the 1950 Benefit Plan the performance of these additional functions will not impact adversely on the Trustee's performance of their responsibilities under such plan.

In conclusion, the applicants also represent that the ability of the 1950 Benefit Plan to satisfy its benefit obligations is assured for the term of the 1984 Agreement because the Employers have guaranteed the benefits. If the Trustees are to perform such benefit resolution services under future Agreements the benefits would be subject to similar protections.

8. The last three wage agreements have called for the Trustees to perform a similar role in resolving the Disputes. The applicants suggest that, as a practical matter, the resolution procedure has been one continuous arrangement of over five years in duration. In the past the Department has limited the relief provided to the term of the current collective bargaining agreement. Because of the impact on all parties resulting from the Trustees inability to act pending the finalization of a successor exemption, the applicant has requested that the instant exemption permit the Trustees to resolve disputes arising under the Employer Plans maintained pursuant to any substantially similar provision in any successor collective bargaining agreement. Based on the success and stability of the dispute resolution procedure through three successive collective bargaining agreements, the likelihood of its retention in future agreements and the condition of the exemption making the records maintained by the Trustees available to the Department, the Union and the Employers, this exemption is being proposed to extend beyond the life of the 1984 Agreement.

9. In summary, the applicant represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) the role of the Trustee has been established and refined through the collective bargaining process and can only be modified by such process; (b) the opinions rendered to the Employer Plans in resolving the Disputes will be useful to the Trustees in resolving similar issues which may arise under the 1950 Benefit Plan; (c) the recordkeeping requirement permits the parties to any successor collective bargaining agreement or the Department to evaluate the effectiveness of the dispute resolution procedure; and (d) the exemption is contingent on the presence of a substantially similar authorization provision in any successor collective bargaining agreement between the Union and the Employers.

Notice to Interested Persons: Notice of the proposed exemption will be provided all interested persons in the manner agreed upon by the applicants and the Department within 30 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.

Comments and requests for a hearing are due within 60 days of the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, telephone (202) 523–6915. (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 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 10th day of December, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 84–32670 Filed 12–13–84; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 84–173; Exemption Application No. D–3122 et al.]

Grant of Individual Exemptions; United Bank of Alaska, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person

might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, 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 proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

United Bank of Alaska (UBA) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 84–173; Exemption Application Nos. D–3122 and D–3123]

Exemption

I. Effective January 1, 1975, 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 past and proposed sale, exchange or transfer between UBA and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by UBA provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of UBA who has authority to manage or control those Plan assets being invested in Mortgages or Participation Interests;

B. The terms of all transactions between the Plans and UBA involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties;

C. No investment management, advisory, underwriting fee, sales commission or similar compensation is paid to UBA with regard to such sale, exchange or transfer;

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a Plan, acting with the knowledge of UBA, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Plan; and

E. UBA shall maintain for the duration of any Mortgage of Participation Interest which is sold to a Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. Effective January 1, 1975, 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 any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14), (F), (G), (H), or (I) of the Act) solely because of the ownership of a Mortgage or Participation Interest by such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 12, 1984 at 49 FR 40120.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

Alaska Pacific Bank (APB) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 84–174; Exemption Application No. D–3490]

Exemption

Effective January 1, 1975, 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 past and proposed sale, exchange or transfer between APB and certain employee benefit plans (the Plans) of multi-family residential and commercial mortgage loans (the Mortgages) or participation interests therein (the Participation Interests) which are originated by APB provided that:

A. Such sale, exchange or transfer is expressly approved by a fiduciary independent of APB who has authority to manage or control those Plan assets being invested in the Mortgages or Participation Interests.

B. The terms of all transactions between the Plans and APB involving the Mortgages or Participation Interests are not less favorable to the Plans than the terms generally available in arm's length transactions between unrelated parties.

C. No investment management, advisory, underwriting fee or sales commission or similar compensation is paid to APB with regard to any such sale, exchange or transfer.

D. The decision to invest in a Mortgage or Participation Interest is not part of an arrangement under which a fiduciary of a plan, acting with the knowledge of APB, causes a transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the plan.

E. APB shall maintain for the duration of any Mortgage or Participation Interest which is sold to a Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records mentioned above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan.

II. Effective January 1, 1975, the restriction 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 any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in

section 3(14), (F), (G), (H), or (I) of the Act) solely because of the ownership of a Mortgage or Participation Interest by such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 12, 1984 at 49 FR 40122.

Effective Date: The effective date of this exemption is January 1, 1975.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

Radiology Medical Group Profit Sharing Plan (the Plan) Located in San Diego, California

[Prohibited Transaction Exemption 84-175; Exemption Application No. D-4475]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuation past June 30, 1984 of a lease of certain real property by the Plan to the Radiology Medical Group, Inc., the sponsor of the Plan, provided that such lease is on terms and conditions at least as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 11, 1984 at 49 FR 20084.

Effective Date: This exemption is effective July 1, 1984.

Comments: The only comment received by the Department was submitted by the applicant. The applicant represents that under prevailing state law applicable to the fact and circumstances of this exemption application, ownership of the improvements on the subject real property is not deemed to have passed from the Employer to the Plan upon the June 30, 1984 expiration of the statutory exemption at section 414(c)(2) of the Act.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Retirement Trust for Employees of the Standard Oil Company and Subsidiaries (the Trust) Located in Cleveland, Ohio

[Prohibited Transaction Exemption 84-176; Exemption Application No. D-5339]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale to the Trust of certain limited partnership interests (the Limited Partnership Interests) in three venture capital partnerships (the Venture Capital Partnerships) which are presently held by the Standard Oil Company (the Employer), provided the price paid for the Limited Partnership Interests is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 24, 1984 at 49 FR 29883.

Written Comments: The Department received ten written comments to the proposed exemption that were submitted by the applicant and certain Trust participants. Six comments, submitted by Trust participants, generally endorsed the proposed exemption and voiced no specific objections. Four comments, submitted by the applicant and the remaining participant commentators, either addressed erroneous information contained in the pendency notice or they raised substantive issues. Although two of the ten comments contained requests for a public hearing, these hearing requests were subsequently withdrawn by their commentators.

The applicant forwarded two comments with respect to the notice of proposed exemption. The initial comment concerned the applicant's request to amend the exemption application to provide that the Employer sell the Limited Partnership Interests to the Trust instead of making an in kind contribution. The applicant explained that it had anticipated making the contribution to the Trust on or before September 15, 1984 as part of its annual contribution for plan year 1983. However, because the Department had not granted the exemption by the contribution date, the applicant decided not to proceed with the transaction.

Accordingly, the applicant wishes to amend the exemption application to provide for a transfer of the Limited Partnership Interests to the Trust and for the receipt of payment by the Employer that is based on the fair market value of the Limited Partnership Interests as of the date of transfer. The applicant represents that Manufacturers Hanover Investment Corporation (MHIC), the independent fiduciary for the Trust, has consented to the sale of the Limited Partnership Interests. The applicant also represents that it will pay all commissions and fees that are incurred in connection with the sale.

The second comment submitted by the applicant addressed two inaccuracies in the notice of proposed exemption. The applicant stated that Bankers Trust Company, the trustee of the Trust, was incorrectly identified in item 2 of the notice of proposed exemption as "Bankers Life Trust Company". The applicant also noted that the initial sentence in item 5(c) of the pendency notice had language omitted. The applicant indicated the sentence should have read "MHTC serves as trustee under the Employer's Dorr-Oliver Profit Sharing Plan. MHIC . . .".

A third comment, submitted by a Trust participant, was opposed to the proposed exemption. The commentator felt the proposed transaction would benefit the Employer more than its employees because of the Employer's holdings in the Venture Capital Partnerships. The applicant responded to this comment by stating that the proposed transaction was an appropriate investment for the Trust and consistent with the Trust's investment scheme because of the high rates of return and excellent performance history the Limited Partnership Interests would offer the Trust as well as the asset diversification and minimal risk features such an investment would provide. Furthermore, the applicant noted that MHIC had approved the proposed sale as a prudent investment for the Trust. In addition, the applicant noted that because of their excellent track record, limited partnership interests are traded infrequently and that it would be unlikely for the Trust to have acquired the Limited Partnership Interests at their fair market value had they not been owned by the Employer. Accordingly, the applicant represented that the proposed transaction would not benefit the Employer more favorably than it would the Trust.

A fourth comment, also submitted by a Trust participant, was opposed to the proposed exemption for five reasons. Firstly, the commentator stated that venture capital was a high risk investment and that the Trust required only modest yields to meet its benefit commitments. The applicant responded

to this objection by acknowledging the fact that venture capital investments involve greater risk than other investments. However, because the Limited Partnership Interests represent less than one percent of the Trust's assets, the applicant believed their sale would not jeopardize the diversification requirements of the Trust. After balancing the earnings potential of the Limited Partnership Interests against their risks and their Trust asset representation, the applicant stated that the proposed sale would be a prudent investment for the Trust.

Secondly, the commentator referred to an August 17, 1984 *Wall Street Journal* article pertaining to the slowdown in the flow of funds to venture capital partnerships. The applicant stated that the slowdown had no direct bearing on the long-term expected valuations of the emerging growth stocks that are financed by the Venture Capital Partnerships because the Venture Capital Partnerships are fully subscribed and financed. The applicant attributed the slow-down to a short to medium-term decline in the valuation of equity securities between June 1983 and July 1984.

Thirdly, the commentator felt that three percent of the total Trust's assets would be too much to be invested in venture capital. The applicant, however, disagreed and it would consider three percent appropriate. The applicant further notes that the Trust has committed other funds to venture capital investments and such investments when combined with the subject transaction would result in a total of approximately 2.1% of the Trust's assets being invested in venture capital investments.

Fourthly, the commentator stated that there was a lack of knowledge and information on the risk-benefits of investments in venture capital and more importantly, who would shoulder them. The applicant asserted that it had appointed MHIC as the independent fiduciary for the proposed transaction because of MHIC's extensive experience with both venture capital investments and pension fund investments. The applicant also considered MHIC's investment and management procedures to be reasonable.

Fifthly, the commentator questioned whether the Limited Partnership Interests were actually worth $7.6 million in the open market. The applicant responded to this issue by stating that MHIC would make a determination of the value of the Limited Partnership Interests prior to their sale to the Trust in a manner consistent with procedures prescribed by the general partners of the Venture Capital Partnerships. The applicant also reiterated MHIC's opinion that the valuation methodology was reasonable.

After consideration of the entire record, the Department has made a decision to grant the exemption and, as requested by the applicant, has amended the exemption to provide for a sale of the Limited Partnership Interests to the Trust because the potential conflict of interest and valuation issues pertinent to either the proposed in-kind contribution or sale transactions are adequately addressed by the substantial safeguards provided under the application.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (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) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of December, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-32809 Filed 12-13-84; 8:45 am]

BILLING CODE 4510-29-M

Office of Workers' Compensation Programs

Report on Computer Matching Project Involving Beneficiaries Under the Federal Employees' Compensation Act and the Civil Service Retirement Act

Summary

The Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), announces that it will perform a computer match in cooperation with the Office of Personnel Management (OPM), of the name, Social Security numbers and dates of birth, etc., of beneficiaries under the Civil Service Retirement Act (CSRA) and the Federal Employees' Compensation Act (FECA) in order to identify those beneficiaries receiving concurrent benefits under both Acts. Most concurrent payments to the same individual would constitute a prohibited dual payment under both Acts.

a. *Authority:* The Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, et. seq.)

b. *Description of the Match:* Among the responsibilities of the OWCP in the administration of the FECA is to assure that benefit payments are proper and to prevent fraud or abuse. The computer matching program is an efficient and nonobtrusive method of determining whether certain beneficiaries are receiving benefits from the OPM and OWCP of the type prohibited by the FECA under 5 U.S.C. 8116 and under the CSRA.

The matching effort will compare the electronic records of the OPM and OWCP for the name and Social Security number of recipients of compensation benefits under the FECA and benefits under the CSRA in order to ascertain whether the same person is drawing benefits from both organizations for the same period of time. Based on a previous match which was managed by the Office of the Inspector General, the match is cost effective and productive. Therefore, it is scheduled as an ongoing matching program, with each agency alternating as the matching agency and the source agency. It is anticipated that

matches will be performed each six months to twelve months, but at least once annually.

The purpose of the match is to detect, identify, and follow-up on payments of prohibited dual benefits. Prohibited dual benefits include the concurrent payment of compensation for wage loss or death, under the FECA with retirement or death benefits to the same person under the CSRA. An initial manual review of the input data will be conducted to determine its significance. If required, additional computer processing will be performed to further refine the data. The data will be evaluated to determine the appropriate course of action. Follow-up procedures will be determined by the nature of the findings.

c. *Description of Records to be Matched:* The OWCP records are published as DOL/ESA–13, 47 FR 30382–30383 on 7/13/82, as amended in 48 FR 5326, on 2/8/83, the OPM System of Records to be matched is OPM Central-1, Civil Service Retirement and Insurance Records, 48 FR 37120, 8/16/83.

d. *Starting and Ending Dates of the Project:* The anticipated starting date is December 31, 1984, and the match may run for a period of six months.

e. *Privacy Protection and Data Security:* The personal privacy of individuals identified on tapes is protected by strict compliance with the Privacy Act (Pub. L. 93–579) and OMB Circular A–108. Information from matching programs is used only for official purposes and "raw hits" are not released to the press or to the public.

All automated data sets will be password protected, and only those who need to know will be given access to the data sets or passwords. The source information remains the property of the source agency and will be used only for the purposes of the match. All paper listings of data will be stored in a room which will be locked when not occupied.

f. *Disposal of Records:* The source data will be returned to the source agency, whose property it remains. OWCP will, after initial editing and validation, submit listings of hits to the District Office which has jurisdiction of the case. The district office will identify the case and record the dates, amount, and basis of the FECA payment. The hit sheets will then be forwarded to OPM for similar action. The hits that appear to involve prohibited dual payments will be followed-up by both agencies, although OWCP will obtain required elections in order that appropriate action may be taken.

Hit sheets within the district office are controlled from the standpoint of security to the same extent as case files. The files in the National Office are available to a limited number of employees on a need to know basis. The hit sheets will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Schedule after having served their purpose.

Signed at Washington, D.C., this 7th day of December 1984.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 84–32871 Filed 12–13–84 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84–93]

Intent To Grant an Option Agreement on an Exclusive Patent License; Medical Sciences Corp.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Option Agreement on an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant an option agreement on a limited, exclusive, royalty-bearing, revocable license to Medical Sciences Corporation, of Wedowee, Alabama, for the invention described in U.S. Patent Application No. 655,605 for a "Photorefractor Ocular Screening System." This application was filed on September 28, 1984, by the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed option agreement will be for a limited period of time and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the option agreement unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the option agreement.

DATE: Comments to this Notice must be received by February 12, 1985.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: November 30, 1984.

John E. O'Brien,

Deputy General Counsel.

[FR Doc. 84–32552 Filed 12–13–84 8:45 am]

BILLING CODE 7510–01–M

[Notice 84–92]

Intent To Grant an Exclusive Patent License; Rockwell International

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to Rockwell International, of Thousand Oaks, California, a limited, exclusive, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,184,021 for a "Ambient Cure Polyimide Foams Prepared From Aromatic Polyisocyanates, Aromatic Polycarboxylic Compounds Furfuryl, Alcohol, and a Strong Inorganic Acid," which issued on January 15, 1980, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by February 12, 1985.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 453–2430.

Dated: November 30, 1984.

John E. O'Brien,

Deputy General Counsel.

[FR Doc. 84–32553 Filed 12–13–84 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

1. Date: January 4, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316.
Program: This meeting will review applications submitted to the Research Resources Publications Program: Literature, Philosophy, Religion, and the Arts, Division of Research Programs, for projects beginning after April 1, 1985.

2. Date: January 7, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 316.
Program: This meeting will review applications submitted to the Research Resources Publications Program: History, Anthropology, and Political Science, Division of Research Programs, for projects beginning after April 1, 1985.

3. Date: January 7–8, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after July 1, 1985.

4. Date: January 10, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after July 1, 1985.

5. Date: January 14–15, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after July 1, 1985.

6. Date: January 17, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after July 1, 1985.

7. Date: January 23–24, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after July 1, 1985.

8. Date: January 28–29, 1985.
Time: 8:30 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Museums and Historical Organizations Program, Division of General Programs, for projects beginning after July 1, 1985.

9. Date: January 9, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Studies Program, Division of Research Programs, for projects beginning after March 1, 1985.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Stephen J. McCleary,
Advisory Committee Management Officer.

[FR Doc. 84–32588 Filed 12–13–84; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Availability of Reports and Recommendations

Reports Issued

Highway Accident Report—Collision of G & D Auto Sales, Inc., Tow Truck Towing Automobile, Branch Motor Express Company Tractor-Semitrailer, Town of Rehoboth Schoolbus, Rehoboth, Massachusetts, January 10, 1984 (NTSB/HAR–84/05) (NTIS Order No. PB84–916205).

Highway Accident Report—Activity Bus/Tractor-Cargo Tank Semitrailer Collision, State Route 61, near Devers, Texas, December 23, 1983 (NTSB/HAR–84/06) (NTIS Order No. PB84–916206).

Marine Accident Report—Capsizing of the U.S. Offshore Vessel Laverne Hebert, Gulf of Mexico, November 9–10, 1983 (NTSB/MAR–84/06) (NTIS Order No. PB84–916406).

Pipeline Accident Report—Columbia Gas of West Virginia, Inc., Explosion and Fire, South Charleston, West Virginia, October 17, 1983 (NTSB/PAR–84/04) (NTIS Order No. PB84–916504).

Marine Accident Briefs—Brief Format, Issue Number 1—Reports Issued August 8, 1984 (NTSB/MAB–84/02) (NTIS Order No. PB84–917302).

Note.—Reports may be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703–487–4650 and to order subscriptions to reports call 703–487–4630.

Recommendations to

Aviation—*Federal Aviation Administration: Oct. 25: A–84–111:* Postpone nationwide implementation of the Hazardous Inflight Weather Advisory Service Program at Air Traffic Control Centers until the broadcasting procedures are improved and program information is disseminated widely. *A–84–112:* Designate communication frequencies within the 118–135 MHz band for each Air Route Traffic Control Center to broadcast Hazardous Inflight Weather Advisory Service information. *A–84–113:* Develop procedures similar to those currently used in terminal areas for Automatic Terminal Information Service, for flightcrews to monitor an individual facility's Hazardous Inflight Weather Advisory Service frequency and to inform the controller/facility on initial contact that the flight has the current HIWAS information. *A–84–114:* During a transition period following the further implementation of Hazardous Inflight Weather Advisory Service,

require Air Traffic Controllers to advise flightcrews when critical safety information is being made available through HIWAS. For example, ARTCC controllers should be required to advise flights upon initial contact "significant weather information available on HIWAS." *A–84–115:* Institute a program to ensure that changes to Air Traffic Control operations and communications procedures, means to disseminate aviation weather information, etc., are published in a manner to directly reach all users of the National Airspace System. *Nov. 9: A–84–116:* Issue a General Notice (GENOT) directing the management of Air Route Traffic Control Centers (ARTCC) to provide redundancy of the Air Traffic Control system by having at least two controllers present at each sector (or combined sector) control station at all times during the periods when traffic density is, or is predicted to be, above a minimum level. *A–84–117:* Issue a General Notice (GENOT) directing the management of all Air Traffic Control facilities to schedule ancillary activity of supervisors so as to minimize interruption of their controller supervision function during periods of high traffic demands. *A–84–118:* Establish a formal program to periodically review controller staffing requirements of Air Traffic Control facilities and allocate personnel to facilities to provide sufficient controllers at all control stations during periods of moderate to high traffic demand and to eliminate the recurrent need for scheduled overtime. *A–84–119:* Expedite the development and adoption of the en route sector loading prediction program (the ELOD program) to effect ARTCC flow control management based upon dynamic real-time traffic flow data. *A–84–120:* Until such time as more effective flow control management can be effected take interim measures to control traffic access to the Air Traffic Control system. *A–84–121:* Identify ARTCCs and individual sectors which have multiple or inappropriately located conflict points which increase unnecessarily the need for controller intercenter coordination and take action to revise sector boundaries and preferential IFR routing to reduce potential traffic conflict. *A–84–122:* Develop and put into effect radar handoff procedures which require that either an automated interfacility handoff be completed or that voice communications between controllers be established before an airplane is permitted to proceed beyond a defined point where control options are no longer available to the transferring controller to prevent an intrusion into the receiving controller's airspace. *Nov. 16: A–84–123:* Apply the findings of behavioral research programs and accident/incident investigations regarding degradation of pilot performance as a result of automation to modify pilot training programs and flight procedures so as to take full advantage of the safety benefits of automation technology. *A–84–124:* Direct air carrier principal operations inspectors to review the airspeed callout procedures of assigned air carriers and, where necessary, to require that these procedures specify the actual speed deviations (in appropriate increments, i.e., +10, +20, −10, −20, etc.) from computed reference speeds. *Nov. 20: A–84–125:* Issue an Air Carrier Operations Bulletin directing the Principal Operations Inspectors of Wings West and Imperial Airlines to require that the airlines amend their operating procedures so that their flights contact Los Angeles Center prior to departure from San Luis Obispo County Airport and obtain either an IFR clearance or a discrete transponder code if departing VFR. *A–84–126:* Require that the instrument approach chart for the localizer approach to runway 11 at San Luis Obispo County Airport and the Crepe One Departure Chart include a cautionary note with appropriate communication frequencies advising VFR flights on practice instrument approaches and departures to contact Los Angeles Center for traffic advisories. *A–84–127:* Disseminate the contents of this safety recommendation letter to fixed-base operators in the general vicinity of the San Luis Obispo County Airport.

Highway—*National Highway Traffic Safety Administration: Oct. 5: H–84–75:* For newly manufactured vehicles, revise Federal Motor Vehicle Safety Standard 222 to include a requirement that schoolbus seat cushions be installed with latching devices which ensure they remain in their latched position during impacts and rollovers. *Oct. 12: H–84–87:* Evaluate the effectiveness of license actions against juveniles who violate alcohol laws, such as the laws recently enacted in Oregon, Washington, North Carolina, Maryland, and Maine. *H–84–88:* Incorporate the salient features of such court records systems as the Court Reporting Network in Pennsylvania and the PROMIS System in Colorado in the model Case Management Information System; ensure that the model system incorporates motor vehicle licensing records and court records of drunk driving-related violations and convictions.

Federal Highway Administration, Bureau of Motor Carrier Safety: Nov. 27: H–84–93: Issue an "On-Guard" Bulletin which discusses the circumstances of the accident in Ashdown, Arkansas, on July 5, 1984, with particular reference to tailgating by trucks, improper adjustment of truck brakes, and the tendency of trucks to jackknife on wet pavement.

Veterans Administration: Oct. 12: H–24–89: Develop and implement a national policy making VA hospital alcohol dependence treatment programs more consistently available to local traffic court rehabilitation programs for convicted DWI defendants who are veterans.

American Bar Association, the National Association of Judicial Educators, and the National Judicial State College: Oct. 12: H–84–90: Work with State governments, State judicial organizations, and the National Highway Traffic Safety Administration to vigorously promote initial and recurrent training for judges in alcohol issues and DWI case adjudication and to develop more sources of funds for financing this training.

International Association of Chiefs of Police, Inc.: Nov. 27: H–84–91: Develop a recommended policy to clarify the use of emergency signalling equipment by police in nonemergency conditions. *H–84–92:* Develop a recommended policy to the States which will prompt law enforcement personnel to request medical testing for the presence of alcohol in the blood of all truckdrivers involved in serious accidents.

Arkansas State Police and the Arkansas State Crime Laboratory: Nov. 27: H–84–94: Instruct State Police officers to request that two separate vials of blood containing 5 ml each be collected for alcohol and drug analysis in serious and fatal accident investigations and that the samples be refrigerated until they can be transported to a laboratory for analysis and not be held in an officer's possession except for direct transportation to the laboratory. *H–84–95:* Provide State Police officers with commercially available blood collection kits which contain the necessary materials for drawing blood under sterile conditions, two sterile containers for the blood samples that are precharged with an appropriate preservative and anticoagulant, and labels for identifying the samples.

Marine—*Secretary of U.S. Department of Transportation: Nov. 21: M–84–48:* Direct the Commandant of the U.S. Coast Guard to address immediately the early promulgation of

personnel qualification and manning regulations for mobile offshore drilling units.

U.S. Coast Guard: Nov. 21: M–84–49: Revise the stability standards for drillships to include the capability of drillships to survive the flooding of any two adjacent compartments or tanks located within 5 feet of the hull. *M–84–50:* Urge the International Maritime Organization to amend its 1979 Code for the Construction and Equipment of Mobile Offshore Drilling Units to include the capability of drillships to survive the flooding of any two adjacent compartments or tanks located within 5 feet of the hull. *M–84–51:* Require that the operating manual for a drillship include guidance on the degree of survivability to which it is designed and the appropriate countermeasures to be taken in case of flooding. *M–84–52:* Review the structural design, in conjunction with the American Bureau of Shipping, of the other five Global Marine drillships, similar in design to the GLOMAR JAVA SEA, and, if necessary, require design modifications to prevent a structural failure similar to that which occurred on the GLOMAR JAVA SEA. *M–84–53:* Amend the U.S. Coast Guard regulations for mobile offshore drilling units (46 CFR 108.503) to require each drillship to have sufficient lifeboats on each side to accommodate all persons onboard. *M–84–54:* Require as soon as possible that all U.S. Coast Guard-approved survival craft be provided with a radio device capable of transmitting a distress signal. *M–84–55:* Require every inspector (or the senior inspector if more than one) assigned to inspect U.S. mobile offshore drilling units in foreign waters to have had prior experience in the inspection of mobile offshore drilling units. *M–84–56:* Require that a representative sample of non-fuel oil tanks on all U.S. vessels in salt water service be inspected internally at least once in every 30 month period during drydock or biennial inspections and that the sample of tanks to be inspected be increased as the vessel gets older. *M–84–57:* Require that a representative sample of fuel oil tanks on all U.S. vessels in salt water service be inspected internally at least once in every 5-year period during drydock or biennial inspections and that the sample of tanks to be inspected be increased as the vessel gets older.

Global Marine Drilling Company: Nov. 21: M–84–58: Designate the master as the individual in overall charge of the ordering, loading and safe stowage of all drilling equipment, drilling supplies, and ship consumables aboard Global Marine drillships. *M–84–59:* Require that shorebased rig managers of drillships operating in remote areas contact the cognizant rescue coordination center to preplan procedures for an emergency. *M–84–60:* Provide sufficient licensed personnel during severe weather seasons either aboard drillships or ashore nearby to man a drillship operating in a remote area to safely move off location and seek shelter if threatened by a severe storm. *M–84–61:* Review and revise all heavy weather plans for Global Marine drillships to include a specific list, by position, of nonessential personnel to be evacuated on the approach of a tropical storm, a hurricane or a typhoon. *M–84–62:* Review and revise all heavy weather plans for Global Marine drillships to include realistic distance and time guidelines for the evacuation of nonessential personnel, the disconnecting of anchors and the moving off location on the approach of a tropical storm, a hurricane or a typhoon and require that the master take these safety measures when the conditions arise. *M–84–63:* Review and revise the operating manuals of each Global Marine drillship to include information on its survivability in case of flooding, actions that should be taken by the master to minimize the effects of flooding, and countermeasures that should be taken by the master in case flooding has occurred. *M–84–64:* To improve the survivability of drillships, direct all masters, chief engineers, and drilling superintendents that adjacent wing tanks are not to be kept empty. *M–84–65:* Require representative samples of non-fuel oil tanks on drillships be inspected internally at least once every 30-month period and that representative samples of fuel tanks be inspected internally at least once every 5 years. *M–84–66:* Install remote gauging systems in all drillships so the engineer on watch can immediately determine the liquid level in all tanks.

ARCO China, Inc: Nov. 21: M–84–67: Develop a detailed contingency plan for operations off the coast of the People's Republic of China which includes communications procedures, an inventory of air and sea rescue resources, and shoreside facilities available for various emergencies, including severe storms, and a requirement to contact the cognizant rescue coordination center to establish procedures for an emergency. *M–84–68:* Maintain a continuous 24-hour radio watch in the Zhanjiang, People's Republic of China, headquarters to listen for emergency radio transmissions. *M–84–69:* Consult with the People's Republic of China on maintaining a listening watch in the Zhanjiang headquarters on the international distress frequencies 2182 kHz and 8364 kHz for emergency communications to improve the safety of continuing operations off the coast of the People's Republic of China.

China National Offshore Oil Company: Nov. 21: M–84–70: Establish emergency response centers at Tian Du Zhanjiang, Guangzhou and other centers of offshore oil operations which would maintain a continuous listening watch on the international maritime distress frequencies of 2182 kHz and 8364 kHz as well as the designated operating frequencies and in time of emergencies would coordinate activities of air and sea rescue resources and shoreside rescue centers. *M–84–71:* Require all oil companies operating off the coast of the Peoples Republic of China to develop and submit for your review detailed contingency plans which should include communications procedures, an inventory of air and sea rescue resources and shoreside facilities available for various emergencies, including severe storms. *M–84–72:* Require that a suitable vessel, capable of retrieving persons from the water under adverse conditions, be assigned to all mobile offshore drilling units operating off the coast of the People's Republic of China at all times for the purposes of evacuating personnel from the unit in an emergency. *M–84–73:* Require the standby vessels for a mobile offshore drilling unit off the coast of the People's Republic of China to: (1) Maintain a 24-hour radio watch on radio distress and operating frequencies and (2) use their radar during periods of reduced visibility to maintain contact with the mobile offshore drilling unit.

American Bureau of Shipping: Nov. 21: M–84–74: Revise the stability criteria contained in the Rules of Building and Classing Mobile Offshore Drilling Units include the capability of drillships to survive the flooding of any two adjacent compartments or tanks within 5 feet of the hull. *M–84–75:* Review the structural design in conjunction with the U.S. Coast Guard of the five Global Marine drillships, similar in design to the GLOMAR JAVA SEA, and, if necessary, require design modifications to prevent a structural failure similar to that which occurred on the GLOMAR JAVA SEA. *M–84–76:* Require that a representative sample of non-fuel oil tanks be inspected internally at least once every 30 months for vessels in salt water service and that the sample of tanks to be inspected be increased as the vessel gets older.

International Association of Drilling Contractors: Nov. 21: M–84–77: Urge that member contractors review the chain of command aboard their mobile offshore drilling units to insure that the licensed master or bargemover can effectively exercise full authority over the unit during an emergency. *M–84–78:* Urge that member contractors contact the cognizant rescue coordination center to preplan procedures for an emergency involving mobile offshore drilling units in remote locations.

Pipeline—*Columbia Gas of Pennsylvania: Nov. 27: P–84–46:* Expose and inspect a representative quantity of welds in the 12-inch, steel distribution pipeline installed in 1954 in York, Pennsylvania, and, if indicated, institute a program to replace or repair welds which do not comply with applicable requirements of the Federal minimum safety standards contained in Title 49, Code of Federal Regulations, Part 192. *P–84–47:* Expose and inspect the previously repaired leaks in the cast-iron and steel distribution mains in the vicinity of West King and South Beaver Streets, York, Pennsylvania, to ascertain the cause of the leaks and, if indicated, institute a program of corrective actions. *P–84–48:* Institute a company practice of removing failed pipeline segments for metallurgical examination, on a random sampling basis, as a means of eliminating causes of failures and to assist in determining when portions of its pipeline should be replaced.

Boston Gas Company: Nov. 27: P–84–43: Test for dependability the telemeter facilities used to transmit pressure information and other critical information from distribution system operating locations to the Commercial Point Station, and repair or replace the equipment as necessary. *P–84–44:* Emphasize to its emergency response personnel at the Rivermoor Station and to its gas dispatch personnel at the Commercial Point Station the need to exchange any information that might reflect emergency conditions within the gas distribution system. *P–84–45:* When performing annual inspections on district regulators, test equipment with all necessary appurtenances for normal operation in place.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopiesd will be billed at a cost of 14 cents per page ($1 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

December 11, 1984.

[FR Doc. 84–32564 Filed 12–13–84; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–13]

Finding of No Significant Environmental Impact' Babcock & Wilcox Co.

The Nuclear Regulatory Commission (the Commission) is considering issuance of Amendment No. 13 to Facility Operating License No. CX–10 for the Babcock & Wilcox Company (B&W) Critical Facility located in Lynchburg, Virginia. The amendment would permit B&W to cut irradiated, contaminated and deformed fuel pins prior to shipment, in accordance with its request dated January 6, 1984, as amended by letter dated October 1, 1984.

The fuel cutting operation will not require alteration of buildings or structures, will not lead to significant changes in effluents released from the facility to the environment, will not increase the probability or consequences of accidents, and will not involve any unresolved issues concerning alternative uses of available resources. Based on the foregoing and on the Environmental Assessment dated November 14, 1984, the Commission concludes that issuance of the amendment will not result in any significant environmental impacts.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment of this action and has concluded that the proposed action will not have a significant effect on the quality of the human environment. The Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

Summary of Environmental Impacts As Described in the Environmental Assessment

The environmental impacts associated with the fuel cutting operation are discussed in an Environmental Assessment associated with this action. The Assessment concluded that the fuel cutting operation will not result in any significant environmental impacts on air, water, land or biota in the area, and that an Environmental Impact Statement need not be prepared. These conclusions were based on the fact that the radiological effluent control systems ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as is reasonably achievable (ALARA).

For further details with respect to this proposed action, see the application for license amendment dated January 6, 1984, as amended, the Environmental Assessment, and the Safety Evaluation prepared by the staff.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555. Copies may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, ATTENTION: Director, Division of Licensing.

Copies may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Document Management Branch, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 10th day of December 1984.

Gary M. Holahan,

Acting Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 84–32659 Filed 12–13–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–325]

Carolina Power & Light Co. (Brunswick Steam Electric Plant, Unit 1); Exemption

I

The Carolina Power & Light Company (CP&L, the licensee) is the holder of Facility Operating License No. DPR–62 (the license) which authorizes the operation of the Brunswick Steam Electric Plant, Unit 1 at a steady-state power level not in excess of 2436 megawatts thermal. The facility consists of a boiling water reactor (BWR) located in Brunswick County, NC. This license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

Section 50.54(o) of 10 CFR Part 50 requries that primary reactor containments for water cooled power reactors be subject to the requirements

of Appendix J to 10 CFR Part 50. Appendix J contains the leakage test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate the containment. Section III.D of Appendix J requires that local leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than two years. Appendix J was published on February 14, 1973 and in August 1975, each licensee was requested to review the extent to which its facility met the requirements.

In responses dated September 8, 1975, February 9, and September 16, 1977, and in an earlier letter dated May 2, 1975, the licensee responded to the August 5, 1975 letter from the staff and requested a number of specific exemptions from Appendix J. On November 5, 1977 Amendment Nos. 10 and 36 to DPR–71 and DPR–62, respectively, were issued. Those amendments granted specific exemptions from Appendix J and contained the Technical Specification changes for Appendix J consistent with these exemptions.

Brunswick Unit 1 was last shut down for refueling in December 1982 and the leak rate test was performed over a period of the next three or four months. Brunswick Unit 1 was restarted in July 1983 after a 7½ month outage and except for about one month, when an intergranular stress corrosion cracking (IGSCC) inspection was performed, it has operated essentially continuously since then, a total of about 14 months. By March 31, 1985 Unit 1 will have operated the full 18-month cycle and will be ready for refueling. However, the two year Type B and C local leak rate test periods end on various dates beginning about the middle of December 1984.

III

On September 4, 1984, as supplemented October 22, 1984, the licensee requested an exemption from the local leak rate interval requirements of Appendix J to 10 CFR 50 for about 164 valves and penetrations. An associated proposed Technical Specification (TS) change revises Section 4.6.1.2.d to allow a one-time only deferment of required Type B and C local leak rate tests (LLRTs) until the next refueling outage scheduled to begin on or before March 31, 1985. TS Section 4.6.1.2.d requires performance of LLRTs at least once per 24-month interval based on the requirements of 10 CFR Part 50, Appendix J, Section D, Part 2. Therefore, an amendment to the Technical Specifications and an exemption to 10 CFR Part 50 Appendix J was requested. A listing of the valves and penetrations involved in this request, their size (applicable to penetrations only), results of the previous LLRTs, and the current test due dates are provided in the application. These due dates range from December 1984 to March 1985. Additionally, the application proposes to change TS Section 4.6.1.2.f to allow a one-time only deferment of main steam line isolation valve (MSIV) leak testing until the March 31, 1985 refueling outage. The current due date for the MSIV leak testing is March 18, 1985.

As indicated above the intent of Appendix J was that isolation valves be tested during refueling outages but not to exceed 24 months. CP&L is presently scheduled to conduct a refueling outage for Brunswick Unit 1 beginning on or before March 31, 1985. The proposed amendment would allow these tests to be postponed until that refueling outage. Such an extension is desirable in order to maintain personnel exposures as-low-as-reasonably achievable (ALARA). With the current LLRT schedule, that is with no exemption, mid-cycle LLRTs would need to be performed again early in Brunswick Unit 1 Cycle 5 to return to a schedule which is coincident with the Unit 1 refueling interval. Performance of mid-cycle LLRTs now and during the next fuel cycle would result in increased exposure of personnel of approximately 20 man-rem which is not consistent with CP&L's or NRC's ALARA policies.

In addition, the test interval for Type C tests in Appendix J was based on two years of expected exposure of components to service conditions. In the case of the valves referred to in the licensee's request, approximately eight months of the two-year period since the valves were last tested was spent in an extended maintenance outage during which the components were not exposed to an operating environment.

Technical Specification Section 4.6.1.2.f requires that the main steam line isolation valves be leak tested at least once per 18 months. The MSIVs were last tested on May 3, 1983. Utilizing the maximum surveillance period of 125 percent, the latest required performance date is March 18, 1985. The requested extension results in only an additional 12 days, or a 1.75 percent increase, in the maximum surveillance interval permitted by the TS.

IV

The staff has reviewed the information contained in the above referenced letters and has concluded that it would be acceptable to postpone, until the March 31, 1985 scheduled refueling outage, the required LLRTs for approximately one-half of the Brunswick Unit 1 primary containment penetrations. These penetrations are identified in Table 1. The basis for our conclusion is contained in the Safety Evaluation dated December 6, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Southport, Brunswick County Library, 109 W. Moore Street, Southport, NC 28461.

Based on our evaluation, the staff has concluded that the one-time extension of the test period for certain valves from December 12, 1984 or later to the next refueling outage scheduled to begin on or before March 31, 1985 will not adversely affect the health and safety of the public and that the requested exemption from the requirements of 10 CFR 50, Appendix J, Section D.2 for the valves listed in attachment 1 should be granted.

V

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security, is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Exemption is granted from the requirement of 10 CFR Part 50, Appendix J, Section D.2, that requires a 24-month interval between local leak tests for the valves specified in Table 1 for the Brunswick Steam Electric Plant, Unit 1 from December 12, 1984 or later to the next refueling outage scheduled to begin on or before March 31, 1985.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (49 FR 44336).

Dated at Bethesda, Maryland, this 6th day of December 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

Table 1—List of Brunswick 1 Containment Penetrations Whose LLRTs Can Be Delayed Until March 31, 1985, Refueling Outage

Penetrations are identified by their Test No. (from October 22, 1984, licensee letter).

Test No.
CAC–1
CAC–1
CAC–9 thru CAC–12

CAC–14 thru CAC–26
CAC–39 thru CAC–42
CAC–45
E11–1
E11–2
E11–4
E11–6
E11–11
E11–12
E11–15 thru E11–17
E11–19
E11–20
E11–22
E11–24
E11–26 thru E11–32
E21–1 thru E21–5
E21–7
E21–8
E41–2
E41–4
E41–6
E41–8
E51–2 thru E51–4
G31–2
SA–1
TIP–1 thru TIP–5
Also, the Main Steam Isolation Values
B21–F022A, F028A
B21–F022B, F028B
B21–F022C, F028C
B21–F022D, F028D

[FR Doc. 84–32662 Filed 12–13–84; 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. (Limerick Generating Station, Units 1 and 2); Schedule for Further Evidentiary Hearings

December 11, 1984.

Before Administrative Judges: Helen F. Hoyt, Chairperson, Dr. Richard F. Cole, and Dr. Jerry Harbour.

The following schedule for further evidentiary hearings has been established:

December 17, 1984, Monday—12:00 p.m.–6:00 p.m.
December 18, 1984, Tuesday—9:00 a.m.–5:00 p.m.
December 19, 1984, Wednesday—9:00 a.m.–6:00 p.m.
December 20, 1984, Thursday—9:00 a.m.–5:00 p.m.
December 21, 1984, Friday—9:00 a.m.–2:00 p.m.
January 2, 1985, Wednesday—12:00 p.m.–6:00 p.m.
January 3, 1985, Thursday—9:00 a.m.–5:00 p.m.
January 4, 1985, Friday—9:00 a.m.–2:00 p.m.
January 7, 1985, Monday—12:00 p.m.–6:00 p.m.
January 8, 1985, Tuesday—9:00 a.m.–5:00 p.m.
January 9, 1985, Wednesday—9:00 a.m.–6:00 p.m.
January 10, 1985, Thursday—9:00 a.m.–5:00 p.m.
January 11, 1985, Friday—9:00 a.m.–2:00 p.m.
January 14, 1985, Monday—12:00 p.m.–6:00 p.m.
January 15, 1985, Tuesday—9:00 a.m.–5:00 p.m.
January 16, 1985, Wednesday—9:00 a.m.–6:00 p.m.
January 17, 1985, Thursday—9:00 a.m.–5:00 p.m.
January 18, 1985, Friday—9:00 a.m.–2:00 p.m.
January 21, 1985, Monday—12:00 p.m.–6:00 p.m.
January 22, 1985, Tuesday—9:00 a.m.–5:00 p.m.
January 23, 1985, Wednesday—9:00 a.m.–6:00 p.m.
January 24, 1985, Thursday—9:00 a.m.–5:00 p.m.
January 25, 1985, Friday—9:00 a.m.–2:00 p.m.
January 28, 1985, Monday—12:00 p.m.–6:00 p.m.
January 29, 1985, Tuesday—9:00 a.m.–5:00 p.m.
January 30, 1985, Wednesday—9:00 a.m.–6:00 p.m.
January 31, 1985, Thursday—9:00 a.m.–5:00 p.m.
February 1, 1985, Friday—9:00 a.m.–2:00 p.m.

The hearings during the week of December 17, 1984, will be held in the Old Customs Courtroom, U.S. Customs House, 2nd & Chestnut Streets, Philadelphia, PA 19106. The remaining scheduled hearings during the weeks of January 2, 7, 14, 21 and 28, 1985, will be held in Courtroom 6, Commonwealth Court of Pennsylvania, Old Federal Courthouse, 9th & Market Streets, Philadelphia, PA 19107.

The Board wishes to remind the parties that all examination of LEA'S witnesses will be conducted within the time limits established by the Board at Tr. 14,727–28.[1]

Dated at Bethesda, Maryland this 11th day of December, 1984.

For the Atomic Safety and Licensing Board.
Helen F. Hoyt,
Chairperson, Administrative Judge.

[FR Doc. 84–32663 Filed 12–13–84; 8:45 am]
BILLING CODE 7590–01–M

[1] The following corrections should be made to those transcript pages:
P. 14,727, line 13: "on" should be "one".
P. 14,728, line 5: "decidely" should be "decided".
P. 14,728, line 6: "no" should be added to the end of the line.

[Docket No. 50–333]

Power Authority of the State of New York; 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–59, issued to Power Authority of the State of New York (the licensee), for operation of the James A. FitzPatrick Nuclear Power Plant (the facility), located in Oswego County, New York.

In accordance with the licensee's application dated October 2, 1984, as supplemented October 22, 1984, the proposed amendment would change the Technical Specifications (TSs) to permit changes in the normal full power background trip level setting for the main steam line high radiation scram and isolation setpoints to accommodate a scheduled short-term test of hydrogen injection as a potential intergranular stress corrosion cracking mitigating activity. The change would specifically permit a temporary increase in the main steam line high radiation scram and isolation setpoints to facilitate operation with the expected increased N–16 radiation levels due to the hydrogen injection test.

Before issuance of the proposed license amendment, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would permit, during the proposed 17-day test,

an increase in the calculated radiation background level used to determine setpoints. The main steam line high radiation level setpoint will remain at three times the background radiation level; however, due to the increased N–16 carryover in the steam, the background radiation level used to determine the high radiation setpoint will be increased prior to the test period. The increase in the background level would be based upon the calculated value of the radiation level expected during the tests, i.e., approximately a factor of five increase. During controlled power reduction, restoration to pre-test setpoints will be done prior to going below 20% of rated power. If due to a recirculation pump trip or other unanticipated power reduction event, the reactor drops below 20% rated power without the setpoint readjustment, control rod withdrawal will be prohibited until the necessary trip setpoint readjustment is made. The main steam line high radiation scram and isolation setpoints provide the capability to monitor for fuel failures. The only event which takes credit for these trips is the design bases control rod drop accident (CRDA). A CRDA is only a concern below 10% of rated power. The hydrogen injection test will not be performed below 20% power. In addition, the capability to monitor for fuel failures will be maintained through: (1) The continued operability of the main steam radiation monitoring scram and isolation system; (2) routine radiation surveys; (3) the performance of daily primary coolant water analyses; and (4) the continued operability of the Steam Jet-Air Ejector Off-Gas Monitor. Although the potential for error exists whenever instrument setpoints are adjusted, the resulting increase in the probability or consequences of accidents previously evaluated is considered insignificant because of the licensee's existing quality assurance program and operating procedures as applied to instrument adjustments.

Furthermore, radiation protection practices will be performed during the course of the test based upon the licensee's pre-test radiation (ALARA) review. During the hydrogen injection test, special radiation level surveys will be performed and protective actions will be taken, as appropriate, to control all onsite personnel exposure. Changes in gaseous effluent release rates for hydrogen injection are expected to be negligible due to the short decay times for N–16. Based on these considerations, the Commission's staff concludes that the proposed amendment will not significantly increase the probability or consequences of accidents previously considered, will not create the possibility of a new or different accident from any previously evaluated, and will not significantly reduce a safety margin. Thus, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By January 14, 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 aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the basis 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, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., 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 Domenic B. Vassallo: 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 Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, 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 petition and/or request should be granted 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, dated October 2, 1984, as supplemented October 22, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 10th day of December, 1984.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch #2, Division of Licensing.

[FR Doc. 84-32861 Filed 12-13-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules and Inservice Inspection of Nuclear Power Plant Components" to the Tennessee Valley Authority (the licensee). The relief relates to the hydrostatic tests for the Sequoyah Nuclear Plant, Units 1 and 2 (the facilities) located in Hamilton County, Tennessee. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief relates to certain inservice examination requirements, pursuant to the Commission's regulations in 10 CFR 50.55a(g)(6)(i). The licensee has requested relief from the hydrostatic test pressure requirements following installation of emergency raw cooling water (ERCW) system piping between the existing diesel generator building, turbine building, and the proposed fifth diesel generator. The relief is needed because performing the hydrostatic test after the installation of the piping is impractical. The licensee will perform a system leakage test after the replacement at nominal operating pressure of approximately 110 psig. In addition, a liquid penetrant examination will be performed on each weld. A hydrostatic pressure test will be performed by the end of the unit 1 cycle 3 refueling outage scheduled for January 1986.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this relief will have no significant impact on the environment (49 FR 45675).

For further details with respect to this action, see: (1) The licensee's letter dated September 21, 1984, (2) the Commission's letter to the licensee dated December 10, 1984, and (3) the Commission's related Safety Evaluation Report. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 10th day of December 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-32864 Filed 12-13-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 30-10576; 30-11727; 70-02953; License Nos. 06-01450-47; 06-01450-48; SNM-1889; EA 84-80]

The University of Connecticut, Storrs, Connecticut 06268; Order Imposing Civil Monetary Penalties

I

The University of Connecticut, Storrs, Connecticut 06268 (the "licensee") is the holder of License Nos. 06-01450-47, 06-01450-48, and SNM-1889 (the "licenses") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") which authorize the license to possess and use radioactive materials for medical research, diagnosis, therapy, and training in accordance with conditions specified therein.

II

An NRC safety inspection of the licensee's activities under the licenses was conducted on June 7-8, 1984. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated August 31, 1984. The Notice states the nature of violations, the provisions of the Nuclear Regulatory Commission's requirements that the licensee had violated, and the amount of the proposed civil penalties for the violations. Two responses, both dated October 9, 1984, to the Notice of Violation and Proposed Imposition of

Civil Penalties were received from the licensee.

III

Upon consideration of the answers received, and the statements of fact, explanations, and arguments for remission or mitigation of the proposed civil penalties contained therein, the Deputy Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix to this Order, that the penalties proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, PL 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Two Thousand Five Hundred Dollars ($2,500) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Deputy Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Deputy Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within thirty days of the date of this Order, the provisions of this order shall be effective without further proceedings, and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties as amended by the encolosed Appendix and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 7th day of December 1984.

For the Nuclear Regulatory Commission.

James M. Taylor,

Deputy Director, Office of Inspection and Enforcement.

Appendix—Evaluation and Conclusion

In two letters dated October 9, 1984, the licensee responded to the Notice of Violation and proposed Imposition of Civil Penalties dated August 31, 1984. In its reponses the licensee denies certain violations, indicates that errors exist in the Notice and that there were extenuating circumstances, and requests that the civil penalties be withdrawn. Provided below is a restatement of each violation, the licensee's assertion regarding each violation, and the NRC's evaluation and conclusions for each licensee assertion.

I. Restatement of Violations, Licensee Assertions and NRC Response

A. Restatement of Violation A

10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that material not in storage be under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3 (a)(17), an unrestricted area is any area which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, during an NRC inspection conducted on June 7–8, 1984, several laboratories (Rooms 267 and 478 in the Life Sciences Building and Room 348 in Beach Hall) containing millicurie quantities of licensed radioactive material were unlocked and unattended and access was not controlled.

Licensee Assertion

The licensee admits the occurrence of this violation in Rooms 267 and 478 in the Life Sciences Building, but denies that the violation occurred in Room 348 of Beach Hall. In making this assertion, the licensee states that a thorough review of the facility in conjunction with faculty members on the premises indicates no violation occurred in Room 348.

NRC Response

In making this assertion, the licensee neither specifies the nature and extent of the review, nor the evidence which exists to indicate that a violation did not occur. On the day of the inspection, NRC inspectors observed that there was no immediate control of access to or surveillance of Room 348 in Beach Hall, and at the time, one millicurie of P–32 and 0.25 millicuries of H–3 were available on the laboratory bench top and were not secured against unauthorized removal from the place of storage.

Accordingly, no basis has been provided for withdrawal of any portion of the violation. The entire violation remains as stated. Moreover, even assuming that the violation did not occur in Room 348 of Beach Hall, the fact that it did occur in Rooms 267 and 478 of the Life Science Building is sufficient to justify the citation.

B.1 Restatement of Violation B.1

Condition 18 of License No. 06–01450–47 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated December 31, 1979 and letters dated May 6, 1983 and July 14, 1983.

"Policies and Procedures for Surveys and Audits by the Radiation Safety Office" contained in the application dated December 31, 1979 requires that all laboratories using licensed materials be classified as to use-level and frequency of laboratory surveys to be conducted. These procedures establish a minimum quarterly frequency for survey by the Radiation Safety Office of all laboratories using licensed materials.

Contrary to the above, as of June 8, 1984, laboratories at the University had not been classified according to use-level and frequency of surveys and the minimum quarterly survey requirement of all laboratories was not conducted by the Radiation Safety Office during 1984.

Licensee Assertion

The licensee denies that a violation of Condition 18 existed since Condition 18 refers to human use conditions. The licensee admits that the "Policies and Procedures for Surveys and Audits by the Radiation Safety Office" were not being done per the letter of July 14, 1983, and Amendment 12 which incorporated the letter dated August 23, 1983, but denies that these "Policies and Procedures . . ." were in the December 31, 1979 application.

NRC Response

Although a violation of a License Condition occurred, the licensee is correct in stating that there was no violation of Condition 18. The correct license condition violated for Violations B.1–B.4 was Condition 23. The licensee is also correct in stating that the "Procedures and Policies . . ." are required by the letters dated July 14, 1983 and August 23, 1983 rather than the December 31, 1979 application. The Notice of Violation is hereby corrected accordingly.

Notwithstanding this oversight, the underlying facts constituting the violation specified in B.1 did occur, and were admitted by the licensee. Since there is no question that a condition of the license was not met, the information provided is not a sufficient basis for withdrawal or mitigation of the proposed civil penalty.

B.2 Restatement of Violation B.2

Condition 18 of License No. 06–01450–47 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated December 31, 1979 and letters dated May 6, 1983 and July 14, 1983.

"Monitoring Instructions for Radioactive Shipment Receipts," contained in the May 6, 1983 letter, require that all packages containing radioactive material be surveyed upon receipt.

Contrary to the above, two packages received on April 10 and May 15, 1984, containing millicurie quantities of licensed material, and one package received on May

19, 1984, containing 50 microcuries of licensed material, had not been surveyed upon receipt.

License Assertion

The licensee admits the occurrence of this violation on April 10, 1984 and May 15, 1984, but denies that a violation occurred on May 19, 1984 because the package received on May 19, 1984 was exempt from surveying under the terms of the May 6, 1983 letter.

NRC Response

The NRC agrees with the licensee's assertion that the package received on May 19, 1984 was exempt from surveying. Therefore, there were only two rather than three examples of this violation. The notice of Violation is hereby corrected accordingly. Notwithstanding this oversight, the underlying facts constituting the other examples were admitted by the licensee and this violation did occur. The fact that there were only two rather than three examples of the violation is not a basis for withdrawal or mitigation of the proposed civil penalty.

B.3.a Restatement of Violation B.3.a

Condition 18 of License No. 06–01450–47 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated December 31, 1979 and letters dated May 6, 1983 and July 14, 1983.

Item 13 of the application dated December 31, 1979 requires that procedures described in the University's Radiation Safety Manual be followed by all licensed investigators.

Item III.E.6 of the Radiation Safety Manual requires that each licensed investigator make periodic surveys of each room in which licensed materials are stored. The frequency of these surveys, including wipe tests, is established by the Radiation Safety Office during inspection of the laboratory prior to the initial use of licensed materials. The minimum frequency for surveys as assigned by the Radiation Safety Office is monthly.

Contrary to the above, from January 1983 to June 8, 1984, numerous licensed investigators failed to conduct monthly surveys and wipe tests or only partially completed the required surveys and wipe tests.

Licensee Assertion

The licensee admits the violation.

NRC Response

No response required.

B.3.b Restatement of Violation B.3.b

Condition 18 of License No. 06–01450–47 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated December 31, 1979 and letters dated May 6, 1983 and July 14, 1983.

Item VI.L.1 of the Radiation Safety Manual prohibits smoking, eating, or storage of food in any area where unsealed and unpackaged sources of radioactive materials are being used, handled, transferred, or stored.

Contrary to the above, on June 8, 1984, smoking was observed in laboratories where radioactive materials were in use and food (drink) was stored in the cold room of the laboratory suite identified as Rooms 602, 608D and 611 of the Life Sciences Annex.

Licensee Assertion

The licensee admits that a violation occurred in that smoking was observed in the laboratory. The licensee denies that food (drink) was stored in the cold room of the laboratory suite identified as Rooms 602, 608D, and 611 of the Life Sciences Annex. The licensee contends that the milk stored in these rooms was used as part of an experiment and was not for human consumption.

NRC Response

Although a violation occurred with regard to smoking as admitted by the licensee, the NRC retracts that portion of the citation regarding food and drink. The Notice of Violation is hereby corrected accordingly. The basis for this retraction is the information provided in the licensee's response. The information had not previously been provided to the NRC during the inspection, in a previous licensee's letter dated July 16, 1984 to the Region I office, nor during the enforcement conference on July 30, 1984.

Notwithstanding this fact, the underlying facts constituting the smoking example of this violation did occur, as admitted by the licensee. The fact that a portion of the violation regarding food and drink was retracted is not a sufficient basis for withdrawal or mitigation of the proposed civil penalty.

B.4 Restatement of Violation B.4

Condition 18 of License No. 06–01450–47 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in an application dated December 31, 1979 and letters dated May 6, 1983 and July 14, 1983.

Item 10 of the application dated December 31, 1979 describes survey instruments that must be operable and available. Item 11 of the application requires that these instruments or equivalent instruments be calibrated every six months.

Contrary to the above, an operable Eberline E–120 survey meter, Serial No. 6294, in Room 68A of the Life Sciences building was due for calibration on April 28, 1984 but was not calibrated as of June 8, 1984 and a G-M survey meter in Room 348 of Beach Hall, a Johnson and Associates GSM5—Serial No. 804, was inoperable because of dead batteries.

Licensee Assertion

The licensee admits that a violation occurred in that the Eberline E–120 survey meter in Room 68A of the Life Sciences Building was not calibrated. The licensee denies that a similar violation existed in Room 348 Beach Hall since another survey meter was operable.

NRC Response

Although a violation occurred as admitted by the licensee, the NRC retracts that portion of the citation referencing Room 348 of Beach Hall. The Notice of Violation is hereby corrected accordingly. The basis for this correction is the information provided in the licensee's response. The information had not previously been provided to the NRC during the inspection, in the licensee's letter dated July 16, 1984 to the Region I Office, nor during the enforcement conference on July 30, 1984.

Notwithstanding this fact, the underlying facts constituting the other example of this violation did occur, as admitted by the licensee. The fact that the violation occurred only once, instead of twice, is not a sufficient basis for withdrawal or mitigation of the proposed civil penalty.

II. NRC Evaluation and Conclusion

Although the licensee provided additional information, not previously provided, which resulted in retraction of portions of some of the violations, no information was provided to retract any violation in its entirety. Accordingly, all of the violations did occur and they collectively represented a breakdown in mangement control of the radiation safety program. Further, a sufficient basis was not provided for either mitigation or withdrawal of the civil penalties. Therefore, the NRC staff concludes that civil penalties of $2,500 should be imposed.

[FR Doc. 84–32660 Filed 12–13–84; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comments Regarding Section 337 Exclusion Order

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments.

SUMMARY: On November 26, 1984, pursuant to sections 337 and 337a of the Tariff act of 1930 (19 U.S.C. 1337, 337a), the U.S. International Trade Commission (ITC) transmitted two exclusion orders issued in the ITC's investigation of *Certain Processes for the Manufacture of Skinless Sausage Casings and Resulting Product*, Inv. No. 337–TA–148/149. The ITC determined that the importation and sale of certain skinless sausage casings manufactured by Vicofan, S.A. and industrial Navaria de Envolturas Arifiales, S.A. violated section 337. The ITC further determined that the appropriate remedy for the violation of section 337 was the issuance of (1) a general exclusion order prohibiting the entry into the U.S. of sausage casings manufactured by a process which if practiced in the U.S. would infringe U.S. letter Patent 3,361,484 and (2) a limited exclusion order prohibiting the entry of skinless sausage casings manfactured by Vicofan and Industrial Navarra de Envolturas Artificiales.

Under section 337(g), the President, for policy reasons, may disapprove an exclusion order within a 60 day period following receipt of the ITC's determination and record.

Interested persons are invited to submit comments regarding foreign or domestic policy issues raised by the exclusion orders.

Comments may not exceed 15 letter-sized pages, including attachments. Twenty copies of the submission should be delivered to the Secretary, Trade Policy Staff Committee, room 500, 600 17th Street, NW., Washington, D.C. 20506. Comments should be submitted by c.o.b. Wednesday, December 19, 1984 to ensure consideration by the TPSC.

FOR FURTHER INFORMATION: Warren H. Maruyama, Esq., Office of the U.S. Trade representative, 600 17th Street, NW, Washington, D.C. 20506; telephone (202) 395–6800

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 84-32821 Filed 12-13-84; 8:45 am]

BILLING CODE 3190-01-M

Determination Regarding the Withdrawal From Warehouse of Certain Stainless Steel Bar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice permits the withdrawal from warehouse for consumption of not more than twenty tons of certain stainless steel bar, presently subject to quota.

EFFECTIVE DATE: December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Maria T. Springer, Office of the United States Trade Representative, (202) 395–4946.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233), provides for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States. Headnote 10(d), Part 2A of the Appendix to the Tariff Schedules of the United States (TSUS) authorizes the U.S. Trade Representative to adjust the restraint level for any such steel to be exceeded during any restraint period.

Accordingly, I have determined that an amount not to exceed twenty short tons of the following stainless steel bar, provided for in Tariff Schedules of the United States (TSUS) item 926.10, may be entered for consumption or withdrawn from Customs bonded warehouse, in excess of the restraint level provided for the period October 20, 1984—January 19, 1985, for the "Other" foreign country category:

Stainless steel bar, annealed and ground, not less than 5.27 millimeters and not more than 5.30 millimeters in diameter, containing, in addition to iron, each of the following elements by weight in the amount specified:

Carbon:
  Not less than 0.82 percent
  Not more than 0.98 percent
Silicon: Not more than 1.05 percent
Manganese: Not more than 1.03 percent
Chromium:
  Not less than 16.8 percent
  Not more than 19.2 percent
Molybdenum:
  Not less than 0.85 percent
  Not more than 1.35 percent
Vanadium:
  Not less than 0.04 percent
  Not more than 0.15 percent
Phosphorous: Not more than 0.055 percent
Sulphur: Not more than 0.035 percent

certified by the importer of record or the ultimate consignee at the time of entry for use in the manufacture of gasoline fuel injections.

In addition, an indentical amount shall be deducted from the quota quantity allocated to the "Other" foreign country category for TSUS 926.10 for the restraint period January 20, 1985–April 19, 1985. This determination supersedes the provisions of the notice of October 20, 1983 (48 FR 48888), to the extent inconsistent herewith.

William E. Brock,

United States Trade Representative.

[FR Doc. 84-32562 Filed 12-13-84; 8:45 am]

BILLING CODE 3190-01-M

Implementation of Modifications in Specialty Steel Import Relief

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice permits the withdrawal from warehouse for consumption of a quantity of certain stainless steel bar, presently subject to quota.

EFFECTIVE DATE: December 6, 1984.

FOR FURTHER INFORMATION CONTACT: Maria T. Springer, Office of the United States Trade Representative (202) 395–4946.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233), provides for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States. Headnote 10(d), Part 2A of the Appendix to the Tariff Schedules of the United States (TSUS) authorizes the U.S. Trade Representative to adjust the restraint level for any such steel to be exceeded during any restraint period.

Accordingly, I have determined that an amount not to exceed two short tons of the following stainless steel bar, provided for in Tariff Schedules of the United States (TSUS) item 926.11, may be entered for consumption or withdrawn from Customs bonded warehouse, in excess of the restraint level provided for the period October 20, 1984—January 19, 1985, for the "Other" foreign country category:

Round stainless steel bar, centerless ground, not less than 2.342 millimeters and not more than 2.350 millimeters in diameter, 3 meters in length, containing, in addition to iron, each of the following elements by weight in the amount specified:

Carbon:
  Not less than 0.40 percent
  Not more than 0.47 percent;
Manganese: 0.50 percent;
Sulfur: 0.005 percent;
Phosphorus: 0.019 percent;
Silicon: 0.35 percent;
Chromium:
  Not less than 12.0 percent
  Not more than 13.0 percent;
Nickel: 0.30 percent
Copper: 0.05 percent
Molybdenum: 0.04 percent
Aluminum: 0.01 percent;

and certified by the importer of record or the ultimate consignee at the time of entry for use in the manufacture dental burs.

In addition, an identical amount shall be deducted from the quota quantity allocated to the "Other" foreign country category for TSUS item 926.11 for the restraint period January 20, 1985-April 19, 1985. This determination supersedes the provisions of the notice of October 20, 1983 (48 FR 48888), to the extent inconsistent herewith.

William E. Brock,

United States Trade Repesentative.

[FR Doc. 84-32563 Filed 12-13-84; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[500-1]

Burel Enterprises, Inc.; Order of Suspension of Trading

December 10, 1984.

It appearing to the Securities and Exchange Commission that unusual unexplained market activity has occurred in the securities of Burel Enterprises, Inc., that Burel has failed to file any required periodic reports with

the Commission, and that there is a lack of adequate current information concerning the affairs of Burel Enterprises, Inc. including certain recent changes in the company's management and control,

It is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in Burel Enterprises, Inc. securities, in the form of common stock, warrants and any units consisting of both common stock and warrants, over-the-counter or otherwise is suspended, for the period from 9:00 A.M. December 10, 1984 through midnight (e.s.t.) on December 19, 1984.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 84-32800 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14270; 812-5548]

Lambert Brussels Corp., et al.; Filing of Application for an Order Amending a Previous Commission Order Granting an Exemption

In the Matter of the Lambert Brussels Corporation (formerly The New LBC Corporation), the Lambert Brussels Investment Corporation, the Lambert Brussels Financial Corporation,the Lambert Brussels Holding Corporation, the Lambert Brussels Real Estate Corporation, and all future wholly-owned subsidiaries of the above listed corporations, c/o Stephen J. Friedman, Esquire, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022.

December 7, 1984.

Notice is hereby given that The Lambert Brussels Corporation ("LBC") (formerly The New LBC Corporation), The Lambert Brussels Investment Corporation ("LBIC"), The Lambert Brussels Financial Corporation, The Lambert Brussels Holding Corporation, The Lambert Brussels Real Estate Corporation, and all future wholly-owned subsidiaries of the above-listed corporations (collectively "Applicants"), filed an aplication on October 5, 1984, and an amendment thereto on December 4, 1984, to amend an order which has been issued pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), which would have the effect of exempting Applicants from all provisions of the Act subject to certain undertakings. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, a summary of whch is set forth below, and to the Act and rules thereunder for the text of the applicable provisions.

Applicants state that, by order dated July 18, 1983 (Investment Company Act Release No. 13391) (the "Order"), the Commission exempted LBC from all provisions of the Act subject to certain undertakings to which LBC consented (the "Undertakings"). Applicants further state that subsequent to the issuance of the Order, LBC established three wholly-owned subsidiaries, The Lambert Brussels Financial Corporation, The Lambert Brussels Holding Corporation, and The Lambert Brussels Real Estate Corporation (the "Original Subsidiaries"), to hold LBC's real estate investments, its investment in The Drexel Burnham Lambert Group Inc., and its other United States investments. Applicants represent that the Original Subsidiaries are deemed to be investment companies within the meaning of the Act. According to Applicants, application for an amendment of the Order to exempt the Original Subsidiaries from the provisions of the Act has been delayed pending structuring of the reorganization of LBC described below.

The application represents that LBC's intention has been to sell a limited amount of its stock to its officers and directors. According to the application, as a matter of administrative convenience, LBC has decided to establish a new intermediate holding company, LBIC, to afford senior executives and directors an opportunity to invest in the enterprise (the recapitalization of LBC being a less convenient alternative).

The application states that, in exchange for the contribution by LBC to LBIC of all of the stock of the Original Subsidiaries (and substantially all of LBC's remaining assets), LBIC has issued to LBC all of its authorized Class A Cumulative preferred Stock (with a liquidation value equal to 99.5% of the value of the assets contributed) and 90% of its authorized Common Stock (with a value equal to the balance of the 0.5% of value of the assets contributed). It is further stated that, upon issuance of the amended order, the remaining 10% of the authorized Common Stock of LBIC will be sold to senior executives and directors of LBC (some of whom will also be senior executives or directors of LBIC). According to the application, only three of such individuals are citizens or residents of the United States; the others are non-resident aliens.

Applicants recognize that the undertakings apply only to LBC. It is therefore requested that the following undertakings be extended to LBIC, the Original Subsidiaries, and all other wholly-owned subsidiaries as defined in the application (collectively, the "Wholly-Owned Subsidiaries"):

1. No more than 25 United States persons, including both outside investors and employees, will be shareholders of LBC AND ITS Wholly-Owned Subsidiaries (taken as a whole) at any given time. For the purpose of calculating the number of United States shareholders, the attribution rules under Section 3(c)(1)(A) of the Act shall apply.

2. Neither LBC nor any Wholly-Owned Subsidiary will issue shares to any United States investor (other than any employee) unless such shares of LBC or such Wholly-Owned Subsidiary are valued at no less than $2 million, and each such investor will agree that any transfer to another United States investor will either include all such shares or shares valued at no less than $2 million. Any United States transferee will enter into a similar agreement.

3. United States citizens and residents will not hold more than a 10 percent equity interest in LBC and its Wholly-Owned Subsidiaries on a consolidated basis.

4. Non-United States shareholders of LBC and its Wholly-Owned Subsidiaries will be prohibited from transferring their shares to United States residents or citizens.

5. Employee of LBC and its Wholly-Owned subsidiaries will be prohibited from transferring their shares to any person other than LBC or any of its Wholly-Owned Subsidiaries.

6. LBC will notify the Commission within ten days of the sale of any of its shares or the shares of any of its Wholly-Owned Subsidiaries to United States investors.

Applicants state that the proposed restructuring of LBC's investments is technical in nature. Applicants contend that it will not change the identity of the ultimate beneficial owners of the undderlying assets of LBC, only the corporate structure through which those assets will be held. According to Applicants, the interposition of LBIC as an intermediate holding company in no way affects the justification on which the Order was based. Applicants state that, in view of the broadening of the Undertakings set forth above, the level of investment permitted by United States persons in LBC and its underlying subsidiaries will be no greater than that already permitted under the Order.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 27, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities

and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request, after said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32601 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Boston Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 10, 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:

British Telecommunications PLC
American Depository Receipts, File No. 7-8188

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 2, 1985, 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 applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-32604 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Cincinnati Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 10, 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:

AMCA International, Ltd.
Common Stock, No Par Value, File No. 7-8184
Arrow Electronics, Inc.
Common Stock, $1.00 Par Value, File No. 7-8185
NWA, Inc.
Common Stock, $2.00 Par Value, File No. 7-8186
KMI Continental, Inc.
$4.50 Cumulative Preference Stock, Series C, No Par Value, File No. 7-8187

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 2, 1985, 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 applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-32606 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 10, 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:

American Stores Company
Series A $4.375 Cumulative Convertible Exchangeable Preferred Stock, No. Par Value, File No. 7-8181
American Stores Company
Series B $6.80 Cumulative Exchangeable Preferred Stock, No. Par Value, File No. 7-8182
Republic Gypsum Company
Common Stock, $1.00 Par Value, File No. 7-8183
Frontier Holdings, Inc.
Common Stock, $.50 Par Value, File No. 7-8180
Anthem Electronics Inc.
Common Stock, $.125 Par Value, File No. 7-8189

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 2, 1985, 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 applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-32607 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21551; File No. SR-NSCC-84-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change of National Securities Clearing Corp.

December 7, 1984.

Pursuant to Secton 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 14, 1984, the National Securities Clearing Corporation ("NSCC") filed with the

Securities and Exchange Commission the rule change described below. The Commission is publishing this notice to solicit comments on the rule change.

The proposed rule change enables NSCC to provide its members with Trade Date ("T") Contract Lists for "locked-in" trade data reported to NSCC by self-regulatory organizations ("SROs") or service bureaus.[1] Because NSCC receives trade data from SROs on trade date, NSCC will be able to provide its members with T-Contract Lists on the first day after trade date ("T+1").[2]

The rule change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this notice is published in the **Federal Register**. Please refer to File No. SR-NSCC-84-13, and file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available at the Commission's Public Reference Room and at the principal office of NSCC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-32602 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Pacific Stock Exchange; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

December 10, 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:

British Telecommunications PLC American Depositary Receipts, File No. 7-8179

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 2, 1985, 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 applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 84-32605 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21535; File No. SR-PHLX 84-18]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Increasing Foreign Currency Position Limits

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1984, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to amend Rules 1001, 1002 and 1003 as set forth below.

Italics indicate material proposed to be added; brackets indicate material proposed to be deleted.

Rule 1001 Position Limits

Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for an account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, an opening transaction (whether on the Exchange or on another Participating Exchange) in an option contract of any class of options dealt in on the Exchange if the member or member organization has reason to believe that, as a result of such transaction, the member or member organization or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly hold or control or be obligated with respect to an aggregate position of more than 2500 or 4000 put or call option contracts on the same side of the market relating to the same underlying security, which limit is determined in accordance with commentary .05, in the case of options on a stock, or more than [10,000] *25,000* put or call option contracts on the same side of the market relating to the same underlying foreign currency, in the case of options on a foreign currency, or such other number of option contracts as may be fixed from time to time by the Exchange as the position limit for one or more classes or series.

. . . Commentary

.01-05 [No. Change]

Rule 1002 Exercise Limits

Except with the prior aproval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange if as a result therof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that particular class of options in excess of the number of options covering the same options class (put or call) as set forth as in the position limit in Rule 1000, in the case of options on a stock, or in excess

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[1] For example, NSCC intends to produce T-Contracts for system-side "locked-in" trade data generated in the New York Stock Exchange's Designated Order Turnaround System ("DOT"), the American Stock Exchange's Post Execution Reporting System ("PER"), and the National Association of Securities Dealers' Computer Assisted Execution System ("CAES").

[2] Currently, NSCC initially reports to members all compared trade data, including locked-in trade data, on the morning of T+2.

of [10,000] *25,000* options covering the same option class (put or call), in the case of options on a foreign currency, without regard to the exchange on which the options were purchased.

. . . Commentary

.01-.03 [No Change]

Rule 1003 Reporting of Option Position

(a) Each member and member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a partner, officer director or employee of such member organization, and each customer account, which has established an aggregate position of 200 or more option contracts (whether long or short) of a put class and call class on the same side of the market covering the same underlying security, in the case of options on a stock, or an aggregate position of [1,000] *2,500* or more option contracts (whether long or short) of a put class and call class on the same side of the market covering the same underlying foreign currency, in the case of options on a foreign currency, combining for purposes of this rule (i) long positions in put options with short positions in call options, and (ii) short positions in put options with long positions in call options. The report shall be in such form as may be prescribed by the Exchange and shall be filed no later than the close of business on the next business day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this paragraph, the member or member organization filing the same shall file with the Exchange such additional periodic reports with respect to such account as the Exchange may from time to time prescribe.

(b) and (c) [No Change]

. . . Commentary

.01-03 [No Change]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to increase the PHLX's foreign currency option position and exercise limits in order to add to market depth and liquidity and to increase the foreign currency option contract reporting requirement in order to lessen the reporting burden of member organizations conducting a foreign currency option business.

The PHLX began trading foreign currency options in December, 1982. Daily trading volume over the past 20 months has grown from a few hundred to 7,000 to 10,000 contracts with open interest of 150,000 contracts. In view of the size of the foreign exchange market, an increase in currency option position limits would be consistent with the Act.

The PHLX foreign currency option market is being used primarily by institutional investors both domestic and international to hedge currency risk. The median size of a foreign currency option transaction is significantly greater than in other option products traded on the PHLX. Consequently, member organizations report to the PHLX a far greater percentage of their customer positions in foreign currency options than in other option products. The PHLX therefore believes that an increase in this reporting threshold is consistent with the underlying purposes of the Act, especially in view of the size of the underlying market.

The proposed rule change is based on Section 6(b)(5) of the Securities Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments on this proposed rule change have been solicited or received from members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1984.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.

Dated: December 3, 1984.

John Wheeler,

Secretary.

[FR Doc. 84-32803 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21534; File No. SR-PHLX 84-27]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc., Relating to Modified Rotations for Options Trading

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 5, 1984, Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes to amend the commentary to Rule 1047 as set forth below. Italics indicates material to be added; brackets indicate material to be deleted.

Rule 1047. Trading Rotations, Halts and Suspensions. No change.

Commentary * * *

.01–01(a) No change.

.01(b) *A modified rotation is an opening rotation in which each option series opens in the same manner and sequence as during a regular trading rotation stated above in paragraph (a), but is permitted to freely trade once all option series with the same expiration month have been opened. When approved by two Floor Officials, a modified trading rotation may be employed in connection with delayed openings, halts or suspensions of any option series listed for trading on the Exchange or unusual market conditions, such as a heavy influx of orders. In addition, a modified rotation may be employed for the same reasons but in a different manner and sequence of trading than described above provided two Floor Officials determine that such procedure should be implemented.*

.01[(b)] (c) No change.

.02 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The proposed rule change is intended to improve the quality and efficiency of option rotations by providing for modified rotations. When approved by two Floor Officials modified rotations will be used in place of regular trading rotations following halts or suspensions, delays in openings or when certain market conditions prevail, such as heavy influx of orders.

In the modified rotation rule each option series within the same expiration month will open in seriatim with no free trading permitted in any series until all the puts and calls within that month have been opened. All exercise prices of the near-term expiration must be opened before free trading may commence in such near-term option series. The same procedure is then followed for the mid-term expiration series and finally, for the far-term expiration series. The proposed rule change also provides for a different sequence than described above upon the approval of two Floor Officials. For example, in certain situations where it is desirable to open the least active series first, it may be appropriate to reverse the order described above by having the specialist first open the series of options having the most distant expiration, and then proceed to open the series of options having the next most distant expiration and so forth. The procedure is similar to one used by the American Stock Exchange, Inc., ("AMEX") in AMEX Rule 917, commentary .01(b).

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder applicable to the PHLX in that it will facilitate option openings resulting in fair and orderly openings. Therefore, the proposed rule change is consistent with Section 6(b)(5) of the 1934 Act, which requires that the rules of the PHLX to be designed to promote just and equitable principles of trade.

B. Self-Regulatory Organizations Statement on Burden on Competition

The proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 28, 1984.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 3, 1984.

John Wheeler,

Secretary.

[FR Doc. 84-32589 Filed 12-13-84; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Rev. 3, Amdt. 1]

Associate Administrator for Procurement and Technical Assistance; Delegation of Authority; Change Title

Delegation of Authority No. 13, Revision 1 (39 FR 29444), as amended (40 FR 18055), Revision 2 (44 FR 20529), and Revision 3 (47 FR 5393) is hereby amended to reflect a change of title from Associate Administrator for Procurement and Technology Assistance to Associate Administrator for Procurement and Technical Assistance.

Accordingly, Delegation of Authority No. 13, Revision 3, Amendment 1, reads as follows:

I. Pursuant to the authority vested in the Administrator of the Samll Business Administration by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, there is hereby delegated to the Associate Administrator for Procurement and Technical Assistance the following authority:

* * * * *

III. All authority delegated herein may be exercised by any Small Business Administration employee designated as Acting Associate Administrator for Procurement and Technical Assistance.

EFFECTIVE DATE: December 14, 1984.

Dated: December 10, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-32677 Filed 12-13-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Standards District Offices at Dallas and Houston, TX; Southwest Region; Change in Geographic Jurisdiction

Notice is hereby given that on or about January 1, 1985, the following five Texas counties will be transferred from the jurisdiction of the Dallas, Texas, Flight Standards District Office to the jurisdiction of the Houston, Texas, Flight Standards District Office:

Angelina
Nacogdoches
Sabine
San Augustine
Shelby

There will be no change in service provided to the public. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Fort Worth, Texas on December 4, 1984.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 84-32559 Filed 12-13-84; 8:45 am]

BILLING CODE 4910-13-M

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App.1) notice is hereby given of a meeting of Task Group 4-2 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for this meeting is as follows: In order to consolidate east coast oceanic operations into one facility a review of airspace delegations with a view toward boundary and sector adjustments will be conducted. Sequencing and timing of changes must be developed together with identification of all interfaces.

DATE: Beginning Tuesday, January 22, 1985 at 9 a.m., through Thursday of the first week and resuming at 9 a.m. Monday through Thursday of the following week.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 7A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426-3560. Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT-1, 800 Independence Avenue, SW., Washington, D.C. 20591, by January 14, 1985. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on December 10, 1984.

Karl D. Trautmann,

Manager, Special Projects Staff Office of the Associate Administrator for Air Traffic.

[FR Doc. 84-32556 Filed 12-13-84; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 137—Airborne Area Navigation Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 137 on Airborne Area Navigation Systems (RNAV) to be held on January 9-11, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approve Minutes of the Seventeenth Meeting Held on August 22-24, 1984; (3) Report on European Organization for Civil Aviation Electronics (EUROCAE) Working Group 13 Activities; (4) Review Draft of Committe Report on Minimum Operational Performance Standards for Omega Based Airborne Area Navigation Equipment; (5) Review Draft of Committee Report on Mininum Operational Performance Standards for Loran-C Based Airborne Area Navigation Equipment; (6) Discuss Plans to Update RTCA Document DO-180 "Minimum Operational Performance Standards for Airborne Area Navigation Equipment Using VOR/DME Reference Facility Sensor Inputs" dated September 1982; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on December 7, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-32560- Filed 12-14-84; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket No. S-765]

United States Lines (S.A.) Inc.; Application

Notice is hereby given that United States Lines (S.A.) Inc. (USL(S.A.)) has filed an application dated December 5, 1984, for all necessary approvals in order to: (1) Take title to 11 existing vessels owned by Delta Steamship Lines, Inc. (Delta) and 549 LASH barges, (2) subcharter from Delta three new self-sustaining Sea Wolf class Ro-Ro/container vessels, one of which has recently been delivered and two of which are currently under construction at Odense Steel Shipyard in Odense, Denmark, (3) assume Delta's interest in Operating-Differential Subsidy Agreements (ODSA), Contract Nos. MA/MSB-353 and MA/MSB-425, and (4) assume Delta's authorization for a

foreign newbuilding pursuant to the Maritime Subsidy Board's action of September 30, 1982 under section 615 of the Merchant Marine Act, 1936, as amended. Delta has filed an application dated December 7, 1984 with respect to the transaction.

Under ODSA, Contract No. MA/MSB–338, USL (S.A.) is authorized to make a maximum of 70 sailings on Trade Route (TR) 1 (U.S. Atlantic/East Coast South America). USL (S.A.) currently operates two C6–S–60C (707 TEU) and one C6–S–60b (641 TEU) type vessels on a subsidized basis in the trade and also operates four foreign-flag vessels on an unsubsidized basis.

USL (S.A.) is authorized to make a maximum of 36 sailings on its subsidized TR 15A service (U.S. Atlantic/South and East Africa) and makes privilege calls at South America on the return route. USL (S.A.) currently operates one C6–S–60b (641 TEU), two C6–S–60C (707 TEU) and one C5–S–73b (1220 TEU) type vessels on the service.

Delta is authorized under Contract No. MA/MSB–425 to provide a maximum of 62 sailings on TR 2 (U.S. Atlantic/West Coast South America) and a maximum of 55 sailings on TR 4 (U.S. Atlantic/Caribbean and East Coast Mexico). Delta currently operates these routes as a combined service with two C6–S–1x (903 TEU) type vessels. When the routes are operated on a combined basis, Delta may make a maximum of 80 annual calls at the Venezuelan ports of Maracaibo, Puerto Cabello and La Guaira and 33 calls at other Venezuelan ports.

Delta is authorized under Contract No. MA/MSB–353 to provide a maximum of 77 sailings on TR 20 (U.S. Gulf/East Coast South America) and TR 14–2 (U.S. Gulf/West Africa). Delta presently operates two C9–S–81d LASH vessels (1543 TEU) on TR 20.

USL (S.A.) proposes to offer bi-weekly service between the East Coast of the United States and Venezuela and the East Coast of South America. USL will operate the service with one of the 903 TEU C6–S–1x vessels to be acquired from Delta and the three new 1936 TEU Sea Wolf class vessels. The service will offer a port rotation from U.S. East Coast ports in the New York/Jacksonville range to Venezuela and the New York/Miami range to the East of South America with a direct return to the East Coast of the United States.

USL (S.A.) proposes to offer bi-weekly service between the U.S. Gulf Coast and Venezuela and the East Coast of South America with a direct return to the Gulf Coast. USL (S.A.) intends to deploy on the service either two C6–S–60b and one C6–S–60c type vessels having an aggregate capacity of 1989 TEUs or one C6–S–60b and two C6–S–60c type vessels having an aggregate capacity of 2055 TEUs.

USL (S.A.) intends for its service between the U.S. East Coast and Africa and East Coast of South America to remain essentially as it is. The service will be operated with a 1220 TEU C5–S–73b type vessel and the three C6 vessels which are not redeployed in the U.S. Gulf service described above.

USL (S.A). requests the privilege to transfer and interchange (substitute) any of the existing vessels to be acquired from Delta (two C3–S–76a, three C3–S–43a, two C6–S–1x, four C9–S–81d), any of the Sea Wolf class vessels and any of the vessels in USL (S.A.)'s ODSA (two C6–S–60b, four C6–S–60c, four C4–S–1u, two C4–S–64a, one C3–S–33a) between and among any of the services specified in Contract No. MA/MSB–338 (TRs 1 and 15A), Contract No. MA/MSB–353 (TRs 14–2 and 20), Contract No. MA/MSB–425 (TRs 2, 4, 23–24–25) and the proposed deployments set forth above. USL (S.A.) requests the right to operate any of the vessels enumerated in this paragraph on a subsidized basis on any of the services enumerated in this paragraph.

USL (S.A.) requests a waiver of the required minimum sailings and port calls specified in Contract No. MA/MSB–353 and MA/MSB–425 with respect to those trades not proposed for service as set forth in this Notice.

The application may be inspected during normal business hours in the Office of the Secretary, Maritime Subsidy Board, Room 7300–B, Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590. Interested parties who desire to comment on USL (S.A.)'s application must submit their written comments in triplicate with the Secretary, Maritime Subsidy Board, on or before 5:00 p.m., December 28, 1984. The Maritime Subsidy Board will consider such comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidy (ODS))

By Order of the Maritime Subsidy Board.

Dated: December 11, 1984.

Georgia P. Stamas,

Secretary.

[FR Doc. 84–32626 Filed 12–13–84; 8:45 am]

BILLING CODE 4910–84–M

National Highway Traffic Safety Administration

[Docket No. 84–05; Notice 2]

Highway Safety Programs; Standard for Devices To Measure Breath Alcohol

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

ACTION: Notice.

SUMMARY: This notice converts the standard for devices to measure breath alcohol from a mandatory standard to model specifications. The standard (38 FR 30459) established requirements for the performance and testing of evidential breath testers (EBT's) which are instruments that measure the alcohol content of deep lung breath samples with sufficient accuracy for evidential purposes. NHTSA is converting the standard to provide flexibility to the States and because the benefits of the standard can be maintained without the existence of a mandatory requirement.

DATE: This notice becomes effective on December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald E. Engle, Office of Alcohol Countermeasures, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, Telephone (202) 426–9581.

SUPPLEMENTARY INFORMATION: On May 11, 1984 (49 FR 20100) the National Highway Traffic Safety Administration (NHTSA) issued a notice proposing to convert the standard for devices to measure breath alcohol from a mandatory standard to model specifications. Interested parties were invited to submit comments on or before June 11, 1984.

No objections have been received regarding the proposed conversion. Accordingly, the mandatory standard is hereby rescinded and, in its place, the model specifications are issued in the notices section of this **Federal Register** for use by State and local governments. Also published is a list of EBT's, which have been tested and found to conform to these model specifications (Conforming Products List).

The model specifications are in the same format as the standard. They add, however, an alternative laboratory method to test the breath sampling capability of EBT's thereby eliminating the need to test with human subjects. This method represents state-of-the-art technology and furthers the agency's goal of promoting an effective alcohol

countermeasures program by simplifying and improving testing procedures.

NHTSA will continue to test EBT's to determine whether they comply with performance criteria recommended in the NHTSA model specifications. Results of this testing will be published by NHTSA.

State and local governments may either rely on NHTSA's test results and adopt the model specifications, or set their own requirements. In this way the integrity of the States' alcohol countermeasures programs is not compromised. It is the agency's belief that the States will continue to give the programs high priority.

Since this notice converts a standard to model guidelines, thus increasing State flexibility, the 30 days notice of the effective date required by the Administrative Procedure Act is not applicable.

NHTSA has analyzed the impact of this action and has determined that it is neither "major" with the meaning of Executive Order 12291, nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. Because the purchase of alcohol testing devices with Federal money is allowable notwithstanding their compliance with the Federal standard, the rescission of this standard will have no economic impact on State or local governments nor on the manufacturers of EBT's. Because there will be virtually no economic or other impact from this conversion, a full regulatory evaluation is not necessary.

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Based on that evaluation, I certify that the rescission of this standard will not have a significant economic impact on a substantial number of small entities. While some manufacturers of EBT's may be small businesses as defined by the Regulatory Flexibility Act, they will not be significantly affected by this action. The standard set forth testing procedures to determine equipment accuracy and precision. However, the States have been permitted to puchase these instruments with Federal funds whether or not they comply with the Federal standard. This action will, therefore, have no effect on either the manufacturers of these products or on small governmental units and will not impose any cost or other burden. Accordingly, a regulatory flexibility analysis is not necessary.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that rescission of this standard will not have any effect on the human environment.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50.)

Issued on December 11, 1984.

Diane K. Steed,

Administration.

[FR Doc. 84-32595 Filed 12-11-84; 12:55 p.m.]

BILLING CODE 4910-59-M

Highway Safety Programs; Model Specifications for Evidential Breath Testing Devices: Publication of a Conforming Products List

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

ACTION: Notice.

SUMMARY: This notice establishes model specifications for the performance and testing of evidential breath testing devices (EBI's). These model specifications replace the Standard for Devices to Measure Breath Alcohol (38 FR 30459) which is rescinded in the notices section of this **Federal Register.** These model specifications are issued for use by State and local governments.

This notice also publishes a Conforming Products List (CPL) which is a list of EBI's which have been found to conform to the model specifications.

DATE: This notice becomes effective on the date the rescission of the mandatory standard is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. Ronald E. Engle, Office of Alcohol Countermeasures, NTS-21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426-9581.

SUPPLEMENTARY INFORMATION: On May 11, 1984 (49 FR 20103) the National Highway Traffic Safety Administration (NHTSA) issued a notice proposing to issue model specifications for the performance and testing of evidential breath testing devices. The notice also published as attachment C a Conforming Products List (CPL) of EBI's found to conform to the proposed model specifications.

The notice indicated that the agency would continue to test EBI's and would release its findings to provide States which choose not to conduct their own testing with adequate information upon which to base their purchasing decisions.

This program therefore assists the State and local communities by providing a centralized qualification test program for breath-testing devices designed to collect evidence in law enforcement programs. The model specifications are not intended to replace the current qualification programs required in certain States for this equipment or to directly regulate the manufacture of EBI's. However, some States may wish to make use of this program in addition to setting their own requirments. While the agency is not imposing its findings on State and local governments, NHTSA encourages each State to consider adopting the NHTSA model specifications as its own.

Interested parties were invited to submit comments on or before June 11, 1984. The comments which have been received are discussed below.

Model Specifications

In addition to converting the standard to model specifications, the agency proposed a major change to the test methods themselves. The standard previously in effect required determination of breath sampling characteristics of EBI's through direct correlation of blood analysis with instrument readings of breath alcohol concentration. Human subjects are used for these tests. These model specifications permit the incorporation of a simulation procedure to evaluate the breath-sampling capability of EBI's, thus eliminating the need for human subjects. This method utilizes an instrument called a Breath Alcohol Sample Simulator (BASS) which was developed by the DOT's Transportation Systems Center (TSC) in collaboration with the National Bureau of Standard's Law Enforcement Standards Laboratory. The work of both groups was funded by NHTSA. The BASS is a mechanical device which simulates human breath.

There are distinct advantages to the replacement of intoxicated human subjects with a mechanical system. The analysis of alcohol concentration in a given subject is accomplished by using a sample collected from a single breath which the subject delivers to the testing device. Each subject must provide a large number of breath samples during the testing, over a short period of time. For this reason, it is difficult to ensure that all samples are uniform. To take this into account, tests involving human subjects must be conducted under more carefully controlled conditions. Human subject testing is also an expensive procedure requiring payment for on-site medical staff, clinical facilities and test subject.

Use of the BASS eliminates these problems Although human breath

cannot be produced in every aspect, the key physical parameters relevant to breath alcohol content measurement can be accurately and reliably simulated in a controlled laboratory environment. The result is a more accurate and reliable evaluation of EBT's using a simpler, more cost-effective technique.

By eliminating the need for human blood-breath correlations through the incorporation of the BASS, the model specifications represent the state-of-the-art in the area of breath-alcohol testing evaluations.

It is important to note that BASS is intended only for the purpose of testing whether an instrument conforms with these model specifications and is not intended to replace the conventional calibration units currently used by local agencies to calibrate EBT's.

The agency recommends use of the BASS as the preferred method for evaluating EBT's. However, the existing test protocol which utilizes human subjects is also incorporated in the model specifications. The agency does not wish to impose the BASS upon any State which might wish to continue with human subject testing.[1]

No objections have been received regarding the incorporation of a simulation procedure to evaluate the breath-sampling capability of EBT's.

Comments were submitted by the Department of Justice, State of California, suggesting that additional values at higher BAC levels be included in the model specifications. California indicated that, while the tests focus on the BAC level of 0.10, the average DWI arrest in the State is between 0.17 and 0.18. A great number of BAC readings are therefore beyond the test parameters. Testing at the additional higher BAC levels was suggested to insure linearity at higher BAC values.

Under the model specifications, testing is conducted at .05, .101 and .151. NHTSA believes that testing at these levels is sufficient to ensure accurate information for a DWI arrest. Under the current procedures, linearity is established up to at least the .151 BAC level. In every state, a BAC level of .10 or lower is either illegal per se or presumptively illegal, and in no state is either level higher than .15. Therefore, even in the case where the suspect's BAC is above .151, the extent to which the BAC is beyond that level is not significant and need not be proved.

California suggests that in cases where a driver is charged with vehicular manslaughter or second-degree murder, higher BAC levels are significant. In such cases, a higher degree of criminal culpability must be proved, and verifiable BAC readings which exceed the parameters tested under these model specifications would enhance the utility of test results. NHTSA agrees that tests at higher BAC levels can provide the States with useful information in such cases. Since these higher levels are not uniform among the States, however, tests should be conducted on a case-by-case basis. TSC has performed a number of tests at BAC levels above .151 and will perform additional tests upon request. For additional information regarding such tests, interested parties should contact NHTSA's Office of Alcohol Countermeasures (OAC), NTS-21, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Since higher BAC levels are not recommended in the model specifications, failure of linearity at these levels will not cause an instrument to be dropped from the CPL.

California also indicated that in PR 5.2.3, the value given for test series (a) should have been 0.05 percent w/v. This typographical error has been corrected. Other typographical errors have also been corrected and editorial changes have been made, none of which effects the model specifications substantively.

Procedures

Testing to these model specifications of products submitted by manufacturers, will be conducted by the DOT Transportation Systems Center (TSC). Tests will be conducted semiannually, or as necessary. Manufacturers wishing to submit EBT's for testing must apply for a test date to NHTSA's Office of Alcohol Countermeasures (OAC), NTS-21, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Normally, at least 30 days will be required from the date of notification until the test can be scheduled. One week prior to the scheduled initiation of the test program, the manufacturer will deliver at least one unit of its equipment to TSC, DTS-48, Kendall Square, Cambridge, Massachusetts 02142. The manufacturer shall be responsible for ensuring that its device is operating properly and is in proper calibration. If the manufacturer wishes to submit a duplicate, backup instrument, it may do so. In addition to the Operator's Manual and the Maintenance Manual normally supplied with the purchase of this equipment, the manufacturer shall deliver to TSC specifications and drawings which fully describe its units. Proprietary information will be respected. (See 49 CFR Part 512, regarding the procedure by which NHTSA will consider claims of confidentiality.)

The manufacturer will have the right to check its instruments between their arrival in Cambridge and the start of the test, but will have no access to them during the tests. Any malfunction of the instrument which results in failure to complete any of the tests satisfactorily will result in a finding that the instrument does not conform to the model specifications. If an instrument fails to conform, it may be resubmitted for testing.

On the basis of these results, NHTSA will publish a Conforming Products List (CPL) identifying the EBT's that conform to the model specifications.

Retesting of instruments will be conducted when necessary. NHTSA intends to modify and improve these model specifications as new data and test procedures become available. (The test procedures may be altered, if necessary, to meet unique design features of a specific instrument.) Notification will be provided in the **Federal Register** of each such modification. If NHTSA determines that retesting is necessary, a manufacturer whose equipment has already been tested to the model specifications will be notified to resubmit the equipment for testing to the new specification only.

NHTSA shall certify that the CPL does, in fact, reflect whether a given instrument meets the performance criteria set forth in the model specifications.

If at any time a manufacturer changes the design of an EBI currently on the CPL, the manufacturer should submit the proposed changes to OAC for review. Based on this review, NHTSA will decide whether the change will require retesting of the instrument. Normally, such retesting will be accomplished at the next testing period.

OAC will be the point of contact for information about acceptance testing and field performance of equipment already on the list. When it is available, NHTSA requests that State and local agencies provide both acceptance and field performance data to OAC. Information from users will be used to: (1) Help NHTSA determine whether EBI's continue to perform according to the NHTSA model specifications and (2) ensure that field use does not indicate excessive breakdown or maintenance problems.

[1] States that wish to continue with human subjects testing can alternatively obtain a reference measurement directly from the respiratory system through the use of rebreathed air. This technique was devised by TSC, under contract with NHTSA. For information on the use of rebreathing techniques, interested parties may write to the Office of Alcohol Countermeasures, NTS-21, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 and should request the Interim Report (Rebreathed Air as a Reference for Breath-Alcohol Testers, DOT-HS-801333).

If information gathered indicates that an instrument on the CPL is not performing in accordance with the model specifications, NHTSA will direct TSC to conduct a special investigation. This study may include visits to users and additional tests of the instrument obtained from the open market. If the investigation indicates that the instruments actually sold on the market are not meeting the model specifications, then the manufacturer will be notified that the instrument may be dropped from the list. In this event the manufacturer shall have 30 days from the date of notification to reply.

Based on the TSC investigation and any data provided by the manufacturer, NHTSA will decide whether the instrument should remain on the list. Upon resubmission, the manufacturer must submit a statement describing what has been done to overcome the problems which led to the dropping of the instrument in question from the list.

No comments have been received regarding these procedures.

Conforming Products List

On May 11, 1984 (43 FR 20109) the National Highway Traffic Safety Administration (NHTSA published as Appendix C the Conforming Products List (CPL) listing the instruments which had been found to conform to the model specifications.

Comments were submitted by the Department of Health, Commonwealth of Pennsylvania, indicating that the Smith and Wesson Model 1000 Breathalyzer instrument had been omitted from the CPL. This omission was the result of a typographical error prior to the printing the notice. The Smith and Wesson Model 1000 Breathalyzer instrument should have been listed as a conforming product. Additionally, several EBT's have since been tested and found to conform to the model specifications. The CPL, as updated and corrected, appears as Appendix D to this notice. The fact that an EBT does not appear on the list does not necessarily indicate that it failed to meet the model specifications. It may not have been included instead because it was not tested.

In accordance with the foregoing, the DOT model specifications for the performance and testing of evidential breath testing devices are issued as set forth below.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and 501)

Issued on: December 11, 1984.

George Reagle,

Associate Administrator for Traffic Safety Programs.

Model Specification for Evidential Breath Testers

1. Purpose and Scope

The purpose of these specifications establish performance criteria and methods of testing for evidential breath testers. Evidential breath testers (EBT's) are instruments that measure the alcohol content of deep lung breath samples with sufficient accuracy for evidential purposes. These specifications are intended primarily for use in the qualification testing of EBT's.

2. Classification

2.1 Mobility

2.1.1 Mobile Evidential Breath Testers

EBT's that are designed to be transported to non-fixed operational sites in the field.

2.1.2 Nonmobile Evidential Breath Testers

EBT's that are designed to be operated at a fixed location.

2.2 Power Source

2.2.1 Battery Powered Evidential Breath Testers

EBT's that are powered by batteries.

2.2.2 AC Powered Evidential Breath Testers

EBT's that are powered from the AC power lines.

3. Definitions

3.1 Alcohol

Ethanol; ethyl alcohol.

3.2 BAC

Blood alcohol concentration, expressed in percent weight by volume (% w/v) based upon grams of alcohol per 100 cubic centimeters of blood or per 210 liters of breath in accordance with the Traffic Laws Annotated,[1]

Section 11-902.1(a) (Supp. 1983). A BAC of 0.10% w/v means 0.10 grams of alcohol per 100 cubic centimeters of blood (0.01 g/100 cc or 1.0 mg/cc) or 0.10 grams of alcohol per 210 liters of breath. Alcohol concentrations in either breath or in air mixtures can also be expressed in milligrams of alcohol per liter of air (mg/1); to convert mg/l to units of percent weight by volume, multiply by 0.21.[2]

3.3 Qualification Tests

Tests performed to check the compliance of a product with these specifications.

3.4 Standard Deviation

A common indication of precision among repeated measurements of a single quantity given by:

$$\text{Standard Deviation} = \sqrt{\frac{\text{Sum } (X-\bar{X})^2}{N-1}}$$

where:
N = the number of measurements.
X = the value of single measurement, and
$\bar{X}$ = the mean (average) of all X's.

An equivalent formula which is often more convenient for performing calculations is:

$$\text{Standard Deviation} = \sqrt{\frac{SS}{N-1}}$$

$$\text{where } SS = \frac{\text{Sum of } X^2 - (\text{Sum of } X)^2}{N}$$

[1] Copies of the Traffic Laws Annotated are available from the National Committee on Uniform Traffic Laws and Ordinances, 801 N. Glebe Rd., Suite 400, Arlington, VA 22203.

[2] The conversion factor of 0.21 is a commonly used value recognized by the Committee on Alcohol and Other Drugs of the National Safety Council; that is, 210 liters of "deep lung" air at 34°C contains approximately the same quantity (mass) of ethanol as 100 cc of pulmonary blood. See, for example, R. N. Harger, R. B. Forney and R. S. Baker, "Estimation of the Level of Blood Alcohol from Analysis of Breath," Quarterly Journal of Studies on Alcohol, 17, 1-18 (1956).

3.5 Systematic Error

As used in these specifications, the difference between the mean measured value and the known value, expressed as a percentage of the known value.

4. Requirements

4.1 Precision

EBT's shall measure the alcohol content of vapor mixtures with an average standard deviation of no more than 0.020 mg/1 (0.0042% w/v) when tested in accordance with paragraph 5.2.

4.2 Accuracy

EBT's shall measure the alcohol content of vapor mixtures with a systematic error of no more than ±5% or 0.005% w/v, whichever is greater, when tested in accordance with paragraph 5.3.

4.3 Blank Reading

EBT's shall indicate an average instrument reading of no more than 0.048 mg/l (0.010% w/v) and no single reading shall exceed 0.096 mg/l (0.020% w/v) when tested in accordance with paragraph 5.4.

4.4 Breath Sampling

The ability of EBT's to analyze the appropriate portion of the breath sample shall be determined by testing in accordance with paragraph 5.5. EBT's shall indicate instrument reading of 0.48 mg/l (0.101% w/v) ±5% for each of 10 tests conducted with each of the three specified sample volume/delivery rates.

4.5 Power

4.5.1

When AC powered EBT's are operated at line voltages of 108 V and 123 V (rms) in accordance with paragraph 5.6, the systematic errors shall not exceed ±5%, and the standard deviations shall not exceed 0.020 mg/l (0.0042% w/v).

4.5.2

The operator's manual supplied with EBT's that operate from internal battery power shall state the maximum period of time or the number of breath tests that can be performed before battery replacement or recharging is necessary. When tested in accordance with paragraph 5.7.1, the systematic errors shall not exceed ±5%, and the standard deviations shall not exceed 0.020 mg/l (0.0042% w/v).

4.5.3

When battery powered EBT's that are designed to operate from a 12 V DC vehicle power supply are operated at voltages of 11 and 15 V DC in accordance with paragraph 5.7.2, the systematic errors shall not exceed ±5%, and the standard deviations shall not exceed 0.020 mg/l (0.0042% w/v).

4.5.4

When battery powered EBT's that have an indicator that warns when the accuracy and precision requirements (pars. 4.1 and 4.2) cannot be met because of battery condition are tested in accordance with paragraph 5.7.2.5, the indicator shall function as intended.

4.6 Ambient Conditions

4.6.1

EBT's shall meet these specifications when operated within the following ambient conditions.

a. Temperature: 20 to 30 °C (68 to 86 °F)

b. Pressure: 73 to 105 Kilopascals (548 to 788 mm Hg)

c. Relative Humidity: 10 to 90%

4.6.2

EBT's shall be tested in accordance with paragraph 5.8 for their ability to operate properly at low and at high temperatures. The low temperature tests shall be conducted at 20 °C (68 °F) or at the lowest temperature at which the manufacturer states (par. 4.9.) that the unit will operate properly, whichever is lower, and the high temperature tests shall be conducted at 30 °C (86 °F) or the highest temperature at which the manufacturer states that the unit will operate properly, whichever is higher. The systematic errors shall not exceed ±5% and the standard deviations shall not exceed 0.020 mg/l (0.0042% w/v.

4.7 Vibration Stability of Mobile EBT.

Mobile EBT's shall measure the alcohol content of vapor mixtures with a systematic error of no more than ±5% and a standard deviation of no more than 0.020 mg/l (0.0042% w/v) after they have been subjected to the vibration test in accordance with paragraph 5.9.

4.8 Electrical Safety

EBT's shall meet the following safety requirements of the American National Standard Electrical Safety Requirements: ANSI C 39.5–1974,[3] sections 6. Marking; 8.1. Unsafe Temperature, 9.2. Accessible Parts; 9. Precautions Against Spread of Fire; 11. Protection Against Electric Shock (pars. 11.1 and 11.2); 13. Components, Parts and Accessories; 14. Terminal Devices; and 15. External Supply Cords.

4.9 Operator's Manual

An operator's manual shall be supplied by the manufacturer or distributor with each EBT. This manual shall clearly state the instructions for operation and maintenance of the instrument.

5. Test Method—Bass

All tests shall be conducted under environmental conditions meeting the requirements of paragraph 4.6.1. Each EBT under test shall be operated in accordance with manufacturer's instructions. All instrument readings (equivalent BAC) shall be recorded to three decimal places (i.e., 0.XXX % BAC).

With the exception of the tests described in paragraph 5.6, all AC powered EBT's shall be operated directly off of laboratory power lines that provide nominal 120 V AC.

5.1 Equipment

5.1.1 Breath Alcohol Sample Simulator

The breath alcohol sample simulator, used to determine the sampling capability of EBT's, shall be capable of delivering a total sample volume ranging from 2.0 liters to 6.0 liters during time intervals from 6 to 12 seconds at a temperature of 34 ±0.1 °C. When used to generate an ethanol vapor profile, the test sample shall consist of three successive ethanol mixture steps as follows: 0.060% w/v; 0.090% w/v; and 0.101% w/v. The delivery duration of each ethanol mixture shall be adjustable to 2.0, 3.3 and 4.0 ± 0.1 s. The ethanol vapor mixture of the last step shall meet the requirements of the NHTSA Model Specifications Calibrating Units [4] and the simulator shall have sufficient capacity to deliver a minimum of 12 complete 6-liter samples with no more than 1% degradation of the ethanol vapor concentration from the final reservoir. A suitable simulator is described in Appendix A.

5.1.2 Power Supply

The DC power supply shall be adjustable from zero to 15 V, or such other higher operating voltage as may be specified by the manufacturer, have a maximum peak-to-peak ripple of 75 mV and be capable of providing an output current equal to 1.5 times the operating current of the EBT under tests.

5.1.3 Calibration Device

The calibration device and the ethanol mixture used therein shall meet

[3] Copies of this ANSI publication may be obtained from the American National Standards Institute, Inc., 1420 Broadway, New York, New York 10018

[4] The model specifications are issued in the notices section of this **Federal Register**.

the requirements of the NHTSA Model Specifications for calibrating units.

5.2 Precision Test

5.2.1

Allow the instrument to warm up for a peroid of 30 min., or as specified by the manufacturer. Connect the EBT, in accordance with the instructions in the operator's manual, to a calibration device that supplies known concentrations of ethanol vapor.

5.2.3

Using the EBT, measure each of the three known ethanol vapor concentrations listed below 10 times:

a. 0.24 mg/l (0.050% w/v)
b. 0.48 mg/l (0.101% w/v)
c. 0.72 mg/l (0.151% w/v)

5.2.4

For each of the three sets of 10 measurements made in accordance with paragraph 5.2.3, calculate the standard deviation to two significant figures. (See sample calculation in Appendix B.) Add the three standard deviations and divide by three to obtain the average standard deviation.

5.3 Accuracy Test

Use the test data obtained in accordance with paragraph 5.2 to calculate the systematic error at each of the three known vapor concentrations.

5.4 Blank Test

Rinse each of the three vapor mixture reservoirs of the breath alcohol sample simulator (par. 5.1.1) with water to remove all traces of ethanol from the reservoirs. Place distilled water in each reservoir, and install the exhaust manifold on the reservoir assembly. Turn on the heaters and allow the system to stabilize at 34.0°C. Drive the piston of the delivery cylinder to the bottom of its travel. Adjust the timer for each reservoir to provide a step duration of 3.3±0.1 seconds. Connect the air supply cylinder to a source of test gas containing five parts CO_2, 0.004 parts CO, 80 parts N_2 and 14 parts O_2. Operate the simulator through three complete cycles to flush the system and fill it with the specified gas mixture.

Connect the EBT to the output of the simulator. If it is possible, connect the output of the EBT to a spirometer to measure the volume of gas delivered through it. If the breath tester vent port is not accessible, place the unit under test in an air tight laboratory glove box of sufficient size to provide at least 15 cm. (6 in.) clearance between the sides and top of the interior surfaces of the glove box. The glove box shall be equipped with internal outlets for 110 V AC power, or connections for DC power as appropriate for the instrument under test and a transparent viewing window that allows observation of all controls and displays of the breath tester. Connect the output of the simulator to the input of the breath tester by means of an air tight feed in the wall of the glove box and install a fitting on a vent port in a wall of the glove box and connect the 9 L vitalometer to it. Measure directly the sample volume delivered to the breath tester as the volume of air displaced from the glove box.

Adjust the cylinder driver pressure to deliver a total sample volume of 2 liters in a total delivery time of 10 s.

Subject the EBT to 10 complete cycles, noting the instrument BAC indication for each of the 10 tests.

5.5 Breath Sampling Test

Fill the ethanol vapor reservoirs of the breath alcohol sample simulator (par. 5.1.1) with a mixture of ethanol and water that will yield ethanol vapor concentrations of 0.060; 0.090 and 0.101% w/v respectively in reservoir numbers 1, 2, and 3. Install the exhaust manifold and turn on the heaters. Allow the system to stabilize at a temperature of 34.0±0.1°C. Adjust the drive pressure as determined in paragraph 5.4, and set the timer for each reservoir profile step to 3.3±0.1 seconds.

Attach the EBT to the output of the simulator. Run the simulator through 10 complete cycles, allowing sufficient time for the EBT to recover between cycles, if required, and record the indicated instrument reading for each test.

Adjust the profile step timers for each reservoir to 2.0 seconds. Using the procedure outlined in paragraph 5.4, adjust the initial drive pressure to provide a total delivery volume of 2.0 liters. Conduct 10 tests as above and record the instrument readings for each test.

Adjust the profile step timers for each reservoir to 4.0 seconds, using the procedure outlined in paragraph 5.4, adjust the initial drive pressure to provide a total delivery volume of 6.0 liters. Conduct 10 tests as above and record the BAC readings for each test.

Throughout the above test sequence, monitor the ethanol vapor concentration in solution reservoir number 3, and replace the mixture as required to ensure compliance with the requirements of the NHTSA Model Specifications for Calibrating Units.

5.6 Power Line Voltage Tests

5.6.1

Apply line power to each AC powered EBT under test through a variable autotransformer having a nominal input voltage of 117 V AC and an output adjustable between 0 and 130 V, and having a current rating as required by the instrument under test. Any voltage regulating device used with the instrument shall be connected between the variable autotransformer and the instrument under the test.

5.6.2

Monitor the autotransformer output voltage with an rms AC voltmeter having an accuracy of ±2% in the range of 105 to 125 V.

5.6.3

Adjust the voltage to the EBT to 108 V. Wait at least 30 min., readjust the voltage if necessary and then immediately measure a known ethanol vapor concentration of 0.48 mg/l (0.101% w/v) 10 times, as in the precision tests (par. 5.2).

5.6.4

Increase the voltage to the EBT to 123 V. wait at least 30 min., readjust the voltage if necessary and again measure a known ethanol vapor concentration of 0.48 mg/l (0.101% w/v) 10 times (par. 5.2).

5.6.5

Calculate the systematic errors and the standard deviations in accordance with paragraphs 5.2 and 5.3, for each of the two sets of 10 measurements (obtained with line voltages of 108 V and 123 V).

5.7 Battery Powered Tests

5.7.1 Internal Power Supplies

Install new disposable batteries or fully charged rechargable batteries in the EBT under test if it is designed to operate from an internal battery power supply.

5.7.1.1

Turn the EBT under test on, and allow it to warm up as specified by the manufacturer and measure a known ethanol vapor concentration of 0.48 mg/l (0.101% w/v). If the manufacturer specifies a maximum number of tests that can be conducted before recharging or replacing the batteries, repeat the test until that number of measurements have been made. If the manufacturer does not specify the number of tests that can be made, but instead specifies a maximum period of operation during which the

EBT will provide accurate analysis, allow the unit to operate continuously for that period of time; measure a known ethanol vapor concentration periodically during the time of continuous operation at intervals equal to approximately one-tenth of the manufacturer specified time (the last measurement taken at the maximum time limit) to obtain a total of ten measurements.

5.7.1.2

Calculate the systematic error and the standard deviation for the set of measurements obtained in paragraph 5.7.1.1 in accordance with paragraphs 5.2 and 5.3.

5.7.2 External Battery Power Supplies

Connect an EBT that is designed to operate from a vehicle power supply to a variable laboratory dc power supply that meets the requirements of paragraph 5.1.2.

5.7.2.1

Monitor the power supply voltage with a voltmeter having an accuracy of ± 2% in the range from 10 to 16 V dc.

5.7.2.2

Adjust the voltage to the EBT to 11±0.25 V. Wait at least 30 min., adjust the voltage if necessary and then immediately measure a known ethanol vapor concentration of 0.48 mg/l (0.101% v/v) 10 times, as in the precision test (par. 5.2).

5.7.2.3

Increase the voltage to the EBT to 15±0.25 V, wait at least 30 min., readjust the voltage if necessary and again measure a known ethanol vapor concentration of 0.48 mg/1 (0.101% w/v) 10 times, as in the precision test (par. 5.2).

5.7.2.4

Calculate the systematic error and standard deviation for each of the two sets of 10 measurements obtained at 11 and 15 V.

5.7.2.5

If the battery powered EBT under test incorporates an indicator to warn the operator when the power has been depleted such that the accuracy and precision required can no longer be met, operate the unit from the internal batteries continuously and note whether the indicator functions properly. If the manufacturer specifies the voltage level at which the indicator operates, remove the internal batteries and connect the EBT to a variable DC power supply (par. 5.1.3) and adjust the imput voltage to that level: note whether the indicator functions as intended.

5.8 Ambient Temperature Test

Maintain the test temperatures constant and accurate within 15±1.0°Ψ *τηροθγηοθτ τηε δθρατιον οφ τηε τεστινγ περιοδ.*

5.8.1

Allow at least 1 hour for the evidential breath tester EBT to come to temperature equilibrium at each requirement test temperature.

5.8.2

Measure a known ethanol vapor concentration of 0.48 mg/1 (0.101% w/v) 10 times at each test temperature.

5.8.3

Calculate the systematic error and the standard deviation for each set of 10 measurements.

5.9 Vibration Test for Mobile EBT's [5]

5.9.1

Subject the mobile EBT to simple harmonic motion having an amplitude of 0.38 mm (0.015 in.) [total excursion 0.76 mm (0.030 in.)] applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2½ min., then decreased at a uniform rate to 10 Hz in 2½ min.

5.9.2

Subject the unit to simple harmonic motion having an amplitude of 0.19 mm (0.0075 in.) [total excursion 0.38 mm (0.015 in.)] applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2½ min., then decreased at a uniform rate to 30 Hz in 2½ min.

5.9.3

Perform the tests described in paragraphs 5.9.1 and 5.9.2 in each of three directions, namely in the directions parallel to both axes of the base and perpendicular to the plan of the base.

5.9.4

Measure a known ethanol vapor concentration of 0.48 mg/1 (0.101% w/v) 10 times, and calculate the systematic error and the standard deviation.

6. Alternate Test Method Human-Subject Testing

The ambient conditions of temperature, pressure, and humidity shall be within the ranges specified in 4.6.1 during the tests described in 6.1, 6.2, 6.3, 6.4, 6.5, and 6.7.

6.1 *Precision test using known ethanol vapor concentrations.*

6.1.1 Connect a device which supplies known concentrations of ethanol vapor to the evidential breath tester in accordance with the instructions in the operator's manual. The device and the ethanol mixture used therein shall meet the requirements of the standard for breath tester calibrating units.

6.1.2 Flush the sampling assembly of the instrument completely with the alcohol vapor sample as described in the operator's manual.

6.1.3 Using the EBT, measure each of the three known ethanol vapor concentrations listed below ten times:

(a) 0.24 mg/1 (0.050 percent W/V).

(b) 0.48 mg/1 (0.10 percent W/V).

(c) 0.72 mg/1 (0.15 percent W/V).

6.1.4 For each of the three sets of ten measurements made in accordance with 6.1.3, calculate the standard deviation. (See sample calculation in Appendix B.) Add the three standard deviations and divide by 3 to obtain the average standard deviation.

6.2 *Accuracy test using known ethanol vapor concentrations.* Use the test data obtained in accordance with 5.1 to calculate the systematic error at each of the three known vapor concentrations.

6.3 *Blank test using alcohol-free test subjects.*

6.3.1 Select five test subjects in generally good physical condition. The test subjects shall have consumed no alcoholic beverage during the 2-day period prior to testing and no more than the equivalent of 3 ounces of 100-proof liquor during the 4-day period prior to testing.

6.3.2 At least two of the five subjects selected shall be smokers and shall smoke at least once during the 2-hour period preceding the start of testing, but shall stop at least 20 minutes before the start of testing.

6.3.3 Take a breath sample from each test subject and obtain an instrument reading, allowing sufficient instrument recovery time (i.e., the time necessary to properly clear the evidential breath tester when following the operation instructions) between measurements.

6.3.4 Repeat 6.3.3 to obtain a total of ten measurements

6.4 *Breath sampling test.*

6.4.1Select eight test subjects in generally good physical condition.

6.4.2 The subjects' body temperatures measured orally shall be between 97.0° F and 99.5° F just prior to the start of testing.

6.4.3 Alcoholic beverages (mixed if desired with a non-alcoholic beverage)

[5] The test was taken from EIA Standard RS-204—A (July 1972) which is available from Electronic Industries Association, Engineering Department, 2001 Eye Street, N.W., Washington, D.C. 20006.

shall be consumed by the eight subjects over a period of 1 to 2 hours. A very light meal consisting of one sandwich and a non-alcoholic beverage shall be offered to the subjects before the start of the drinking period. Smoking shall be permitted if desired during the drinking period.

6.4.4 The eight subjects shall be divided into two groups of four. Each subject shall be given a different amount of alcoholic beverage to drink, to ensure that there is a distribution of BAC's within each group, and that Group 1 BAC's are within the range 0.04 to .10 percent W/V and Group II BAC's are within the range 0.1 to 0.2 percent W/V. Table 1 shall be used as a guide to calculate the consumption of alcoholic beverages necessary for a subject to reach a particular BAC. No constraints on body weight of subjects is implied in table 1. However, the listed amounts of liquor should be adjusted for light and heavy subjects.

TABLE 1

BAC, percent W/V	Amount of 100-proof liquor consumed	Body weight, pounds
0.05–0.06	3 ounces	175–150
0.10–0.12	5½ ounces	175–150
0.20–0.23	10 ounces	175–150

6.4.5 A waiting period preceding the taking of a breath sample from each subject in accordance with 6.4.7.1 shall begin when he has consumed all of the alcoholic beverage given him. The duration of this waiting period shall be at least 90 minutes if capillary blood samples are to be drawn, and 120 minutes if venous blood samples are to be drawn. During the waiting period the subjects shall not consume any alcoholic beverages. Those subjects who smoke may do so, but shall stop at least 20 minutes before the testing begins.

6.4.6 Blood samples, to be taken by a medically qualified person, shall be either venous blood from the cubital arm vein or capillary blood from the finger tip.

6.4.7 Instruct each subject individually as to the manner in which a breath specimen is to be delivered to the instrument under test, in accordance with the operator's manual. The test shall then proceed as follows.

6.4.7.1 Take the subject's breath sample and obtain the instrument reading.

6.4.7.2 Take a blood sample within 2 minutes after taking the breath sample.

6.4.7.3 Repeat 6.4.7.1 taking care that the breath testing instrument has had sufficient recovery time, but allowing no more than 6 minutes between the taking of the first and second breath samples.

The blood samples shall be analyzed within 72 hours after being taken, using a method of analysis which meets the requirements of 6.8. No less than two determinations of alcohol concentration shall be made on each blood sample.

6.4.8.1 A reference sample of known concentration of ethanol in whole blood in the range between 0.05 and 0.20 percent W/V shall be prepared by the analyzing laboratory, and five determinations of the reference sample ethanol concentration shall be made concurrently with the analysis of the blood samples.

6.4.8.2 The analysis of the reference sample and the blood samples shall be considered acceptable only if—

(a) The standard deviation of the five determinations of the reference sample concentration does not exceed 0.005 per cent W/V; and

(b) The systematic error of the five determinations of the reference sample concentration does not exceed plus or minus 5 percent.

6.4.9. Calculate the average of the BAC measurements for each test subject. Let the letter X equal this average BAC, and use the subscripts 1 to 8 to designate the test subjects in ascending order of alcohol concentration (i.e., X_1, X_2, * * *, X_8).

6.4.10 Calculate the averages of the duplicate instrument readings made in accordance with 6.4.7 for each test subject. Convert if necessary to the same units used in 6.4.9 (percent W/V) by means of the conversion factor 0.21 (see footnote 2). Designate each average instrument reading with the letter Y and the same subscript used to identify the subject in accordance with 6.4.9.

6.4.11 Compute the following averages, and designate them as indicated.[6]

(a) X_H, as the average of X_6, X_7 and X_8.

(b) X_L, as the average of X_1, X_2 and X_3.

(c) Y_H, as the average of Y_6, Y_7 and Y_8.

(d) Y_L, as the average of Y_1, Y_2 and Y_3.

(e) X, as the average of all eight X values.

(f) Y, as the average of all eight Y values.

6.4.12 Plot on graph paper the points corresponding to (X, Y), (X_H, Y_H,) (X_L, Y_L,) and the eight breath-blood points corresponding to (X_1, Y_1) (X_2, Y_2) * * * (X_8, Y_8) (see figure in Appendix C.).

6.4.13 Draw a straight line, referred to as the "breath/blood correlation line" through the Point (X, Y) and parallel to a line (not drawn in the graph) joining the points (X_L, Y_L) and (X_H, Y_H).

6.4.14 Draw two lines parallel to the breath/blood correlation line and passing through the points $\hat{Y}+0.020$ and $\hat{Y}-0.020$% W/V.

6.5 Power line voltage test.

6.5.1 Apply line power to the a.c. powered EBT under test through a variable autotransformer having a nominal input voltgage of 117 volts a.c. and an output adjustable between 0 and 130 volts, and having a current rating as required by the instrument under test. Any voltage regulating device used with the instrument shall be connected between the variable autotransformer and the instrument under test.

6.5.2 Monitor the autotransformer output voltage with an rms a.c. voltmeter having an accuracy of plus or minus 2 percent in the range of 105 to 125 volts.

6.5.3 Adjust the voltage of the EBT to 108 volts. After at least one-half hour, check the voltage and readjust if necessary. Then immediately measure a known ethanol vapor concentration of 0.48 mg/1 (0.10% W/V) ten times as in the precision test (6.1)

6.5.4 Increase the voltage to 123 volts, and at least one-half hour later readjust the voltage if necessary and again measure a known ethanol vapor concentration of 0.48 mg/1 (0.10% W/V) ten times.

6.5.5 Calculate the systematic errors and the standard deviations for each of the two sets of ten measurements (obtained with line voltages of 108 volts and 123 volts).

6.6 *Ambient temperature test.*

6.6.1 The test temperatures shall be constant and accurate within plus or minus 3°C throughout the duration of the testing period.

6.6.2 Allow at least 1 hour for the instrument to come to temperature equilibrium after each test temperature change.

6.6.3 Perform steps 6.1.1 and 6.1.2. Measure a known ethanol vapor concentration of 0.48 mg/1 (0.10 percent W/V) ten times at each test temperature.

6.6.4 Calculate the average value of the ethanol vapor concentration measured at each test temperature. Apply any temperature corrections specified by the operator's manual to obtain the adjusted average values.

6.6.5 Using the adjusted average values, calculate the systematic error for each set of ten measurements. Also calculate the standard deviation for each set of ten measurements.

[6] See Appendix D for a sample calculation. An additional example may be found on pages 5–27, paragraph 5–4.3.2 of NBS Handbook 91, "Experimental Statistics," available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

6.7 *Vibration test for mobile EBT.*[7]

6.7.1 Subject the mobile EBT to vibrations of simple harmonic motion having an amplitude of 0.015 inches (total excursion 0.03 inches) applied initially at a frequency of 10 Hz and increased at a uniform rate of 30 Hz in 2½ minutes, then decreased at a uniform rate of 10 Hz in 2½ minutes.

6.7.2 Subject the unit to vibrations of simple harmonic motion having an amplitude of 0.0075 inches (total excursion 0.015 inches) applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2½ minutes, then decreased at a uniform rate to 30 Hz in 2½ minutes.

6.7.3 Repeat 6.7.1 and 6.7.2. in each of three directions, namely in the directions parallel to both axes of the base and perpendicular to the plane of the base.

6.7.4 Perform steps 6.1.1 and 6.1.2. Measure a known ethanol vapor concentration of 0.48 mg/1 (0.10 W/V) ten times, and calculate the systematic error and the standard deviation.

6.8 *Blood alcohol methodology test.* The analytical measurement system for the blood alcohol concentration determination shall be checked in the testing laboratory at least once prior to that laboratory performing the analysis required in 6.4.8.

6.8.1 The determination of the ethanol concentrations of the reference blood alcohol samples shall be performed by the same laboratory personnel who determine the ethanol concentrations of the test subject blood samples taken in accordance with 6.4. The analysis of the reference samples shall closely parallel the analysis of the test subject blood samples, especially with respect to laboratory conditions and analytical technique.

6.8.2 Prepare with an accuracy of plus or minus 1 percent, a blank (an alcohol-free blood sample), and three reference blood alcohol samples having ethanol concentrations within plus or minue 10 percent of 0.05, 0.100 and 0.200 percent W/V, by adding known quantities of ethanol to alcohol-free whole blood containing a suitable preservative.

6.8.3 Determine the ethanol concentrations of each of the three reference samples and the blank five times.

6.8.4 Compute the means, standard deviations, and systematic errors for each of the four sets of five determinations.

6.8.5 The method of analysis shall be considered acceptable if:

(a) The apparent ethanol concentration of the blank (alcohol-free blood) does not exceed 0.002 percent W/V.

(b) The average of the standard deviations from the analyses of the three reference samples does not exceed 0.005 percent W/V.

(c) The systematic error of the analysis of the 0.05 percent W/V reference sample does not exceed plus or minus 10 percent; and

(d) The systematic errors of the analyses of the 0.100 and 0.200 percent W/V reference samples do not exceed plus or minus 5 percent.

Appendix A Breath Alcohol Sample Simulator

The concentration of alcohol in a single expired breath from a human subject, following the ingestion of alcohol, is asymmetric with time as shown in Figure A–1, a typical alcohol sample profile.

Figure A–2 shows a block diagram of a breath alcohol sample simulator that is suitable for use in a laboratory to evaluate the deep lung sampling capability of instruments used to measure the alcohol concentration of human breath. For a full discussion of the development of this equipment, refer to NBS Special Publication 480–41,[8] issued in July 1981.

The breath alcohol sample simulator consists of three ethanol vapor chambers connected to a common exhaust manifold. In use, air from a large piston and cylinder is routed sequentially through each of the ethanol vapor chambers (each adjusted to a different and higher ethanol vapor concentration) to produce at the exhaust manifold in a series of concentration steps joined together to form a single asymmetric profile.

The discussion that follows identifies equipment by manufacturer and model; however, this does not constitute an endorsement of their products. Any equipment meeting the requirements as specified in paragraph 5.1.1. of this standard may be used to construct a breath alcohol sample simulator.

The three ethanol vapor chambers are grouped together as shown in Figure A–3. The input and output valves (Model 53C18HN14–2, Valcor Engineering, Kenilworth, NJ) are automatically controlled so that the air passes through each solution at the proper time and for the proper duration. Heaters, thermoregulators, and the stirers used in the solution reservoirs were taken from MK II Simulators (Smith and Wesson Electronics, Springfield, Mass.), the shafts of which were extended. The air diffusers (double) were taken from Model 999 Air Pump (Lew Childre and Sons, Inc., Foley, AL). High precision thermometers (±0.1°C) are used to monitor the temperature. Initial pressures are variable from 0 to 200 inches of water. Although maximum final delivery pressure is only 64 in. of water, higher initial pressures are needed to overcome the high flow resistance of the air diffusers.

The air supply for the breath alcohol sample simulator is provided by a 7 liter air driven piston and cylinder assembly. The duration of the step for each ethanol vapor chamber is controlled by a relay timer (Model W21LMASOX–2, Magnecraft Electric Co., Chicago, IL).

When used to evaluate the deep lung sampling capability of breath alcohol instruments, the solution reservoirs are filled with water and ethanol in the proper proportions to result in ethanol vapor concentrations of 0.060, 0.090, and 0.101% w/v, respectively in reservoir numbers 1, 2 and 3. The heaters are then turned on and the reservoirs and exhaust manifold allowed to stabilize at a temperature of 34°C. The concentration of the ethanol vapor in reservoir number 3 is tested in accordance with the procedures of the NHTSA Model Performance Specifications for Calibrating Units for Breath Alcohol Testers to ensure that the concentration is 0.101% w/v as required.

The relay timers for each of the three reservoirs are adjusted to provide an individual profile step each equal to one-third of the total delivery duration, such as 4.0 seconds at concentrations of 0.060% w/v, 0.090% w/v, and 0.101% w/v. The instrument to be tested is then connected to the output of the exhaust manifold.

The 7 liter air supply cylinder piston is driven to the bottom position of its travel. The pressure regulator on the input of air supply is adjusted to the predetermined test pressure for the instrument under test to deliver the total sample volume in the required time. The pressure valve to the piston is then opened, and the timers are allowed to cycle automatically to deliver the required alcohol vapor concentration profile to the unit under test.

[7] This test was taken from ELA Standard RS–204–A (July 1972) which is available from Electronic Industries Association, Engineering Department, 2001 Eye Street NW., Washington, D.C. 20006.

[8] Available from the Law Enforcement Standards Laboratory, National Bureau of Standards, Washington, D.C. 20234.

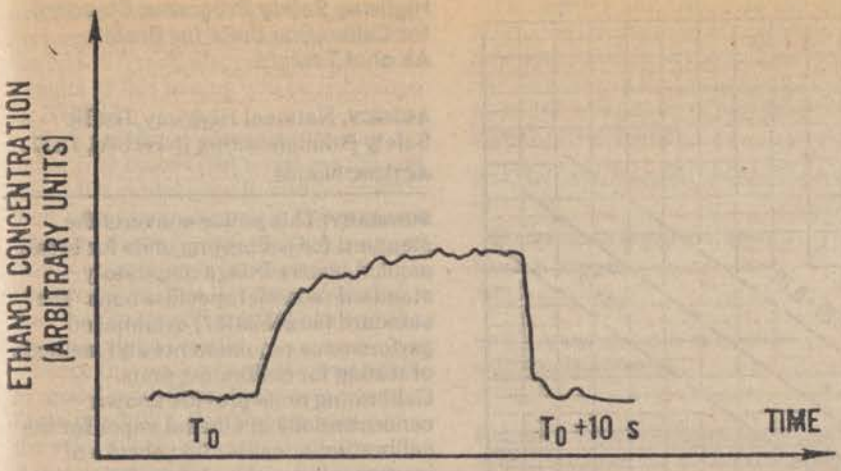


Figure A-1

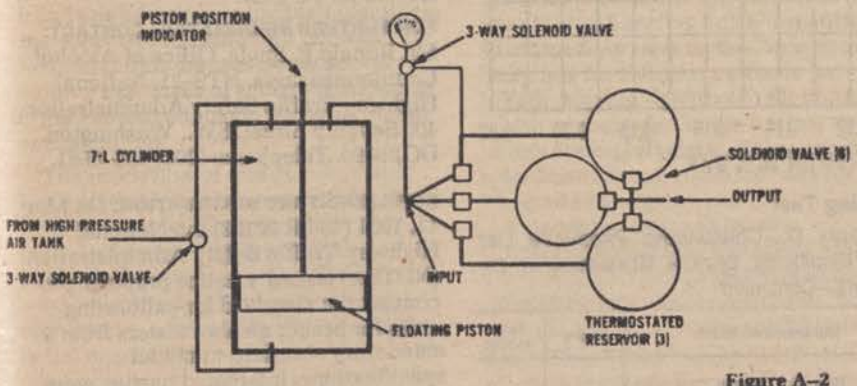


Figure A-2

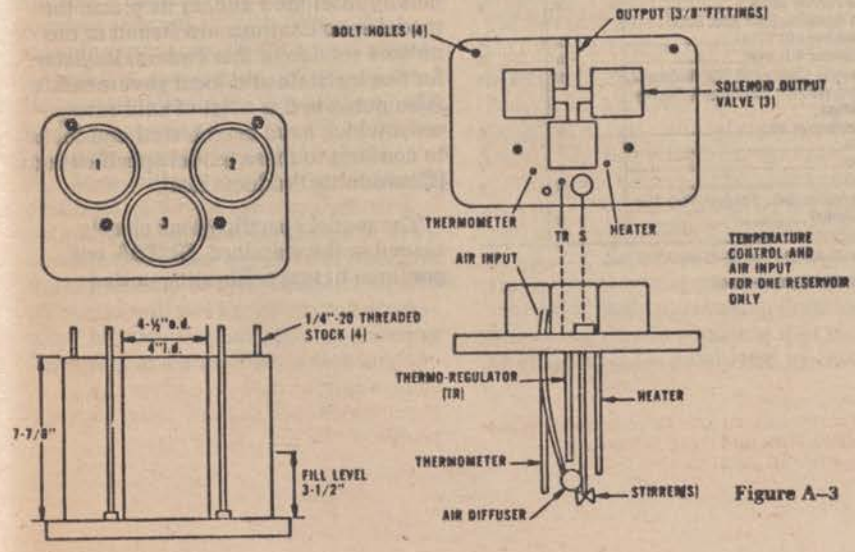


Figure A-3

Appendix B—Sample Calculations of Precision and Accuracy

The results of 10 sample measurements made in accordance with 5.1 and 6.1 at three known ethanol vapor concentration levels are as follows:

TABLE B-1

Measurement No.	0.24 mg/l (9.50% w/v)	0.48 mg/l (0.101% w/v)	0.72 mg/l (0.151% w/v)
	% w/v	% w/v	% w/v
1	0.045	0.092	0.148
2	0.046	0.097	0.149
3	0.049	0.100	0.145
4	0.046	0.105	0.148
5	0.045	0.094	0.146
6	0.049	0.098	0.147
7	0.047	0.098	0.152
8	0.050	0.102	0.147
9	0.047	0.093	0.154
10	0.046	0.094	0.152
Average	0.047	0.097	0.149
Standard deviation	0.0018%	0.0042%	0.0029%
Average standard deviation		0.0030%	
Systematic error	−6%	−4	−1

Appendix C

Sample Calculations in the Deep Lung Sampling Test

C.1. Breath and blood alcohol concentration measurements have been made for each of eight subjects in accordance with 6.4. The average of the BAC measurements for each subject is entered in the X column, and the average of the duplicate instrument readings for each subject is entered in column Y as follows:

Blood X percent W/V	Breath Y percent W/V
$X_1 = 0.0510$	$Y_1 = 0.0510$
$X_2 = 0.0640$	$Y_2 = 0.0648$
$X_3 = 0.0820$	$Y_3 = 0.0717$
$X_4 = 0.0880$	$Y_4 = 0.0899$
$X_5 = 0.1250$	$Y_5 = 0.1164$
$X_6 = 0.1590$	$Y_6 = 0.1294$
$X_7 = 0.1900$	$Y_7 = 0.1577$
$X_8 = 0.2030$	$Y_8 = 0.1647$

C.2 The average values computed in accordance with 6.4.11 for the above data are:

$X_L = 0.06567\%$ W/V
$Y_L = 0.06250\%$ W/V
$X_H = 0.18400\%$ W/V
$Y_H = 0.1506\%$ W/V
$\bar{X} = 0.12025$ W/V
$\bar{Y} = 0.10570\%$ W/V

C.3 The data points and breath/blood correlation line are entered in the sample graph (Figure C-1) as required in 5.4.12 and 5.4.13.

C.4 The value of Y, as defined in 4.4.1, is equal to 0.091% W/V.

C.5 All eight of the breath/blood points lie between the two lines drawn parallel to the breath/blood correlation line and through the points $\hat{Y} + 0.020\%$ W/V = 0.111% W/V and $\hat{Y} - 0.020\%$ W/V = 0.071% W/V.

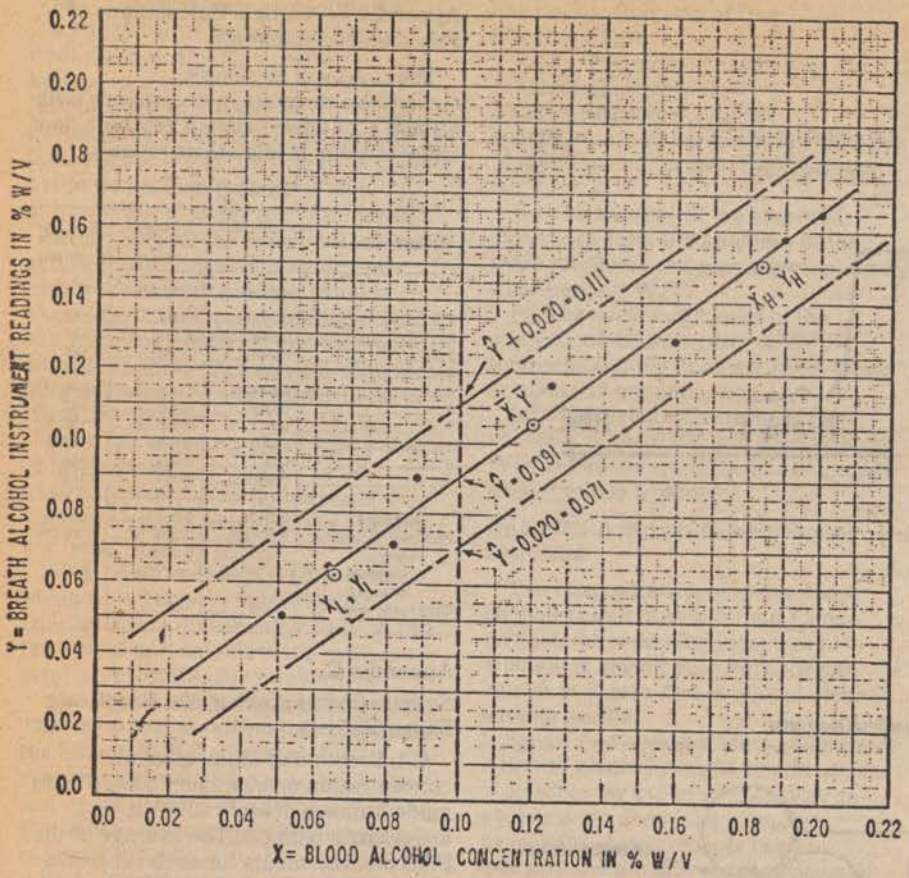


Figure C–1 Sample Data From Deep Lung Sampling Test

APPENDIX D.—CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer model	Mobile	Non-mobile
Alcohol Countermeasures System, Inc., Port Huron, Mich.; Alert J3AD	x	x
BAC System Inc., Ontario, Canada; breath analysis computer		x
CAMEC Ltd., North Shields, Tyne and Ware, England; IR breath analyser	x	x
CMI, Inc., Minturn, Colo.; Intoxilyzer		
1. 4011	x	x
2. 4011A	x	x
3. 4011AS	x	x
4. 4011AS–A	x	x
5. 4011AW	x	x
6. 4011A27–10100	x	x
7. 4011A27–10100 with filter	x	x
8. 5000	x	x
Decator Electronics, Decator, Ill.; Alco-Tector model 500		x
Intoximeters, Inc., St. Louis, MO; Photo Electric Intoximeter		x
GC Intoximeter MK II	x	x
GC Intoximeter MK IV	x	x
Auto Intoximeter A1–1000	x	x
Intoximeter 3000	x	x
Alco-Sensor III	x	x
Alco-Sensor III with printer	x	x

APPENDIX D.—CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES—Continued

Manufacturer model	Mobile	Non-mobile
Komyo Rikagaku, Kogyo, K.K.; Kitagawa Alcolyzer DAP–2	x	x
Luckey Laboratoriese, San Bernadino, Calif.		
Alco-Analyzer 1000		x
Alco-Analyzer 2000		x
National Dreage, Inc., Pittsburgh, PA		
Alcotest 7010	x	x
Breathalyzer 900	x	x
Breathalyzer 900A	x	x
Omicron Systems, Palo Alto, Calif.		
Intoxilyzer 4011	x	x
Intoxilyzer 4011AW	x	x
Siemens-Allis Cherry Hill, NJ; Alcomat	x	x
Smith and Wesson Electronics, Springfield, Mass;		
Breathalyzer 900	x	x
900A	x	x
1000	x	x
2000	x	x
Verax Systems, Inc., Fairport, NY; The BAC Verifier	x	x

[FR Doc. 84–32596 Filed 12–11–84; 12:55 pm]

BILLING CODE 4910–59–M

Highway Safety Programs; Standard for Calibrating Units for Breath Alcohol Testers

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

ACTION: Notice.

SUMMARY: This notice converts the standard for calibrating units for breath alcohol testers from a mandatory standard to model specifications. The standard (40 FR 36167) established performance requirements and methods of testing for calibrating units. Calibrating units provide known concentrations of ethanol vapor for the calibration or calibration checks of instruments, used by law enforcement officials, which measure breath alcohol. NHTSA is converting this standard to provide flexibility to the States and because the benefits of the standard can be maintained without the existence of a mandatory requirement.

DATE: This notice becomes effective December 14, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald E. Engle, Office of Alcohol Countermeasures, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426–9581.

SUPPLEMENTARY INFORMATION: On May 11, 1984 (49 FR 20102) the National Highway Traffic Safety Administration (NHTSA) issued a notice proposing to convert the standard for calibrating units for breath alcohol testers from a mandatory standard to model specifications. Interested parties were invited to submit comments on or before June 11, 1984.

No objections have been received regarding the proposed conversion. Accordingly, the mandatory standard is hereby rescinded and, in its place, the model specifications are issued in the notices section of this **Federal Register** for use by State and local governments. Also published is a list of calibrating units which have been tested and found to conform to these model specifications (Conforming Products List).

The model specifications closely resemble the standard. NHTSA will continue to test calibrating units to

determine whether they comply with performance criteria recommended in the NHTSA model specifications. Results of this testing will be published by NHTSA.

State and local governments may either rely on NHTSA's test results and adopt the model specifications, or set their own requirements. In this way the integrity of the States' alcohol countermeasures program is not compromised. It is the agency's belief that the States will continue to give the programs high priority.

Since this notice converts a standard to model guidelines, thus increasing State flexibility, the 30 days notice of the effective date required by the Administrative Procedure Act is not applicable.

NHTSA has analyzed the impact of this action and has determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. Because States and localities have been purchasing units on the approved list with and without Federal funds, there is no reason to believe that these practices will change if the Federal standard becomes model specifications.

The rescission of this standard will have no economic impact on State or local governments nor on the manufacturers of calibrating units. Because there will be virtually no economic or other impact from this conversion, a full regulatory evaluation is not necessary.

In accordance with the Regulatory Flexibility Act, the agency has evaluated the effects of this action on small entities. Based on that evaluation, I certify that the rescission of this standard will not have a significant economic impact on a substantial number of small entities. While the manufacturers of calibrating units may be small businesses as defined by the Regulatory Flexibility Act, they will not be significantly affected by this action. It is fully expected that States and localities will not alter their purchasing practices as a result of this proposed action. This action will, therefore, have no effect on either the manufacturers of these products or on small governmental units and will not impose any cost or other burden. Accordingly, a regulatory flexibility analysis is not necessary.

The agency has also analyzed this action for the purpose of the National Environmental Policy Act. The agency has determined that rescission of this standard will not have any effect on the human environment.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50)

Issued on: December 11, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-32597 Filed 12-11-84; 12:55 pm]

BILLING CODE 7533-01-M

Highway Safety Programs; Model Specifications for Calibrating Units for Breath Alcohol Testers; Publication of a Conforming Products List

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

ACTION: Notice.

SUMMARY: This notice establishes model specifications for the performance and testing of calibrating units. These model specifications replace the Performance Standard for Calibrating Units for Breath Alcohol Testers (40 FR 36167) which is rescinded in the notices section of this **Federal Register**. These model specifications are issued for use by State and local governments.

This notice also publishes a Conforming Products List (CPL) which is a list of calibrating units for breath alcohol testers which have been found to conform to the model specifications.

DATE: This notice becomes effective on the date the rescission of the mandatory standard is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald E. Engle, Office of Alcohol Countermeasures, NTS–21, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426–9581.

SUPPLEMENTARY INFORMATION: Since August 19, 1975 NHTSA has conducted a program to test calibrating units for breath alcohol testers for accuracy in accordance with specifications set forth in a performance standard (40 FR 36167) and has published a qualified products list (QPL) of devices found to conform to those performance requirements. A review of State purchasing decisions has led the agency to conclude that most calibrating units purchased by States and localities with and without Federal funds have been those which appeared on the list. On September 16, 1982, the agency issued new NHTSA 402 funding requirements which stated that the use of 402 funds for the purchase of alcohol testing devices is no longer limited to the purchase of devices on the QPL. While the notice did not address calibrating units, the agency feels that, since there is no basis for a distinction, the purchase of these units should be treated similarly.

Therefore, on May 11, 1984 (49 FR 20102) NHTSA proposed to convert the mandatory standard for the performance and testing of calibrating units to model specifications. The notice indicated that the model specifications would closely resemble the standard for calibrating units which appears in 40 FR 36167.

The agency will continue to test calibrating units and will release its findings to provide States which choose not to conduct their own testing with adequate information upon which to base their purchasing decisions.

This program therefore assists the State and local communities by providing a centralized qualification test program for calibrating units for alcohol testers used in law enforcement programs. The model specifications are not intended to replace the current qualification programs required in certain States for this equipment or to directly regulate the manufacture of calibrating units. However, some States may wish to make use of this program in addition to setting their own requirements. While the agency is not imposing its findings on State and local governments, NHTSA encourages each State to consider adopting the NHTSA model specifications as its own.

Interested parties were invited to submit comments on or before June 11, 1984. No objections have been received regarding the issuance of these model specifications.

Procedures

Testing to these model specifications of products submitted by manufacturers, will be conducted by the DOT Transportation Systems Center (TSC). Tests will be conducted semiannually, or as necessary. Manufacturers wishing to submit calibrating units for testing must apply for a test date to NHTSA's Office of Alcohol Countermeasures (OAC), NTS–21, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590.

Normally, at least 30 days will be required from the date of notification until the test can be scheduled. One week prior to the scheduled initiation of the test program, the manufacturer will deliver at least one unit of its equipment to TSC, DTS–48, Kendall Square, Cambridge, Massachusetts 02142. The manufacturer shall be responsible for ensuring that the unit is operating properly and is in proper calibration. If the manufacturer wishes to submit a duplicate, backup unit, it may do so. In addition to the Operator's Manual and the Maintenance Manual normally supplied with the purchase of this equipment, the manufacturer shall deliver to TSC specifications and drawings which fully describe its units. Proprietary information will be respected. (See 49 CFR Part 512, regarding the procedure by which NHTSA will consider claims of confidentiality.)

The manufacturer will have the right to check its units between their arrival in Cambridge and the start of the test, but will have no access to them during the tests. Any malfunction of the unit which results in failure to complete any of the tests satisfactorily will result in a finding that the unit does not conform to the model specifications. If a unit fails to conform, it may be resubmitted for testing.

On the basis of these results, NHTSA will publish a Conforming Products List (CPL) identifying the calibrating units that conform to model specifications.

Retesting of units will be conducted when necessary. NHTSA intends to modify and improve these model specifications as new data and test procedures become available. (The test procedures may be altered, if necessary, to meet unique design features of a specific unit.) Notification will be provided in the Federal Register of each such modification. If NHTSA determines that retesting is necessary, a manufacturer whose equipment has already been tested to the model specifications will be notified to resubmit the equipment for testing to the new specification only.

NHTSA shall certify that the CPL does, in fact, reflect whether a given unit meets the performance criteria set forth in the model specifications.

If at any time a manufacturer changes the design of a calibrating unit currently on the CPL, the manufacturer should submit the proposed changes to OAC for review. Based on this review, NHTSA will decide whether the change will require retesting of the unit. Normally, such retesting will be accomplished at the next testing period.

OAC will be the point of contact for information about acceptance testing and field performance of equipment already on the list. When it is available, NHTSA requests that State and local agencies provide both acceptance and field performance data to OAC. Information from users will be used to: (1) Help NHTSA determine whether units continue to perform according to the NHTSA model specifications and (2) ensure that field use does not indicate excessive breakdown or maintenance problems.

If information gathered indicates that an instrument on the CPL is not performing in accordance with the model specifications, NHTSA will direct TSC to conduct a special investigation. This study may include visits to users and additional tests of the unit obtained from the open market. If the investigation indicates that the units actually sold on the market are not meeting the model specifications, then the manufacturer will be notified that the unit may be dropped from the list. In this event the manufacturer shall have 30 days from the date of notification to reply.

Based on the TSC investigation and any data provided by the manufacturer, NHTSA will decide whether the unit should remain on the list. Upon resubmission, the manufacturer must submit a statement describing what has been done to overcome the problems which led to the dropping of the unit in question from the list.

Conforming Products List

The Conforming Products List which appears as Appendix B to this notice lists the calibrating units which have been found to conform to the model specifications. The fact that a unit does not appear on the list does not necessarily indicate that it failed to meet the model specifications. It may not have been included instead because it was not tested.

In accordance with the foregoing, the DOT model specifications for the performance and testing of calibrating units for breath alcohol testers are issued as set forth below.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.50 and Part 501)

Issued on: December 11, 1984.

George Reagle,

Associate Administrator for Traffic Safety Programs.

Model Specifications for Calibrating Units For Breath Alcohol Testers

1. *Scope.* These specifications apply to breath tester calibrating units which provide known concentrations of ethanol vapor for the calibration or calibration checks of instruments which measure breath alcohol. The specifications are intended primarily for use in qualification testing of calibrating units for breath alcohol testing.

2. *Purpose.* The purpose of these specifications is to establish performance criteria and methods of testing for calibrating units for breath alcohol testers.

3. *Definitions.*

3.1 *Apparent concentration.* The ethanol vapor concentration delivered from the breath tester calibrating unit under test.

3.2 *Qualification testing.* Testing performed to check the compliance of a product with these specifications in advance of, and independent of, any specific procurement action.

3.3 *Relative standard deviation.* The ratio of the standard deviation (SD) of a series of measurements to the mean of the series expressed as a percentage:

$$RSD = \frac{100 \times SD}{mean} \text{ percent}$$

3.4 *Standard deviation.* A common indication of precision among repeated measurements of a single quantity given by:

$$\text{Standard deviation} = \sqrt{\frac{\text{Sum}(X-X)^2}{N-1}}$$

where:

N = the number of measurements,
X = the value of a single measurement, and
X = the mean of all X's

An equivalent formula which is often more convenient for performing calculations is:

$$\text{Standard deviation} = \sqrt{\frac{SS}{N-1}}$$

where:

$$SS = \text{Sum of } X^2 - \frac{(\text{Sum of } X)^2}{N}$$

3.5 *Systematic error.* The difference between the mean measured value and the known or assumed value, expressed as percent of the known value.

4. *Requirements.*

4.1 *Precision.* The relative standard deviation of breath tester calibrating units shall not exceed 2 percent at any apparent concentration when repeated measurements of ethanol vapor concentrations from a unit are made in accordance with 5.1.

4.2 *Accuracy.* The systematic error of breath test calibrating units shall not exceed plus or minus 2 percent at any apparent concentration when repeated measurements of ethanol vapor concentrations from a unit are made in accordance with 5.1.

4.3 *Ambient conditions.* The breath tester calibrating units shall meet these specifications when operated within the following ambient conditions:

(a) *Temperature:* 10 °C (50 °F) to 30 °C (86 °F).

(b) *Pressure:* 550 MM. (22 in.) to 787 mm. (31 in.) Hg.

(c) *Relative Humidity:* 5–90 percent.

4.4 *Low and high temperature operation.* The systematic error shall not exceed plus or minus 2 percent, and the relative standard deviation shall not exceed 2 percent when breath tester calibrating units are tested at low and at high temperature extremes in accordance with 5.2.

4.5 *Power.*

4.5.1 *AC line.* The systematic errors shall not exceed plus or minus 2 percent, and the relative standards deviations shall not exceed 2 percent when ac powered breath tester calibrating units are tested in accordance with 5.3 at ac line voltages of 108 volts and 123 volts (rms).

4.5.2 *Battery.* Battery powered breath tester calibrating units shall have an indicator which warns when the accuracy and precision requirements (4.1 and 4.2) cannot be met because of battery conditions.

4.6 *Electrical safety.* Breath tester calibrating units shall meet the following requirements of the American National Standard Electrical Safety Requirements, ANSI C39.5–1974: [1]; 3.1 Shock Hazard; 3.1.1 Grounding; 3.4 Flammability; 4.1.1 Marking of Terminals; 4.1.3 Male Plugs; 4.2.1 Internal (Wiring and Cabling); and 4.4 Over-Current Protection.

4.7 *Operator's manual.* An operator's manual shall be supplied by the manufacturer or distributor with each breath tester calibrating unit. This manual shall clearly state the instructions for operation and maintenance of the device, and shall include the following information:

(a) The ranges of ambient temperature, atmospheric pressure and relative humidity within which the device is designed to be opearted.

(b) The numerical value of the factor for the conversion of the ethanol vapor concentration from the device to an equivalent blood ethanol concentration, if the ethanol vapor concentration is expressed by the manufacturer in terms of a blood alchol concentration.[2]

(c) Any corrections to be applied to the apparent ethanol vapor concentration because of dependence on atmospheric conditions.

(d) The identity of all chemical constituents of the ethanol-containing vapor which are present in concentrations greater than 0.5 percent of the ethanol concentration.

(e) The approximate number of calibration checks which can be performed with battery powered units before battery replacement or recharging is necessary.

5. *Test methods.* Except when noted otherwise, the ambient conditions of temperature, pressure and humidity during these tests shall be within the ranges specified in 4.3.

5.1 *Precision and accuracy test.*

5.1.1 *Test principle.* Gas chromatography (GC) is used for measuring ethanol vapor concentrations by comparing the GC response to ethanol vapor from a breath tester calibrating unit with the GC response to ethanol vapor reference samples having known ethanol concentrations. The ethanol vapor reference samples are obtained by sampling the vapor equilibrium above ethanol-water solutions having known ethanol concentrations. The ratio of the concentrations in the vapor and solution states, the partition ratio, is dependent on the temperature (see Table 1).

5.1.2. *Test apparatus and reagents.* An example of a workable combination of test apparatus is given in Appendix A. Any other combinations which meet the requirements of 5.1.2.1 through 5.1.2.7 are equally acceptable.

5.1.2.1 *Gas chromatograph.* Use a gas chromatograph which can completely resolve the ethanol peak from all other peaks in the chromatogram.

5.1.2.2 *Gas-sampling system.* A gas-sampling valve permits vapor samples to be introduced onto the GC column by manipulation of a control valve as shown in Figure 1. In the flush mode of operation, the sample loop of the gas-sampling system is continually purged with vapor sample. In the transfer mode, a fixed volume of sample vapor is trapped in the loop and introduced onto the GC column for measurement.

The inlet of the gas-sampling valve shall be fitted with a rubber septum, as shown in Figure 2 to permit injection of reference samples into the sampling valve from a syringe in accordance with 5.1.3.8. This septum shall be removed for connection of the breath tester calibration unit to the sampling valve in accordance with 5.1.3.10.

The gas-sampling system shall be maintained at a temperature of at least 95 °C, and shall be controlled to within plus or minus 1°C.

5.1.2.3 *Carrier gas.* The GC carrier shall be technical grade dry helium or nitrogen which is at least 99.995 percent pure by volume.

5.1.2.4. *Column temperature.* The GC column shall be maintained at a temperature of at least 95 °C and shall be controlled to within ±1 °C.

5.1.2.5 *Ethanol.* The ethanol used in the preparation of all ethanol solutions shall meet the specifications either for reagent grade ethanol as published by the American Chemical Society, or for USP grade ethanol as listed in the United States Pharmacopeia.

5.1.2.6 *Standard stock solution.* Prepare or obtain a standard stock solution of ethanol in distilled water. Determine the ethanol concentration to

[1] Copies of this ANSI publication may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

[2] The conversion ratio of 2.1×10^3 to 1 is a commonly used value recognized by the Executive Board of the Committee on Alcohol and Drugs of the National Safety Council; that is, 2.1 liters of "deep lung" air at 34°C contains approximately the same quantity (mass) of ethanol as 1 ml. of circulating pulmonary capillary blood. See, for example, R.N. Hager, R.B. Forney and R.S. Baker, "Estimation of the Level of Blood Alcohol form Analysis of Breath," Quarterly Journal of Studies on Alcohol, Vol. 17, 1–18 (1956).

within ±0.2 percent by potassium dichromate[3] oxidimetry.

5.1.2.7 *Glassware.* Volumetric glassware shall meet the appropriate Federal specification[4] for class "A" volumetric glassware.

5.1.3 *Procedure.*

5.1.3.1 If the calibrating unit can be used at only one apparent concentration, test the unit at that concentration. Otherwise, test the calibrating units at apparent concentration. Otherwise, test the calibrating units at apparent concentrations of approximately 0.24, 0.48, and 0.72mg/l[5] (0.05, 0.10, and 0.15% W/V)

5.1.3.2. For each apparent concentration at which the calibrating unit is to be tested, prepare, by accurate dilution of the standard stock solution (5.1.2.6), 2 ethanol reference solutions which, when equilibrated, deliver ethanol vapor concentrations bracketing the apparent concentrations to within ± 20 percent. These solutions shall have been prepared no earlier than 24 hours before use.

5.1.3.3 Obtain narrow-necked glass bottles or vials of at least 100 ml capacity which can be sealed with tightly fitting rubber septa. Fill each glass bottle approximately ¾ full with the ethanol solutions prepared in accordance with 5.1.3.2.

5.1.3.4 Insert a 20 gauge stainless needle through each rubber septum and connect the sharp end of the needle to a 2 or 3 mm I.D. glass tube as shown in Figure 3. This glass tube equalizes the pressure in the bottle and in the sampling syringe to atmospheric pressure. Seal the bottle as shown in the figure by pressing the rubber septum into place securely. The glass tube should extend below the surface of the solution. Immerse the bottles to the level of the rubber septa, as shown in Figure 3, in a circulating water bath maintained at an appropriate temperature between 25 and 35 °C, constant to within 0.1 °C.

5.1.3.5 Allow at least 1 hour for each air-ethanol solution system to come to equilibrium.

5.1.3.6 Prepare a glass, gas-tight syringe of 5 to 25 ml capacity fitted with a 20 gauge needle. Warm the syringe prior to sampling the headspace vapor to prevent condensation of water vapor.

5.1.3.7 With the syringe plunger in the home position as shown in Figure 3, puncture the septum of the first reference sample and flush the syringe several times by drawing back the plunger and then discharging the headspace vapor back into the bottle. During this flushing operation do not withdraw the needle from the septum.

5.1.3.8 Draw a volume of headspace vapor into the syringe and withdraw the syringe needle from the septum, taking care not to pull back the plunger after release of the syringe needle from the septum. Without delay, inject the vapor sample into the gas-sampling inlet of the GC (see Figure 2). The volume of headspace vapor injected must be large enough to completely purge the gas-sampling system. After injection of the vapor, obtain the ethanol chromatogram and measure the area of the ethanol peak.

5.1.3.9 Repeat 5.1.3.6 through 5.1.3.8 four times so as to obtain a total of 5 ethanol chromatograms and peak areas from the first reference sample.

5.1.3.10 Prepare the breath tester calibrating unit in accordance with the instructions in the operator's manual. Connect the unit to the inlet of the gas-sampling system of the GC using, if necessary, a moisture trap between the device end the GC. Pass the ethanol vapor through the gas-sampling system with a flow rate of from 50 to 200 ml/min. for at least 30 seconds. Measure the flow rate with a flow meter, preferably of the bubble-type, at the sample exit as shown in Figure 1. If the recommended flow rate from the calibration unit exceeds 200 ml/min., a sample slitting device, such as the one shown in Figure 4, may be used to reduce the flow rate into the gas-sampling system. Obtain 10 ethanol chromatograms and measure each ethanol peak area.

5.1.3.11 Using the second reference sample, repeat 5.1.3.6 through 5.1.3.8 five times to obtain 5 ethanol chromatograms and peak areas from the second reference sample.

5.1.3.12 For each of the ethanol peak areas obtained in 5.1.3.8, 5.1.3.9 and 5.1.3.11, calculate a calibration factor equal to the ethanol vapor concentration in mg/l divided by the peak area.

5.1.3.13 Calculate the mean calibration factor.

5.1.3.14 Calculate the relative standard deviation of the ten calibration factors obtained in 5.1.3.12, using the mean calibration factor obtained in 5.1.3.13. Proceed to 5.1.3.15 only if this relative standard deviation does not exceed 2.0 percent.

5.1.3.15 Multiply each of the 10 peak areas obtained from the breath tester calibration unit measurements (5.1.3.10) by the mean calibration factor.

5.1.3.16 Calculate the mean and relative standard deviation of the 10 values obtained in accordance with 5.1.3.15.

5.1.3.17 Calculate the systematic error of the breath tester calibrating unit. (See 3.5.).

5.1.3.18 Repeat 5.1.3.6 through 5.1.3.17 at other apparent concentrations if necessary to satisfy 5.1.3.1.

5.2 *Low and high temperature test.*

5.2.1 Test the units at 10 °C (50 °F) or the lowest temperature at which the manufacturer purports that its unit will operate properly, whichever is lower, and at 30 °C (86 °F) or the highest temperature at which the manufacturer purports that its unit will operate properly, which ever is higher.

5.2.2 Maintain test temperatures constant and accurate within plus or minus 3 °C throughout the duration of the testing period.

5.2.3 Allow at least 1 hour for the breath tester calibrating unit to come to temperature equilibrium after each test temperature is reached.

5.2.4 Repeat the precision and accuracy test (5.1) at an apparent concentration between 0.24 and 0.72 mg/l to obtain the relative standard deviation and the systematic error at each test temperature.

5.3 *AC-Line voltage test.*

5.3.1 Apply ac line power to the unit under test through a variable autotransformer having an output adjustable from 0 to 130 volts, and having a current rating as required by the instrument under test.

5.3.2 Monitor the autotransformer output voltage with an rms ac voltmeter having an accuracy of plus or minus 2 percent in the range of 105 to 125 volts.

5.3.3 Adjust the voltage at the breath tester calibrating unit to 108 volts. After at least one-half hour, check the voltage and readjust to 108 volts, if necessary. Then immediately repeat the precision and accuracy test (5.1) at an apparent concentration between 0.24 and 0.72 mg/l to obtain the relative standard deviation and the systematic error.

5.3.4 Increase the voltage to 123 volts. After at least one-half hour, readjust the voltage if necessary and again repeat the precision and accuracy test (5.1) at an apparent concentration between 0.24 and 0.72 mg/l to obtain the relative standard deviation and the systematic error.

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[3] Potassium dichromate certified as a standard reference material is available from the Office of Standard Reference Materials, National Bureau of Standards, Washington, D.C. 20234. (301) 921–2045. Refer to catalog number SRM 136c.

[4] Copies of Federal specifications are available from Business Services Centers at General Services Administration Regional Offices in Boston, New York, Washington, Atlanta, Chicago, Kansas City, Fort Worth, Denver, San Francisco, Los Angeles, and Seattle.

[5] Using the conversion factor of 2.1 (see footnote 2), ethanol vapor concentrations of 0.24, 0.48, and 0.72 mg/l correspond to 0.50, 1.0, and 1.5 mg of alcohol per ml of blood, commonly expressed 0.05, 0.10, 0.15 of alcohol per 100 ml of blood.

Appendix A—Gas Chromatograph Hardware and Parameters

An example of a workable combination of test apparatus is given herein. Any other combination which conforms to these specifications is equally acceptable.

A.1 *Gas-sampling system.* A commercially available gas-sampling valve having a gas-sampling loop of ⅛ inch O.D. stainless steel tubing with a volume between 0.5 and 1.0 ml and a "dead volume" of less than 0.1 ml, was connected to a research-type gas chromatograph. The injection port of the GC was bypassed. The gas-sampling valve was contained in an oven maintained at 110 °C.

A.2 *GC column.* The GC column was a 6 foot length of ⅛ inch O.D. by 0.93 inch I.D. stainless steel tubing packed the Poropak Q 80/100 mesh. The column temperature was 150 °C.

A.3 *GC detector.* A flame ionization detector was used. The hydrogen and air employed were in compliance with GSA specifications BB–H–886 and BB–A–1034 respectively. The hydrogen and air flow conditions were optimized to give a flame detector response in the plateau region of the detector response curve.

A.4 *Recorder.* Chart speed 0.5 in./min.

A.5 *Integrator.* Electronic type which converts the analog GC signal into digital form automatically. The integrator measured the peak area generated by the GC detector and prints the area in microvolt-seconds.

A.6 *Heating.* Metal tubing connections not contained either in the GC column oven or the gas-sampling valve oven were wrapped with heating tape and maintained above 50 °C.

A.7 *Carrier gas.* Helium dried with a commercially available moisture trap. Flow rate was 50 ml/min.

A.8 *Retention time.* Peak of ethanol chromatogram appeared approximately 2 minutes after sample injection.

A.9 *Syringe.* A 5.0 ml capacity gas-tight glass syringe fitted with a 20 gauge needle. Volume injected was 2.5 ml which completely purged the gas-sampling system.

A.10 *Reference sample bottles.* 500 ml capacity glass serum bottles fitted with rubber septa.

TABLE 1.[1]—Partition ratio for the Distribution of Ethanol Between Water and Air—From 25 °C to 35 °C.

Temperature °C:	Partition = ratio × 10^3:
25.0	.217
25.2	.220
25.4	.223
25.6	.227
25.8	.230
26.0	.233
26.2	.236
26.4	.240
26.6	.243
26.8	.247
27.0	.250
27.2	.254
27.4	.258
27.6	.261
27.8	.265
28.0	.269
28.2	.273
28.4	.277
28.6	.281
28.8	.285
29.0	.289
29.2	.293
29.4	.297
29.6	.302
29.8	.306
30.0	.310
30.2	.314
30.4	.318
30.6	.321
30.8	.325
31.0	.329
31.2	.333
31.4	.337
31.6	.341
31.8	.345
32.0	.349
32.2	.353
32.4	.358
32.6	.362
32.8	.367
33.0	.371
33.2	.375
33.4	.380
33.6	.384
33.8	.389
34.0	.393
34.2	.398
34.4	.403
34.6	.407
34.8	.412
35.0	.417

[1] Experimentally determined values from R.N. Harger, B.B. Raney, E.G., Bridwell, and M.F. Kitchel, J. Biol. Chem. 183, 197–213 (1950). Other values obtained from Harger in a private communication.

BILLING CODE 4910-59-M

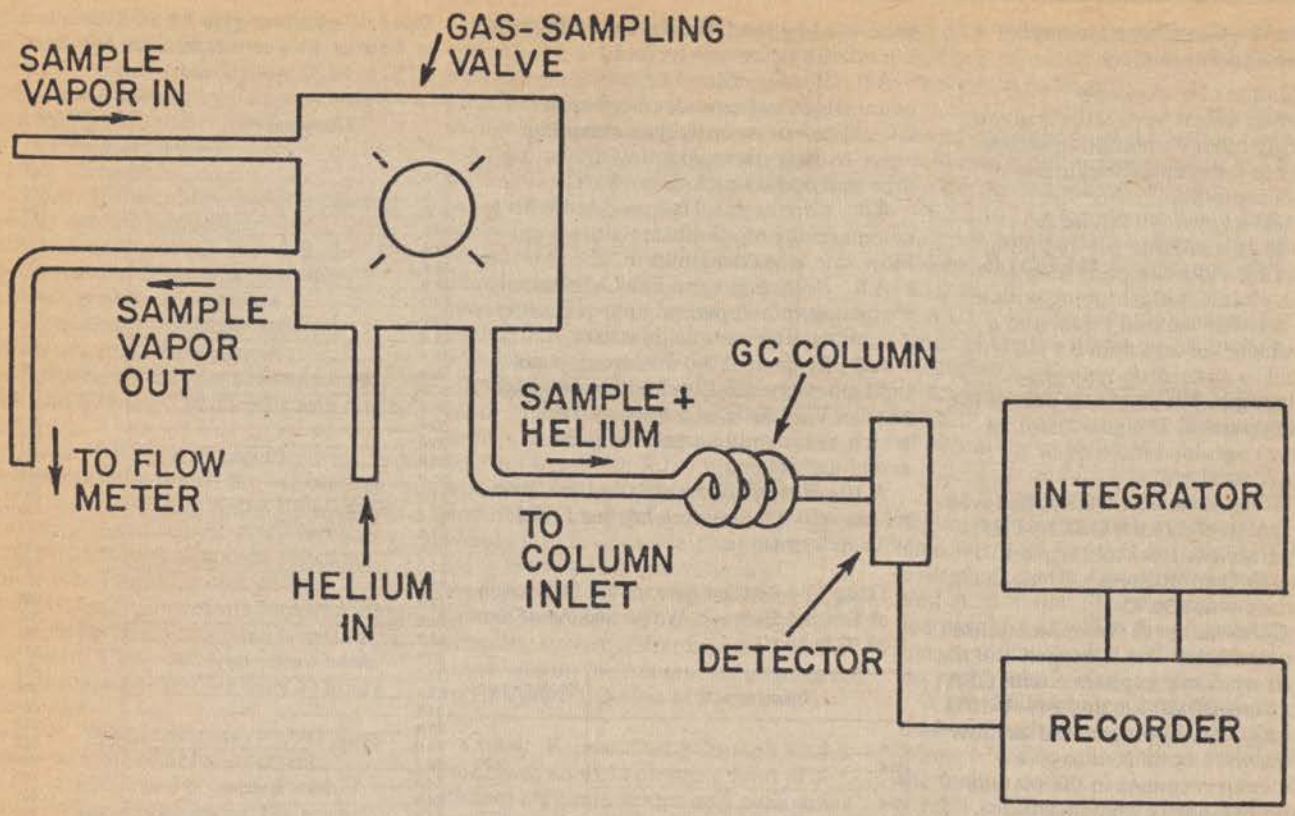


Figure 1

Gas Chromatograph Hardware

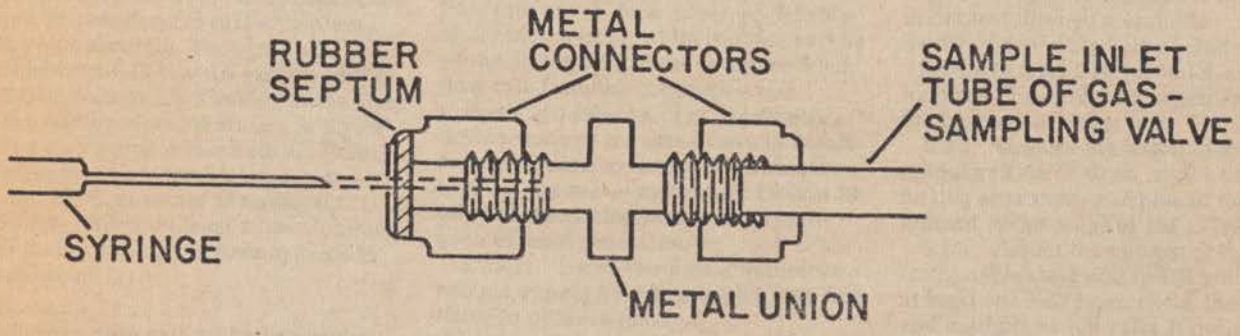


Figure 2

Sample Inlet Tube

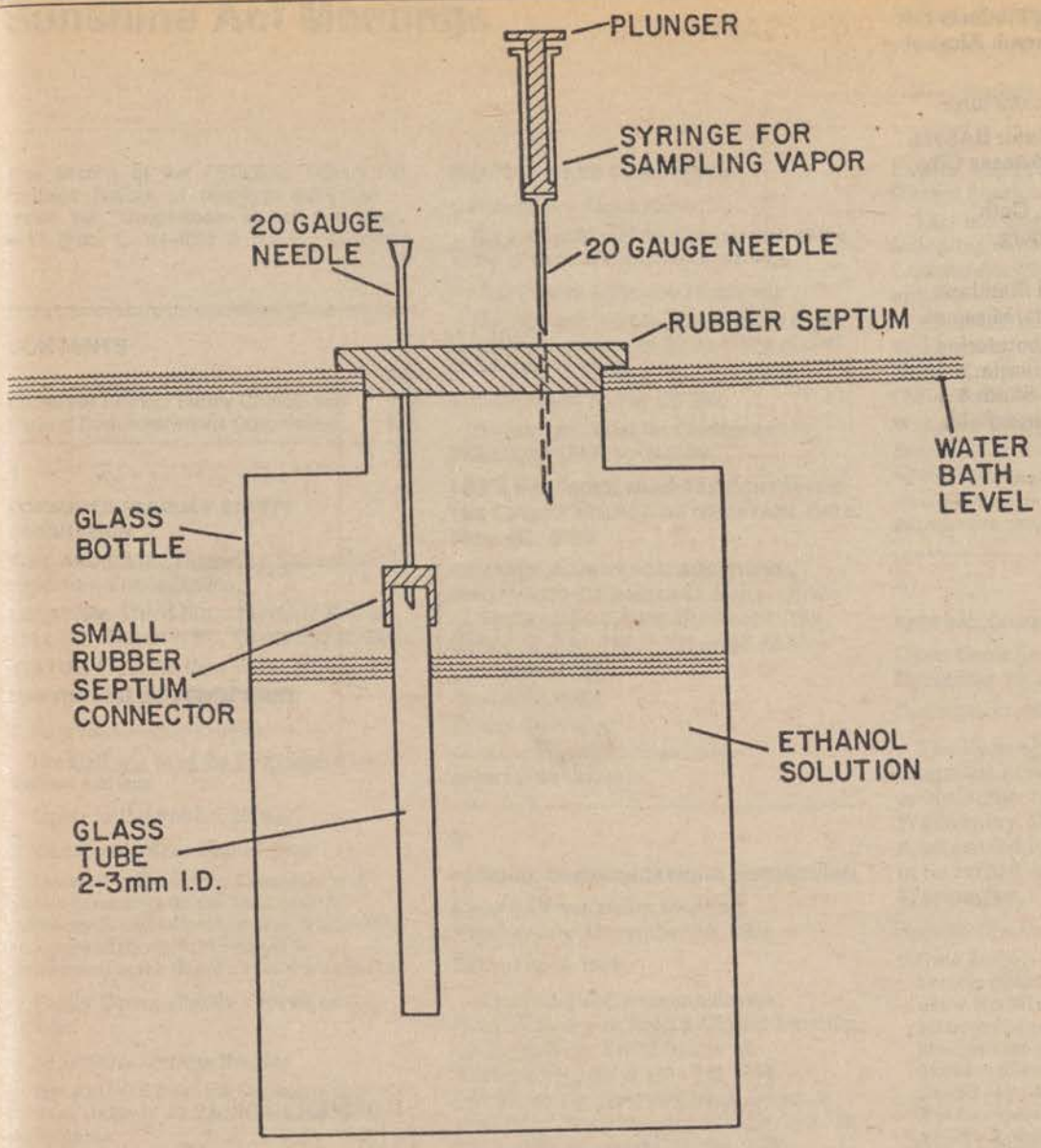


Figure 3

Reference Sample Bottle

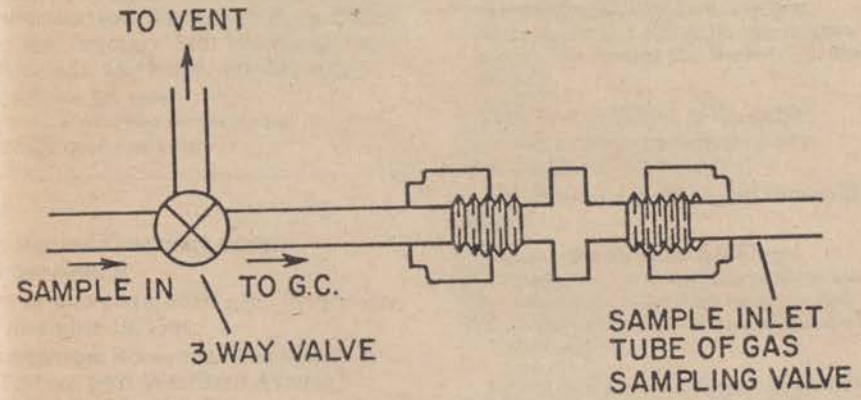


Figure 4

Sample Splitter

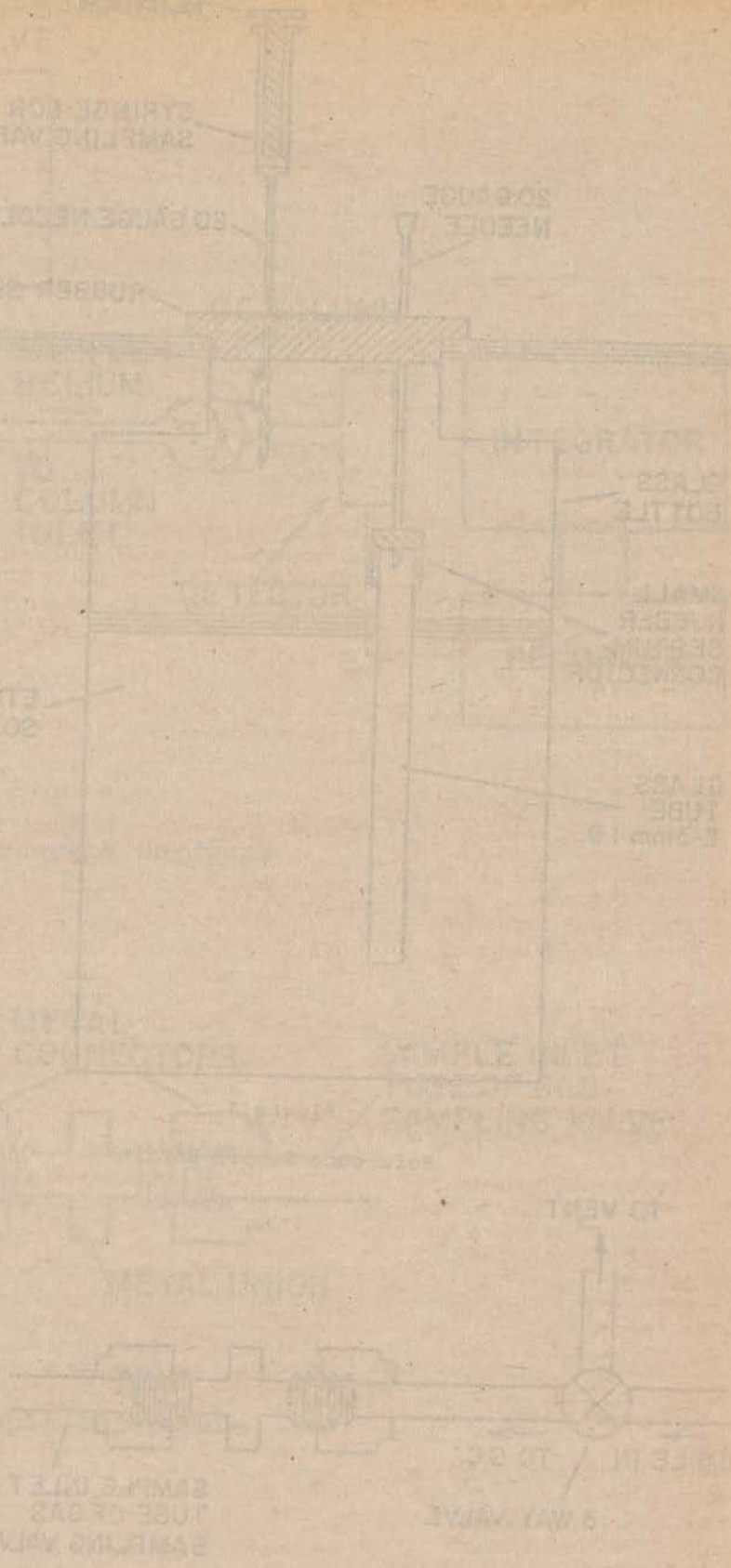
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Appendix B—Conforming Products List of Calibrating Units for Breath Alcohol Testers

Calibrating Unit and Manufacturer

1. Breath Alcohol Simulator BAS311, Century Systems, Inc., Arkansas City, Kansas.
2. Model 34C Simulator, Guth Laboratories, Inc., Harrisburg, Pennsylvania.
3. Nalco Breath Alcohol Standard, Intoximeters, Inc., St. Louis, Missouri.
4. Simulator, Luckey Laboratories, Inc., San Bernardino, California.
5. Mark II–A Simulator, Smith & Wesson Electronic Co., Springfield, Massachusetts.

[FR Doc. 84–32594 Filed 12–11–84; 12:55 pm]
BILLING CODE 4910–59–M



Sunshine Act Meetings

Federal Register
Vol 49, No. 242
Friday, December 14, 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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Federal Communications Commission.	3, 4

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, December 20, 1984. See Times Below.

LOCATION: Third Floor Hearing Room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the Public, 8:30 a.m.

MATTERS TO BE CONSIDERED:

1. Commission Staff Briefing

The staff will brief the Commission on various matters.

Open to the Public, 10 a.m.

2. TAB Report/Recommendations

The staff will brief the Commission on public comments on the Toxicological Advisory Board's final report and will make recommendations with respect to implementing the Board's recommendations.

Partly Open—Partly Closed to the Public.

3. Baby Gates Options Briefing

The staff will brief the Commission on the current status of staff activities related to baby gates.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207; 301–492–6800

December 12, 1984.

[FR Doc. 84-32740 Filed 12-12-84; 2:51 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, December 19, 1984.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

1. Compliance Status Report

The staff will brief the Commission on the status of various Compliance matters.

2. Civil Penalty Litigation Discussion

The staff will brief the Commission on the Commission process in the handling of civil penalty proceedings.

3. Enforcement Matter OS 3669

The staff will brief the Commission on Enforcement Matter OS 3669.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301—492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301—492–6800.

December 12, 1984.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84-32741 Filed 12-12-84; 2:51 pm]

BILLING CODE 6355-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

Closed Commission Meeting, Wednesday, December 19, 1984

December 12, 1984.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Wednesday, December 19, 1984, following the Open Meeting, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—Applications for Review in the United Broadcasting Company, Inc., Washington, D.C. FM radio comparative renewal proceeding (BC Docket Nos. 479 to 80–481).

This item is closed to the public because it concerns Adjudicatory Matters. See 47 CFR 0.603(j).

The following persons are expected to attend:

Commissioners and their Assistants
Managing Director and Members of his staff
General Counsel and Members of his staff
Chief, Office of Public Affairs and Members of his staff

Action by the Commission September 18, 1984. Commissioners Fowler, Chairman; Quello, Dawson, Rivera and Patrick voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-32690 Filed 12-12-84; 10:36 am]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Wednesday, December 19, 1984

December 12, 1984.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, December 19, 1984, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Iten No., and Subject

Private Radio—1—Title: Amendment of Section 90.635 of the Commission's Rules to allow 800 MHz conventional and trunked stations operating on four specific mountaintop sites in the San Diego area to increase effective radiated power. (PR Docket No. 84–608, RM–4765). *Summary:* The Commission will consider whether to adopt a Report and Order to permit increased effective radiated power for 800 MHz stations located on our four mountaintop sites in the San Diego Area.

Common Carrier—1—Title: Notice of Inquiry and Proposed Rulemaking regarding the establishment of satellite systems providing international communications services. *Summary:* The Commission will consider whether to issue a Notice of Inquiry and Proposed Rulemaking regarding the establishment of satellite which would provide international communications services.

Common Carrier—2—Title: In the Matter of Proposed Modifications of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation. *Summary:* The Commission will consider comments filed in response to its Further Notice of Proposed Rulemaking in this proceeding.

Common Carrier—3—Title: Amendment of Part 31, Uniform System of Accounts for

Class A and B Telephone Companies. *Summary:* The Commission will consider adopting a Notice of Proposed Rulemaking proposing to revise the accounting system in Part 31, Uniform System of Accounts (USOA).

Common Carrier—4—Title: Report on Bypass of the Public Switched Network, CC Docket No. 78–72, Phase I. *Summary:* The Commission will consider a report on Bypass on the Public Switched Network.

Common Carrier—5—Title: Further Report In the Matter of MTS and WATS Market Structure, CC Docket No. 78–72, Phase IV. *Summary:* The Commission will consider a Further Report concerning: (1) the effects of certain federal decisions on local telephone service, and (2) an access monitoring plan.

Common Carrier—6—Title: *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board,* CC Docket Nos. 78–72 and 80–286. *Summary:* The Commission will decide a number of issues related to: (1) Jurisdictional separations procedures; (2) the recovery of interstate NTS costs; (3) assistance for subscribers in high cost areas; and (4) measures to assist low income household in affording telephone service.

Mass Media—1—Title: Amendment of Section 73.3555 [formerly Sections 73–35, 73–240, and 73–636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations. *Summary:* The Commission will consider various petitions for reconsideration filed in response to the *Report and Order* in the subject proceeding.

Mass Media—2—Title: Implementation of BC Docket 80–90 to Increase the Availability of FM Broadcast Assignments. *Summary:* The Commission will consider adopting a *First Report and Order* in Docket 84–231 allotting approximately 700 new FM channels throughout the country. It will also consider proposing in a *Further Notice of Proposed Rule Making* new channels to five other communities previously rejected as counterproposals in this proceeding. The questions of special treatment for daytime AM licensees, of accepting applications on these new FM channels and of permitting the filing of new FM petitions will be treated in a separate item at a later Commission meeting.

Mass Media—3—Title: Request for Ruling or Waiver of Section 73.658(k) of the Commission's Rules, the Prime Time Access Rule, filed by Rhodes Productions, Inc. *Summary:* The Commission will consider a petition for a declaratory ruling or waiver of the PTAR in connection with the re-edited version of the former network program SCTV.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Public Affairs Office, telephone number (202) 254–7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84–32691 Filed 12–12–84; 10:36 am]

BILLING CODE 6712–01–M

federal register

Friday
December 14, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates 48 FR 19533 (1983) and of Secretary of Labor's Order, 6–84, FR 32473 (1989). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas: AR84–4100	Oct. 19, 1984.
Colorado: CO83–5113	July 15, 1983.
District of Columbia: DC84–3009	Apr. 6, 1984.
Florida: FL84–1022	Nov. 23, 1984.
Kansas:	
KS84–4053	Aug. 24, 1984.
KS84–4026	Apr. 27, 1984.
Kentucky:	
KY84–1003	Jan. 9, 1984.
KY84–1006	Mar. 16, 1984.
KY84–1011	Mar. 23, 1984.
KY84–1007	Mar. 16, 1984.
Missouri: MO84–4097	Oct. 5, 1984.
New Mexico: NM84–4099	Oct. 19, 1984.
New York: NY81–3061	Sept. 11, 1981.
Ohio:	
OH83–5123	Dec. 2, 1983.
OH83–5124	Do
OH83–5125	Dec. 23, 1983.
Pennsylvania:	
PA83–3009	May 16, 1983.
PA83–3052	Nov. 25, 1983.
Tennessee:	
TN83–1088	Do.
TN84–1023	Aug. 31, 1984.
Washington: WA84–5040	Nov. 16, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decisions numbers are in parentheses following the number of the decisions being superseded.

Kansas: KS84–4101 (KS84–4107)	Oct. 26, 1984.
Illinois: IL82–2050 (IL84–5042)	Oct. 15, 1982.
Montana: MT83–5126 (MT84–5041)	Dec. 9, 1983.
Pennsylvania: PA82–3027 (PA84–3042)	Oct. 8, 1982.

Signed at Washington, D.C. this 7th day of December 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AR84-4100
MOD # 2 (49FR 41139 - October 19, 1984)

Pulaski County, Arkansas

Change:

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$12.65	$2.24

DECISION NO. CO83-5113 - MOD. #8
(48-FR-32451 July 15, 1983)
Adams, Arapahoe, Boulder, Clear Creek Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Ironworkers: Structural, Ornamental and Reinforcing	$15.73	$3.53

OMIT:
Sheet Metal Workers as issued in Modification No. 5 dated 10-5-84.

ADD: Sheet Metal Workers	16.03	3%+3.53

DECISION NO. DC84-3009- MOD. #7
(49 FR 13800-April 6,1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES.

DELETE:
TRUCK DRIVERS: (ALL DRIVERS) BUILDING CONSTRUCTION (EXCLUDING CITY OF ALEXANDRIA VA), HEAVY CONSTRUCTION (ALL AREAS), & HIGHWAY CONSTRUCTION (WASHINGTON D.C. ONLY):

ADD:
TRUCK DRIVERS:
BUILDING CONSTRUCTION (EXCLUDING CITY OF ALEXANDRIA, VA), HEAVY CONSTRUCTION (ALL AREAS), & HIGHWAY CONSTRUCTION (WASHINGTON D.C. ONLY):

	Basic Hourly Rates	Fringe Benefits
Small Dump Trucks/Flat Bed	9.50	1.85+a
Water Sprinkler	9.75	1.85+a
Flusher	10.00	1.85+a
Grease, Oil or Fuel Trucks	10.20	1.85+a
Dump Trucks Over 8 wheels	10.00	1.85+a
Trailers/Low Boys	10.20	1.85+a
Mechanics	10.00	1.85+a
Tireman	9.30	1.85+a

DECISION NO. FL84-1022- MOD. #1
(49 FR 46242-November 23, 1984)
Hillsborough County, Florida

CHANGE:

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS	$11.22	2.95
LINEMAN	11.50	3.75%+ .45

DECISION NO. KS84-4026
MOD # 4 (49FR 18217 - April 27, 1984)

Douglas, Jefferson, Leavenworth, Miami and Shawnee Counties, Kansas

OMIT
LABORERS GROUPS 1,2,3, & 4
For Laborers Zones 1, 2, 3, & 4

Laborers Classification Definitions

ADD

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Zone 1		
Group 1	$7.65	$2.30
Group 2	7.90	2.30
Zone 2		
Group 1	8.45	2.30
Group 2	8.70	2.30
Zone 3		
Group 1	8.85	2.25
Group 2	9.10	2.25
Zone 4		
Group 1	7.65	2.30
Group 2	7.90	2.30

CLASSIFICATION DEFINITIONS

LABORERS

1. Board Mat Weavers & Cable Tiers, Georgia Buggy (Manually operated), Mixerman-No Skip Lift, Salamander Tenders, Track Men, Tractor Swamper, Truck Dumper, Wire Mesh Setter, Water Pump up to 4 inches, and all other general laborer including Flagman.

2. Air tool Operators, Cement Handlers (Bulk), Chain Saw, Georgia Buggy (Mechanically Operated), Grademan, Hot Mastic Kettleman, Crusher Feeder, Joint Man, Jute Man, Mason Tender, Material Batch Hopper & Scale Man, Mixer Man, Pier Hole Man (working 10 Feet Deep), Pipelayer - Drainage (Concrete and/or Corrugated Metal, Signal Man (Crane), Truck Dumper - Dry Batch, Vibrator Operator, Wagon & Churn Drill Operator, Asphalt Raker, Barco Tamper, Concrete Saw, Creosote Material - Handling & Applying, Nozzle Burner (Cutting Torch and Burning Bar), Conduit Pipe, Water and Gas Distribution Lines, Tile and Duct Line Setter, Form Setter & Liner on Concrete Paving, Powderman, Sandblasting & Gunite Nozzleman, Sanitary Sewer Pipe Layer, Steel Plate Structure Erectors, Screed Man.

	Basic Hourly Rates	Fringe Benefits
DECISION NO. KY84-1003		
Mod # 6		
(49 FR 9057 - January 9, 1984)		
McCracken County, Kentucky		
CHANGE:		
PAINTERS:		
Commercial - Sandblasting, Roller, Spray, Brush	$10.10	.90
Industrial (Includes manufacturing plants, & other plants that put 2 or more ingredients together) - Sandblast, Roller, Spray, Brush	11.10	.90
SHEET METAL WORKERS:		
Light Commercial	8.43	3.28
All Other Building Construction	17.13	4.34
DECISION NO. KY84-1006		
Mod # 4		
(49 FR 9997 - March 16, 1984)		
Warren County, Kentucky		
CHANGE:		
SHEET METAL WORKERS:		
Light Commercial	$ 8.43	3.28
All Other Building Construction1	17.13	4.34
DECISION NO. KY84-1011		
Mod # 2		
(49 FR 11066 - March 23, 1984)		
Fayette & Franklin Cos., Kentucky		
CHANGE:		
SHEET METAL WORKERS:		
Light Commercial	$ 8.43	3.28
All Other Building Construction	17.13	4.34

	Basic Hourly Rates	Fringe Benefits
DECISION NO. KY84-1007		
Mod # 5		
(49 FR 9999 - March 16, 1984)		
Hardin, Jefferson & Meade Cos., Kentucky		
CHANGE:		
SHEET METAL WORKERS:		
Light Commercial	$ 8.43	3.28
All other Building Construction	17.13	4.34
DECISION # KS84-4053		
MOD. # 1 (49 FR 33784 August 24, 1984		
LEAVENWORTH COUNTY, KANSAS		
LABORERS:		
GENERAL	$9.30	$2.25
Power Tool Operators, Compactors, Concrete Breakers; Chipping Tools, Drilling Tools, Concrete Saws, Mechanically Operated Georgia Buggy	9.50	2.25
Mason Tenders, Plaster Tenders, Mortar Mixers for Plasterers, Masons and Cement Finishers, All Stocking Scaffold; Clean up for Masons (Building & Wrecking)	9.60	2.25
Sand and Concrete Gun Nozzlemen Powdermen	9.70	2.25

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY81-3061 -		
MOD. #6		
(46 FR 45525 - September 11, 1981)		
Clinton County, New York		
CHANGE:		
CARPENTERS		
Heavy & Highway	15.02	2.125 +a
CEMENT MASONS		
Heavy & Highway	15.01	1.80+a
ELECTRICIANS		
Zone I - City of Plattsburg and 5 mile radius		
Electricians	14.10	2.60+ 4%+b
Cable Splicers	14.40	2.60+ 4%+b
Zone II - From Zone I to a 20 mile radius of Plattsburg		
Electricians	14.30	2.60+ 4%+b
Cable Splicers	14.60	2.60+ 4%+b
Zone III - Beyond Zone II		
Electricians	14.50	2.60+ 4%+b
Cable Splicers	14.80	2.60+ 4%+b
IRONWORKERS		
Structural, Ornamental, Reinforcing, Rodmen, Machinery Mover, Riggers, Fence Erectors, Stone		
Derrickmen	14.70	3.99
Sheeter	14.95	3.99
Sheeter, Bucker-up	14.825	3.99
LABORERS, Heavy & Highway		
Class A	12.74	2.15+h
Class B	12.94	2.15+h
Class C	13.14	2.15+h
Class D	13.34	2.15+h

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MO84-4097 -		
MOD. #2		
(49 FR 39434 - October 5, 1984)		
Pettis and Saline Counties, Missouri.		
OMIT:		
Cooper and Howard Counties from Power Equipment Operators schedule on Mod. #1 published in Federal Register dated November 23, 1984, Vol.49-Page 46241.		
DECISION NO. TN83-1088		
Mod # 5		
(48 FR 53272 - November 25, 1983)		
Shelby County, Tennessee		
CHANGE:		
BRICKLAYERS & STONEMASONS	$12.32	1.68
DECISION NO. TN84-1023		
Mod # 2		
(49 FR 34644 - August 31, 1984)		
Carter, Greene, Hawkins, Johnson, Sullivan, Unicoi & Washington Cos., TN		
CHANGE:		
BRICKLAYERS	$10.00	

DECISION #84NM-4099-MOD. # 1 (49 FR 41140 - October 19, 1984)	Basic Hourly Rates	Fringe Benefits
Statewide (excluding Eddy and Lea Cos. for Building Construction in New Mexico)		
CHANGE:		
Bricklayers-Stonemasons:		
Zone 4	$14.21	$ 1.72
Zone 5	15.71	1.72
Leadburners:		
Area 1	17.29	3.73
Area 2	17.29	3.73
Area 3	17.29	3.73
Area 4	18.09	3.73
Plumbers and Pipefitters:		
Area 1	16.79	3.73
Area 2	16.79	3.73
Area 3	16.79	3.73
Area 4	17.59	3.73

LEADBURNERS, PLUMBERS & PIPEFITTERS BASING POINTS AND AREA DEFINITIONS:

Albuquerque, Alamogordo, Anthony, Belen, Bernalillo, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Las Cruces, Las Vegas, Lordsburg, Los Lunas, Portales, Raton, Rio Rancho, Roswell, Ruidoso, Sante Fe, Silver City, Santa Rosa, Socorro, Taos, Tucumcari, Truth or Consequence, Artesia, Carlsbad, Hobbs, and Lovington.

Area 1: Incudes a distance of 11 road miles inclusive beyond the city or town limits.

Area 2: A 9 mile perimeter around Silver City.

Area 3: A distance of more than 11 road miles beyond the city or town limits; beyond 9 miles from Silver City.

Area 4: Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds.

	Basic Hourly Rates	Fringe Benefits

DECISION NUMBER OH83-5123 - MOD. #2 (48 FR 54419 - December 2, 1983) Mahoning and Trumbull Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Electricians:		
Area 1	$19.11	$1.76+ 9.7%
Area 2	18.24	1.55+ 15½%
Line Construction:		
Area 1:		
Pole Digging Equipment	17.55	.85+ 10½%
Plumbers; Steamfitters; & Pipefitters:		
Area 2	17.23	6.31

DECISION NUMBER OH83-5124 - MOD. #3 (48 FR 54422 - December 2, 1983) Lucas County, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$20.325	$3.58
Elevator Constructors:		
Mechanics	19.155	3.29+ a+b
Helpers	70%JR	3.29+ a+b
Helpers (Prob.)	50%JR	
Glaziers	16.11	2.75
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers	14.68	1.80
Plasterers	17.27	2.46
Roofers	16.45	3.88
Sheet Metal Workers	17.505	4.445
Terrazzo Workers & Tile Setters	16.76	2.60

DECISION NUMBER OH83-5125 - MOD. #3 (48 FR 56898 - December 23, 1983) Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, & Summit Counties, Ohio	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 3	$18.90	$2.89
Bricklayers; Stonemasons:		
Area 5:		
Commercial Building	17.92	4.97
Residential	15.92	4.97
Area 6	17.09	3.27
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:		
Area 3:		
Commercial Building:		
Carpenters	17.40	3.79
Soft Floor Layers	16.25	4.50+d
Residential Carpenters	13.09	2.29
Cement Masons:		
Area 3	19.47	3.40+a
Electricians:		
Area 1	19.11	1.76+ 9.7%
Area 2:		
All Other Work	18.20	3.80+ 3½%
Area 4:		
All Other Work:		
Electricians	18.93	3.75+ 3.2%
Cable Splicers	19.18	3.75+ 3.2%
Elevator Constructors:		
Area 1:		
Mechanic	19.41	3.29+ e+f
Helpers	70%JR	3.29+ e+f
Helpers (Prob.)	50%JR	
Ironworkers:		
Area 1:		
Commercial Building	16.30	4.14
Area 3:		
Ornamental; Reinforcing; & Structural	17.96	4.21
Sheeters; Layout Man	18.96	4.21

DECISION NUMBER OH83-5125 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
- Line Construction:		
Area 2:		
Cable Splicer; Equipment Op.; Line Truck Driver; Linemen	$18.20	$3.80+ 3½%
Groundmen	15.20	3.80+ 3½%
Area 4:		
Cable Splicers	19.18	3.75+ 3%
Equipment Operators; Linemen	18.93	3.75+ 3%
Groundmen; Truck Driver (Winch) Groundmen	12.30	3.75+ 3%
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 6:		
Marble Setters	16.17	3.25
Terrazzo Workers	16.09	3.25
Tile Setters	16.00	3.25
Marble, Terrazzo, & Tile Finishers:		
Area 4:		
Terrazzo Finishers	13.71	3.25
Tile Finishers	13.59	3.25
Terrazzo Grinders	15.55	3.25
Sheet Metal Workers:		
Area 1:		
Commercial Building	20.21	4.38
Residential	12.13	3.58
Laborers:		
Area 5:		
Residential	13.47	3.06
Commercial Building:		
Group 1	15.02	3.06
Group 2	15.17	3.06
Group 3	15.22	3.06
Group 4	15.52	3.06
Omit:		
Area Descriptions:		
Cement Masons:		
Area 5: Portage, Stark, & Summit Counties		
Add:		
Cement Masons:		
Area 6:		
Commercial Building	17.09	2.42
Residential	16.02	2.42
Area Descriptions:		
Cement Masons:		
Area 5: Portage & Summit Cos.		
Area 6: Stark Co.		

DECISION NO. WA84-5040 - Mod #2
(49 FR 45532 - Nov. 16, 1984)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters:		
Area 1:		
Projects under $2,000,000 exclusive of mechanical and electrical subcontracts:		
Carpenters	$12.68	$3.67
Piledrivers:		
Piledriver	12.80	3.67
Boom Man	12.88	3.67
Creosote	13.00	3.67
Millwrights	13.08	3.67
All other work:		
Rates are as previously published.		

FOOTNOTE:

e. LABORERS (AREA 1), POWER EQUIPMENT OPERATOR (AREA 1) & TRUCK DRIVERS (AREA 1): All Counties and portions of Counties East of the 120th Meridian except DOE Hanford Site in Benton and Franklin Counties:
On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits; any other component in excess of the amounts shown shall be paid the full rate on that component.

Paving	$ 75,000
Crushing	200,000
Grading & Clearing	350,000
Bridges & Related Work	500,000
Utilities	Unlimited
Buildings	2,000,000 excl. of mechanical & electrical sub-contracts

EXCEPTION: Paving within 45 mile radius of Spokane or Lewiston shall receive full rate.

DECISION NO. PA83-3009 - MOD. NO. 3
(48 FR 20610 - May 16, 1983)
Erie County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	19.54	3.38
BRICKLAYERS & Stonemasons	16.00	2.57
CARPENTERS	14.40	4.51
CEMENT MASONS	16.00	2.57
ELECTRICIANS	16.15	6.00+ 3 1/2%
ELEVATOR CONSTRUCTORS	17.255	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS	12.08	3.29+ a+b
ELEVATOR CONSTRUCTORS HELPERS (Prob.)	8.63	
GLAZIERS	15.94	2.37
IRONWORKERS:		
Structural, Ornamental & Reinforcing	16.30	4.41
LABORERS:		
Common Laborers	13.10	22%+ .08
Mason tenders & plasterers tenders	13.60	22%+ .08
LINE CONSTRUCTION:		
Lineman, dynamite man, Heavy equipment operator	15.99	.80+3 3/8%
Winch truck operator	11.29	.80+3 3/8%
Groundman	10.00	.80+3 3/8%
MARBLE, TILE, TERRAZZO WORKERS	14.75	2.57
MILLWRIGHTS	15.22	43½%
PLASTERERS	16.00	2.57
PLUMBERS & STEAMFITTERS	16.57	4.40
SOFT FLOOR LAYERS	14.40	4.51
SHEET METAL WORKERS	16.49	4.96
MARBLE FINISHERS	13.60	22%+ .08
TERRAZZO FINISHERS	13.60	22%+ .08
TILE FINISHERS	13.60	22%+ .08

DECISION NO. PA83-3052 - MOD. NO. 3
(48 FR 53264 - November 25, 1983)
Lawrence & Mercer Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	19.54	3.38
CEMENT MASONS	19.69	.01
ELECTRICIANS	17.05	6.37
LINE CONSTRUCTION:		
Lineman, dynamite man, heavy equipment op.	15.99	.80+3 3/8%
Winch truck operator	11.29	.80+3 3/8%
Groundman	10.00	.80+3 3/8%
LANDSCAPING:		
Landscape laborer to include general landscaping work and driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job	10.45	25%
Landscape Tractor Operator to operate small industrial rubber tire tractor equipped with front end loader and backhoe attachment used for the sole purpose of landscape work including soil spreading, but not for heavy and highway construction work	10.87	25%
MILLWRIGHTS		
Lawrence county	15.22	43½%
PLUMBERS & STEAMFITTERS:		
Lawrence County	17.08	4.40
Mercer County	17.00	4.40
PLASTERERS	20.13	.01
SHEET METAL WORKERS		
Lawrence County	16.49	4.96

SUPERSEDEAS DECISION

STATE: KANSAS
COUNTY: SHAWNEE
DECISION NO. KS84-4107
DATE: DATE OF PUBLICATION
Supersedes Decision No. KS84-4101, dated October 26, 1984 in 49 FR 43176.
DESCRIPTION OF WORK: Building Construction Projects (Excluding single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS/STONEMASONS	14.14	1.25
CARPENTERS:		
Carpenters	12.45	1.80
Millwrights	13.45	1.80
CEMENT MASONS/FINISHERS	12.60	1.05
ELECTRICIANS	15.55	2.13+ 3%
GLAZIERS	12.83	5.54
IRONWORKERS	14.25	3.25
LABORERS:		
Laborers, General	9.30	2.30
Mason Tenders	9.60	2.30
PAINTERS	13.60	1.25
PLASTERERS	15.70	.01
PLUMBERS/PIPEFITTERS	15.83	2.34
ROOFERS	14.66	1.29
SHEET METAL WORKERS	14.68	3.10+ 3%
SOFT FLOOR LAYERS	11.00	1.76+ 10%
SPRINKLER FITTERS	16.47	3.23
TILE SETTERS	15.00	
TRUCK DRIVERS	11.32	1.20
POWER EQUIPMENT OPERATORS:		
Backhoe Operators	11.80	3.77
Crane Operators	13.75	3.77
Forklift Operators	13.35	3.77
Front End Loader Operator	11.55	3.77
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).		

Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: ILLINOIS
COUNTY: SANGAMON
DECISION NUMBER IL84-5042
DATE: Date of Publication
Supersedes Decision No. I182-2050, dated October 15, 1982 in 47 FR 46223
DESCRIPTION OF WORK: Building and Residential projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.99	$2.76
BOILERMAKERS	18.30	3.305
BRICKLAYERS; Caulkers; Cleaners Pointers & Stonemasons	15.75	1.87
CARPENTERS:		
Commercial Building:		
Carpenters; Lathers; and Soft Floor Layers	16.17	2.54
Millwrights & Piledrivermen	16.67	2.54
Residential:		
Three stories or less, excluding concrete and steel type construction	11.31	2.54
CEMENT MASONS	15.63	1.50
ELECTRICIANS:		
Commercial Building:		
Electricians & Cable Splicers	17.12	2.15+ 3.1%
Residential 3 floors or less	10.25	1.65 + 3.5%
ELEVATOR		
Mechanics	16.375	2.465 +a,b
Helpers	70%JR	2.465 +a,b
Probationary Helpers	50%JR	
GLAZIERS	16.29	.97
IRONWORKERS	16.53	2.48
MARBLE SETTERS; TERRAZZO WORKERS & TILE SETTERS	15.75	1.87
MARBLE, TERRAZZO & TILE FINISHERS		
Marble & Tile Finisher	16.00	
Terrazzo finisher & Terrazzo Floor Machine Operator	16.15	
Terrazzo Base Machine Oper.	16.55	
PAINTERS:		
Brush	14.50	2.20+c
Sandblasting	15.00	2.20+c
Spray	15.25	2.20+c
Rollers; Taping	15.50	2.20+c
PLASTERERS	17.51	2.01
PLUMBERS; PIPEFITTERS & STEAMFITTERS	17.03	2.33
ROOFERS	16.00	3.00
SHEETMETAL WORKERS:		
Commercial Building	17.12	2.48+d
Residential	10.91	2.46
SPRINKLER FITTERS	16.67	2.33
Welders receive rate prescribed for craft performing operation to which welding is incidental		
LABORERS		
Unskilled	14.10	2.50
Semi-skilled	14.30	2.50
Skilled	14.45	2.50
Residential Laborer	70%	2.05
POWER EQUIPMENT OPERATORS:		
Group 1	16.95	1.83
Group 2	15.30	1.83
Group 3	13.20	1.83
TRUCK DRIVERS:		
Group 1	14.275	1.90+e
Group 2	14.675	1.90+e
Group 3	14.875	1.90+e
Group 4	15.125	1.90+e

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CLASSIFICATION DEFINITIONS

LABORERS

Unskilled - All Sewer Workers plus Depth Pay; Asphalt Plant Laborers; Bankmen on Floating Plant; Batch Dumpers; Carpenter Tenders; Cleaning Lumber; Cofferdam Workers plus depth pay; Deck Hand, Dredge Hand & Shore Laborer; Driving of Stakes; Stringlines for all machinery; Fencing Laborers; Firemen or Salamander Tenders; Fireproofing Fire Shop Laborers; Form Handlers; Gravel Box Men; Lumpmen & Spotters; Laborers w/de-watering systems; Landscapers; Laying Sod; Material Handlers; Pit Men; Plastic Installers; Planting of Trees; Removal of Trees; Rip-Rap Men; Scaffold Workers; Tool Cribmen; Track Laborers; Unloading Explosives; Unloading & Carrying Lath; Unloading & Carrying of Re-Bars; Wrecking, Dismantling Buildings; Wallmen & Housemovers; Wrecking Laborers

Semi-Skilled - Asphalt Workers with Machine; Asphalt Raker & Layers; Cement Handlers; Cement Silica, Fly Ash, Lime & Plasterers, Handlers (Bulk or Bag); Chain Saw; Chloride Handlers; Concrete Workers (Wet); Grade Checker; Handling of materials treated with oil, creosote, asphalt and/or any foreign material harmful to skin or clothing; Kettle Tar Men; on Concrete Paving, Placing, Cutting & Tying of Reinforcing; Signal Man on Crane; Tank Cleaners; Tunnel Tenders in Free Air

Skilled - Air Tamping Hammerman; Caisson Worker plus depth pay; Concrete Burning Machine Operator; Concrete Saw Operator; Coring Machine Operator; Curb Asphalt Machine Operator; Gunnite Nozzle Men; Jackhammer & Drill Operators; Laborers handling Masterplate or similar materials; Laborers Tending Masons with hot material or where foreign materials are used for wet concrete or handling of Building Materials; Multiple Concrete Duct - Leadman; Plasterer Tenders; Ready Mix Scaleman, Portable or Temporary Plant; Screenman on Asphalt Pavers; Steel Form Setters (Street & Highway); Vibrator Operators; Cutters, Burners & Torchmen.

POWER EQUIPMENT OPERATORS

GROUP 1 - Asphalt Plant Engineer; Asphalt Screed Man; Apsco Concrete Spreaders; Asphalt Pavers; Asphalt Rollers on Bituminous Concrete; Athey Loaders; Backfillers; Crane Type Backhoes; Cableways; Cherry Pickers; Clam Shell; C.M.I. & Similar Type Autograde Formless Paver, Autograde Placer & Finisher; Concrete Breakers; Concrete Plant Operators; Concrete Pumps; Cranes; Derricks; Derrick Boats; Draglines; Earth Auger Boring Machines; Elevating Graders; Engineers on Dredge; Gravel Processing Machines; Head Equipment Greasers; High Lift or Fork Lifts; Hoist w/two Drums or Two or more Loadlines; Locomotives;

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POWER EQUIPMENT OPERATORS (CONT'D)

Mechanics; Motor Graders or Auto Patrols; Operators or Levelman on Dredges; Operators Power Boat; Operators Pug Mill (Asphalt Plants); Orange Peels; Overhead Cranes; Paving Mixers; Pile-drivers; Pipe Wrapping & Painting Machines; Push Dozers, or Push Cats; Rock Crushers; Ross Carriers or Similar Machines; Scoops; Skimmer 2 cu. yds., cap. & under; Sheep Foot Roller (Self-propelled); Shovels; Skimmer Scoops; Test Hole Drilling Machines; Tower Cranes; Tower Machines; Tower Mixers; Track Type & Loaders; Track Type Fork Lifts or High Lifts; Track Jacks & Tampers; Tractors; Sideboom; Trenching Machines; Ditching Machine; Tunnel Luggers; Wheel Type End Loaders; Winch Cat; Scoops (All or Tournapull)

GROUP 2 - Asphalt Boosters & Heaters; Asphalt Distributors; Asphalt Plant Fireman; Building Elevator; Bull Floats or Flexplanes; Concrete Finishing Machines; Concrete Saw, Self-propelled; Concrete Spreader Machines; Gravel or Stone Spreaders, Power Operated; Hoist Automatic; Hoist w/1 Drum & 1 Load Line; Oiler on 2 Paving Mixers when used in Tandem Boom or Winch Truck; Post Hole Diggers, Mechanical; Road or Street Sweeper-Self-propelled; Scissors Hoist; Seaman Tiller; Straw Machine; Vibratory Compactor; Well Drill Machines

GROUP 3 - Air Compressor ; Air Compressors, Track or Self-Propelled; Bulk Cement Batching Plants; Conveyors ; Concrete Mixers (except plant, paver, tower); Firemen; Generators ; Greasers; Light Plants ; Mechanical Heaters ; Oilers; Power Form Graders; Power Sub-Graders; Pug Mills, when used for other than Asphalt Operation; Rollers (except Bituminous Concrete); Tractors w/o Power Attachments Regardless of size or type; Truck Crane Oiler & Driver 1 (man); Vibratory Hammer; Water Pumps ; Welding Machines

TRUCK DRIVERS

Group 1 - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

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TRUCK DRIVERS (CONT'D)

Group 2 - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group 3 - 2, 3, or 4 Axles hauling 16 tons or more; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

Group 4 - Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

PAID HOLIDAYS (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; & G-Christmas Day

FOOTNOTES:
a. Employer contributes 8% of regular rate to vacation pay credit for employee who has worked in business more than 5 years and 6% of regular hourly rate for employee who has worked in business less than 5 years
b. 7 Paid Holidays: A through G
c. $25.00 per year
d. 3% of gross earnings to SASMI
e. $55.00 per week

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Montana
DECISION NUMBER:MT84-5041
Supersedes Decision No. MT83-5126 dated December 9, 1983, in 48 FR 55254
DESCRIPTION OF WORK: Heavy and Highway Projects

COUNTIES: Statewide
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Area 1:		
Carpenters		
Zone 1	$12.73	$2.76
Zone 2	13.38	2.76
Zone 3	13.58	2.76
Zone 4	13.98	2.76
Sawfiler, Stationary Power Saw Operator, Carpenters working burned, charred, creosoted or similar treated material, Piledriver:		
Zone 1	12.98	2.76
Zone 2	13.63	2.76
Zone 3	13.83	2.76
Zone 4	14.23	2.76
Millwrights:		
Zone 1	13.73	2.76
Zone 2	14.38	2.76
Zone 3	14.58	2.76
Zone 4	14.98	2.76
Area 2:		
Carpenters	13.06	2.76
Millwrights	14.06	2.76
Piledrivers	13.81	2.76
CEMENT MASONS:		
Cement Masons:		
Zone 1	12.53	2.05
Zone 2	13.18	2.05
Zone 3	13.38	2.05
Zone 4	13.78	2.05
Grinder, Bush Hammer and Chipping Gun when finishing work is to follow or to prepare a finished surface		
Zone 1	12.68	2.05
Zone 2	13.33	2.05
CEMENT MASONS: (Cont'd)		
Zone 3	$13.53	$2.05
Zone 4	13.93	2.05
Epoxy Work		
Zone 1	12.83	2.05
Zone 2	13.48	2.05
Zone 3	13.48	2.05
Zone 4	13.88	2.05
ELECTRICIANS:		
Area 1	16.35	1.55+ 3-1/2%
Area 2:		
Electricians	18.05	1.55+ 3-1/2%
Cable Splicers	18.95	1.55+ 3-1/2%
Area 3:		
Electricians	15.15	1.80+ 3-1/2%
Cable Splicers	15.90	1.80+ 3-1/2%
Area 4	16.60	1.80+ 3-1/2%
Area 5:		
Electricians	17.20	1.80+ 3-1/2%
Cable Splicers	18.06	1.80+ 3-1/2%
Area 6:		
Electricians	18.95	1.35+ 3-1/2%
Cable Splicers	19.89	1.35+ 3-1/2%
Area 7:		
Electricians	15.40	1.55+ 3-1/2%
Cable Splicers	16.17	1.55+ 3-1/2%
Area 8:		
Electricians	15.40	1.55+ 3-1/2%

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	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS: (Cont'd)		
Area 8: (Cont'd)		
Cable Splicers	$16.17	$1.55+ 3-1/2%
IRONWORKERS:		
Area 1	15.41	3.05
Area 2	17.74	4.15
Area 3	15.41	3.05
PAINTERS:		
Area 1:		
Brush or Roller, Prep work, Pot Tender	12.22	1.61
Wet Sandblasting, Brush or Roller application of cold tar, epoxies and acid resistant materials	14.22	1.61
Spray application of cold tar, epoxies and acid resistant materials	17.06	1.61
Structural Steel:		
Brush or Roller	14.55	1.61
Spraying	14.55	1.61
Airless Spraying	13.22	1.61
Area 2:		
Brush; Roller	12.62	1.81
Brush, Roller on Steel and roofs, Pot Tender	13.87	1.81
Spray (not steel)	13.62	1.81
Sandblaster, commerical and steel; Spray on structural steel and tanks	13.87	1.81
Area 3:		
Painter	10.52	
Paint Mitts	13.30	
Application of cold tar products, epoxies, polyurethanes and acid resistant paints; Water Sandblasting and Steam Cleaning; Stacks and Steeples; Brushing of steel; Spraying and airless spraying; work over 30 ft.	13.30	

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	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Area 4:		
Painter Brush, Preparatory work, Pot Tender, Roller up to 9 inches	$12.97	$1.54+ 1%
Brush & Roller on steel	12.97	1.54+ 1%
Water and Sandblasting; Application of cold tar products, epoxies, polyurethanes and acid resistant paints; Spray	14.72	1.54+ 1%
Roller over 9" long	14.47	1.54+ 1%
Area 5	10.90	
Area 6	15.42	1.81
Area 7:		
Highway parking and marking traffic surface applicator Operator; Material Mixer; Sandblaster; Striper	13.00	1.54
The installation of plastic, metal or compostion button, or lines used instead of paint		
PLUMBERS:		
Area 1	18.63	3.50
Area 2	17.95	2.42
Area 3	16.45	1.95
Area 4	18.85	2.90
SHEET METAL WORKERS	16.00	3.07
LABORERS:		
Group 1		
Zone 1:	11.10	2.85
Zone 2:	11.75	2.85
Zone 3:	11.95	2.85
Zone 4:	12.35	2.85
Group 2		
Zone 1:	11.21	2.85
Zone 2:	11.86	2.85
Zone 3:	12.06	2.85
Zone 4:	12.46	2.85

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	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd)		
Group 3		
Zone 1:	$11.35	$2.85
Zone 2:	12.00	2.85
Zone 3:	12.20	2.85
Zone 4:	12.60	2.85
Group 4		
Zone 1:	12.05	2.85
Zone 2:	12.70	2.85
Zone 3:	12.90	2.85
Zone 4:	13.30	2.85

POWER EQUIPMENT OPERATORS:

Group 1

	ZONE 1	ZONE 2	ZONE 3	ZONE 4
A-Frame Truck Crane, Winch Truck & Similar	$14.20	$14.85	$15.05	$15.45
Air Compressor Operator, Single	13.89	14.54	14.74	15.14
Air Compressor Operator, 2 or more	14.06	14.71	14.91	15.31
Air Doctor	14.36	15.01	15.21	15.61
Belt Finishing Machine Operator	14.06	14.71	14.91	15.31
Bit Grinder	14.36	15.01	15.21	15.61
Bitum. Mixer Paving, Travel Plant	14.36	15.01	15.21	15.61
Boring Machine Operator, Jeep, Pickup or farm tractor mounted	13.95	14.60	14.80	15.20
Broom Operator self-propelled	14.03	14.68	14.88	15.28
Cement Silo Operator	14.15	14.80	15.00	15.40
Chain Bucket Loader	14.08	14.73	14.93	15.33
Concrete Batch Oiler, Assistant to Engineer				
up to and incl. 2 mixers	13.88	14.53	14.73	15.13
3 mixers and over	14.19	14.84	15.04	15.44
Concrete Bucket Dispatcher	14.36	15.01	15.21	15.61
Concrete Curing Machine	13.86	14.51	14.71	15.11
Concrete Conveyor under 40'	13.44	14.14	14.29	14.69
Concrete Conveyor over 40'	14.19	14.84	15.04	15.44
Concrete Mixer Operator				
3 bags and under	13.45	14.10	14.30	14.70
4 bags and over	13.62	14.27	14.47	14.87
Concrete Power Saw, self-propelled	13.86	14.51	14.71	15.11
Concrete Travel Batcher	13.86	14.51	14.71	15.11
Conveyor Loader Operator				
up to and including 42" belt	13.44	14.09	14.29	14.69
over 42" belt	13.56	14.21	14.41	14.81
Crane Oiler, Assistant to Engineer	13.43	14.08	14.28	14.68
Crusher Oiler & Helper, Assistant to Engineer	13.35	14.00	14.20	14.60
Crusher Conveyor Operator, when required	13.32	13.97	14.17	14.57
DW 10, 15, 20 Tractor Pulling Roller	13.58	14.23	14.43	14.83
Elevating Grader	13.86	14.51	14.71	15.11
Farm Type Tractor, up to and including 50 h.p. engine	13.32	13.97	14.17	14.57
over 50 h.p. engine	13.40	14.05	14.25	14.65

Fringe Benefits

$2.69

POWER EQUIPMENT OPERATORS:

	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Group 1 cont'd.				
Field Equipment Serviceman Helper	$10.00	$10.65	$10.85	$11.25
Fireman	13.45	14.10	14.30	14.70
Forklift, on Construction Site	13.67	14.32	14.52	14.92
Form Grader Operator	13.63	14.28	14.48	14.88
Grade Setter	13.32	13.97	14.17	14.57
Heavy Duty Drills, Helper	13.45	14.10	14.30	14.70
Herman Nelson Heater & Similar Types	13.40	14.05	14.25	14.65
Hoist Operator, Single Drum	13.63	14.28	14.48	14.88
Hoist Operator, two or more drums	13.86	14.51	14.71	15.11
Helicopter Hoist Operator	14.36	15.01	15.21	15.61
Hot Plant Oiler, Assistant to Engineer, 100 Ton per hour or over	13.35	14.00	14.20	14.60
Hydrolift and similar types	13.76	14.41	14.61	15.01
Mechanic on job	10.00	10.65	10.85	11.25
Mixermobile	13.94	14.59	14.79	15.19
Mountain Logger or similar type	13.86	14.51	14.71	15.11
Oiler, Hoist House, Dams, Assistant to Engineer	13.76	14.41	14.61	15.01
Oiler-Driver, Rubber-tired Cranes, Assistant to Engineer	13.43	14.08	14.28	14.68
Oilers, other than shovels & cranes, Assistant to Engineer	13.35	14.00	14.20	14.60
Pavement Breaker, Emsco & similar	13.86	14.51	14.71	15.11
Power Mixer, single or double drum	13.86	14.51	14.71	15.11
Power Saw, self-propelled, multiple cut	13.86	14.51	14.71	15.11
Pumpman	13.39	14.04	14.24	14.64
Radiator Repairman	13.67	14.32	14.52	14.92
Refrigerator Plant Operator	13.86	14.51	14.71	15.11
Retort Operator	13.45	14.10	14.30	14.70
Roller, on other than hot mix oil paving	13.56	14.21	14.41	14.81
Roller, 25 ton or over	13.86	14.51	14.71	15.11
Shovel Oiler, Assistant to Engineer, 3 cy. and under	13.35	14.00	14.20	14.60
Shovel Oiler, Assistant to Engineer, over 3 cy.	13.76	14.41	14.61	15.01
Turnhead Conveyor Operator or Head Tower Operator on Batch Plant	13.86	14.51	14.71	15.11
Wagner Roller and similar type	13.86	14.51	14.71	15.11
Whirley Crane Oiler, Assistant to Engineer	13.76	14.41	14.61	15.01
Water Pull when used for compaction	13.86	14.51	14.71	15.11
Washing & Screening Plant Oiler, Assistant to Engineer	13.35	14.00	14.20	14.60

Fringe Benefits
$2.69

POWER EQUIPMENT OPERATORS:

	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Group 2				
Chip-Gravel Spreader, self-propelled	$13.68	$14.33	$14.53	$14.93
Concrete Float Operator & Spreader	13.96	14.61	14.81	15.21
Distributor Operator	13.96	14.61	14.81	15.21
Electric Overhead Cranes	14.14	14.79	14.99	15.39
Heavy Duty Drills all types	13.96	14.61	14.81	15.21
Hot Plant Fireman (when in operation)	13.96	14.61	14.81	15.21
Roller, on blade or hot mix oil paving	13.96	14.61	14.81	15.21
Ross and similar type carriers on construction site	13.96	14.61	14.81	15.21
Scraper, DW 15, 20, 21 & similar type if power is not used	13.96	14.61	14.81	15.21
Self-propelled Sheeps Foot & Similar Type	13.96	14.61	14.81	15.21
Group 3				
Asphalt Paving Machine Operator	14.06	14.71	14.91	15.31
Asphalt Paving Machine Screed Operator	14.06	14.71	14.91	15.31
Automatic Finegrader, Gurries and other similar types	14.19	14.84	15.04	15.44
Boring Machine Operator, large	14.06	14.71	14.91	15.31
Cableway Highline Operator	14.57	15.22	15.42	15.82
Central Mixing Plants, concrete dams & stationary	14.31	14.96	15.16	15.56
Concrete Batch Plant Operator				
1 and 2 mixers	14.06	14.71	14.9	15.31
3 and 4 mixers	14.26	14.91	15.11	15.51
5 mixers and over	14.46	15.11	15.31	15.71
Concrete Finish Machine Paving	14.06	14.71	14.91	15.31
Concrete Pump	14.39	15.04	15.24	15.64
Crane Operator, to and including 80' boom	14.22	14.87	15.07	15.47
Crane Operator, 81' to 130' boom	14.37	15.02	15.22	15.62
Crane Operator, 131' to 180' boom (Additional $.05 per hour is added for each 50' of boom. Jibs to be included in boom length.)	14.42	15.07	15.27	15.67
Crater Crane	14.22	14.87	15.07	15.47
Tower Crane	14.22	14.87	15.07	15.47
Skyhorse & Ringer Crane				
250 Ton through 399 Ton	15.22	15.87	16.07	16.47
400 Ton through 599 Ton	16.22	16.87	17.07	17.47
600 Ton and Over	17.22	17.87	18.07	18.47

Fringe Benefits
$2.69

POWER EQUIPMENT OPERATORS:

Group 3 cont'd.	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Crusher Operator	14.06	14.71	14.91	15.31
Field Equipment Serviceman	13.98	14.63	14.83	15.23
Gradall Operator	14.06	14.71	14.91	15.31
Hot Plant Operator	14.06	14.71	14.91	15.31
Industrial Locomotives (all types)	14.06	14.71	14.91	15.31
Mechanic	14.16	14.81	15.01	15.41
Motor Patrol Operator	14.19	14.84	15.04	15.44
Mucking Machine Operator	14.06	14.71	14.91	15.31
Paving & Mixing Machine Operator	14.19	14.84	15.04	15.44
Power Auger, large truck or tractor, mounted & punch	14.06	14.71	14.91	15.31
Pumpcrete or Grout Machine Operator	14.06	14.71	14.91	15.31
Push Tractor, Dozer, or Side Boom, Rubber-tired Dozer	14.06	14.71	14.91	15.31
Quad Cat	14.36	15.01	15.21	15.61
Quad Loader & similar type	14.64	15.29	15.49	15.89
Raygo Giant	14.64	15.29	15.49	15.89
Rubber-tired Front End Loader				
1 cy. and under	13.77	14.42	14.62	15.02
over 1 cy. to and including 3 cy.	14.06	14.71	14.91	15.31
over 3 cy. to and including 5 cy.	14.18	14.83	15.03	15.43
over 5 cy. to and including 10 cy.	14.28	14.93	15.13	15.53
over 10 cy. to and including 15 cy.	14.38	15.03	15.23	15.63
over 15 cy. (Factory rating, not to include sideboards)	14.48	15.13	15.33	15.73
Scraper, Single Engine	14.19	14.84	15.04	15.44
Scraper, Single or Twin Engine, pulling belly dump trailer	14.44	15.09	15.29	15.69
Scraper, Twin Engine	14.29	14.94	15.14	15.54
Scraper, Tandem or 3 engined	14.55	15.20	15.40	15.80
Shovels, including all attachments Under 1 cy.	14.06	14.71	14.91	15.31
Shovels, including all attachments 1 cy. to and including 3 cy.	14.24	14.89	15.09	15.49
Shovels, including all attachments over 3 cy. and including 5 cy.	14.51	15.16	15.36	15.76
Shovels, including all attachment over 5 cy.	14.64	15.29	15.49	15.89
Slip Form Paver Operator	14.19	14.84	15.04	15.44
Stiff-leg Derrick & Guy Derrick	14.51	15.16	15.36	15.76
Track-type Front End Loaders				
Up to and including 5 cy.	14.06	14.71	14.91	15.31
over 5 cy. to and including 10 cy.	14.29	14.94	15.14	15.54
over 10 cy. to and including 15 cy.	14.39	15.04	15.24	15.64
over 15 cy.	14.49	15.14	15.34	15.74
Track-type tractor, on Euclid Loader	14.24	14.89	15.09	15.49
Trenching Machine Operator	14.06	14.71	14.91	15.31
Washing & Screening Plant Operator	14.06	14.71	14.91	15.31
Yo-Yo Cat, both ends	14.26	14.91	15.11	15.51
Whirley Crane Operator	14.59	15.24	15.44	15.84

Fringe Benefits
$2.69

TRUCK DRIVERS:	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Combination Truck and Concrete Mixer and Transit Mixer				
To and including 4 cu. yds.	$13.75	$14.40	$14.60	$15.00
Over 4 cu. yds. to and incl. 6 cu. yds.	13.83	14.48	14.68	15.08
Over 6 cu. yds. to and incl. 8 cu. yds.	13.91	14.56	14.76	15.16
Over 8 cu. yds. to and incl. 10 cu. yds.	13.99	14.64	14.84	15.24
Over 10 cu. yds. add 8¢ per hour each additional 2 cu. yd increment.				
Distributor Driver and Helper	13.73	14.38	14.58	14.98
Dry Batch Trucks				
3 batch or under	13.50	14.15	14.35	14.75
Over 3 batch to and incl. 5 batch	13.63	14.28	14.48	14.88
Over 5 batch to and incl. 10 batch	13.79	14.44	14.64	15.04
Over 10 batch to and incl. 15 batch	13.95	14.60	14.80	15.20
Over 15 batch add 15¢ per hour each additional 5 batch increment				
Dumpman, Gravel Spreader Box Operator				
Dump Trucks and Similar Equipment.				
DW20, DW21 or Euclid Tractors, pulling P.R. 21 or similar Dump Wagons				
Water Level Capacity, including sideboards 7 cu. yds. or less	13.50	14.15	14.35	14.75
Over 7 cu. yds. to and incl. 10 cu. yds	13.63	14.28	14.48	14.88
Over 10 cu. yds. to and incl. 15 cu. yds	13.79	14.44	14.64	15.04
Over 15 cu. yds. to and incl. 20 cu. yds	13.93	14.58	14.78	15.18
Over 20 cu. yds. to and incl. 25 cu. yds	13.99	14.64	14.84	15.24
Over 25 cu. yds. to and incl. 30 cu. yds	14.05	14.70	14.90	15.30
Over 30 cu. yds. to and incl. 35 cu. yds	14.11	14.76	14.96	15.36
Over 35 cu. yds. to and incl. 40 cu. yds	14.17	14.82	15.02	15.42
Over 40 cu. yds. to and incl. 45 cu. yds	14.23	14.88	15.08	15.48
Over 45 cu. yds. add 10¢ per hour each additional 5 cu. yd increment				
Dumpsters	13.63	14.28	14.48	14.88
Flat Trucks				
To and incl. 3-ton Factory Rating	13.65	14.30	14.50	14.90
Over 3-ton Factory Rating	13.85	14.50	14.70	15.10
Servicemen	14.34	14.99	15.19	15.59
Lowboys, Four-wheel trailer, gloat semitrailer	13.85	14.50	14.70	15.10
Lumber Carriers, Lift Trucks and Fork Lifts	13.75	14.40	14.60	15.00
Pickup Driver, hauling materials	13.60	14.25	14.45	14.85
Pilot Car Driver	10.00	10.65	10.85	11.25
Powder Truck Driver (Bulk unloader type)	13.68	14.63	14.83	14.93
Power Boom	13.59	14.24	14.44	14.84
Service Truck Drivers, Fuel Truck Drivers, Tiremen	14.09	14.74	14.94	15.34
Teamsters and Helpers	13.50	14.15	14.35	14.75
Warehouseman, Partsmen, Cardex Men and Warehouse Expediter	13.75	14.40	14.60	15.00
Water Tank Drivers, Petroleum Products Drivers				
2,500 gals. and under	13.50	14.15	14.35	14.75
Over 2,500 gals. to and incl. 4,500 gals.	13.79	14.44	14.64	15.04
Over 4,500 gals. to and incl. 6,000 gals.	13.99	14.64	14.84	15.24
Over 6,000 gals. to and incl. 8,000 gals.	14.05	14.70	14.90	15.30
Over 8,000 gals. to and incl. 10,000 gals.	14.13	14.78	14.98	15.38
Over 10,000 gals. add 10¢ per hour each additional 2,000 gal increment				

Fringe Benefits
$2.79

TRUCK DRIVERS:

Trucks with power equipment if under Teamster Jurisdiction, such as	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Winch, A-frame Truck, Swedish Crane, Hydralift, Grout-crete Truck and Combination Mulching, Seeding and Fertilizing Truck	$13.75	$14.40	$14.60	$15.00
Truck Mechanic	14.49	15.14	15.34	15.74
Fringe Benefits	$2.79			

All tunnel and underground work will be paid at 10% premium above the classification of equipment operated

CARPENTERS:

Area 1:

Zone Definitions - Carpenters
The zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court house of the following listed towns to the center of the job:

Anaconda	Glendive	Kalispell	Missoula
Billings	Great Falls	Lewistown	Sidney
Bozeman	Havre	Livingston	
Glasgow	Helena	Miles City	

Zone 1 0-15 miles
Zone 2 15 to 30 miles
Zone 3 30 to 50 miles
Zone 4 Over 50 miles

Geographical Jurisdiction:
Area 1
Statewide (Except Beaverhead and Silverbow Counties
Area 2
Beaverhead and Silverbow Counties

CEMENT MASONS:

Zone Definitions - Cement Masons
The zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the County Court house of the following listed towns to the center of the job:

Billings	Glasgow	Helena	Missoula
Bozeman	Glendive	Kalispell	Sidney
Butte	Great Falls	Lewistown	
Dillon	Havre	Miles City	

Zone 1 0-15 miles
Zone 2 15-30 miles
Zone 3 30-50 miles
Zone 4 Over 50 miles

Geographical Jurisdiction

Statewide Montana

LABORERS; POWER EQUIPMENT OPERATORS AND TRUCK DRIVERS

Zone Definitions

The zone hourly rate applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job:

Billings	Glendive	Kalispell	Missoula
Bozeman	Great Falls	Lewistown	Sidney
Butte	Havre	Miles City	
Dillon	Glasgow	Helena	

Zone 1 0-15 miles
Zone 2 15 to 30 miles
Zone 3 30-50 miles
Zone 4 Over 50 miles

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA

COUNTIES: BEDFORD, CAMBRIA, CAMERON, CLARION, CLEARFIELD JEFFERSON, CRAWFORD AND VENANGO

DECISION NO.: PA84-3042

DATE: DATE OF PUBLICATION

Supersedes Decision No. PA82-3027 dated, October 8, 1982, in 47 FR 44670.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories), excluding Sewage and Water Treatment Plant Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
ZONE 1	16.10	5.57
ZONE 2	19.54	3.38
BOILERMAKERS		
ZONE 1	17.54	.79+ 14½%
ZONE 2	20.37	4.19
BRICKLAYERS & STONEMASONS		
ZONE 1	14.00	3.42
ZONE 2	16.80	2.35
ZONE 3	16.85	2.37
ZONE 4	15.34	2.60
ZONE 5	14.00	3.42
CARPENTERS & SOFT FLOOR LAYERS		
ZONE 1	14.00	30%
ZONE 2	15.05	28½%
CEMENT MASONS		
ZONE 1	15.94	4.54
ZONE 2	14.00	3.40
ZONE 3	17.85	1.37
ZONE 4	16.80	2.35
ELECTRICIANS:		
ZONE 1	17.72	3.45+ 3%
ZONE 2	17.05	6.37+ 3%
ZONE 3	17.50	1.50+ 10½%
ELEVATOR CONSTRUCTORS	17.94	3.29+ j+k
ELEVATOR CONSTRUCTORS	12.56	3.29+ j+k
ELEVATOR CONSTRUCTORS HELPERS (PROB.)	8.97	
GLAZIERS		
ZONE 1	15.73	5.45
ZONE 2	16.54	1.42
IRONWORKERS		
ZONE 1	16.37	6.50
ZONE 2	15.60	2.85
ZONE 3	16.30	4.14
ZONE 4	17.96	4.21
ZONE 5	14.59	5.34

	Basic Hourly Rates	Fringe Benefits
LABORERS		
ZONE 1		
CLASS I	13.42	23%
CLASS II	13.56	23%
CLASS III	13.69	23%
CLASS IV	13.96	23%
CLASS V	14.14	23%
ZONE 2		
CLASS I	13.74	20%
CLASS II	13.85	20%
CLASS III	13.84	20%
CLASS IV	13.88	20%
CLASS V	13.98	20%
CLASS VI	13.39	20%
CLASS VII	14.28	20%
ZONE 3		
CLASS I	13.35	22%
CLASS II	13.60	22%
CLASS III	14.15	22%
ZONE 4		
CLASS I	13.42	23%
CLASS II	13.50	23%
CLASS III	13.81	23%
CLASS IV	13.87	23%
CLASS V	13.66	23%
CLASS VI	13.99	23%
CLASS VII	13.66	23%
CLASS VIII	13.87	23%
ZONE 5		
CLASS I	11.65	2.79
CLASS II	12.15	2.79
CLASS III	13.25	2.79
CLASS IV	12.15	2.79
CLASS V	11.72	2.79
ZONE 6		
CLASS I	11.92	2.86
CLASS II	12.42	2.86
CLASS III	12.52	2.86
CLASS IV	12.42	2.86
CLASS V	11.99	
LANDSCAPING:		
ZONE 1		
CLASS I	10.45	25%
CLASS II	10.87	25%
ZONE 2		
CLASS I	13.35	22%

DECISION NO. PA84-3042	Basic Hourly Rates	Fringe Benefits
LATHERS Bedford, Cambria, Cameron, Clarion, Clearfield, Crawford, Jefferson Cos.	14.00	30%
LEAD BURNERS	10.75	66+a
LINE CONSTRUCTION		
ZONE 1		
CLASS I	18.01	.80+ 3 3/8%
CLASS II	11.17	.80+ 3 3/8%
CLASS III	13.03	.80+ 3 3/8%
ZONE 2		
CLASS I	16.29	1.00+ 3 3/8%
CLASS II	11.59	1.00+ 3 3/8%
CLASS III	10.30	1.00+ 3 3/8%
MARBLE SETTERS		
ZONE 1	14.00	3.42
ZONE 3	16.85	2.37
ZONE 4	15.16	4.27
MARBLE FINISHER: Counties covered Bedford Cambria, Clarion and Jefferson	7.95	.10
MILLWRIGHTS	15.22	43½%
PAINTERS:		
ZONE - 1		
COMMERCIAL - shall include stores, schools, warehouses not in plant showrooms, apartment buildings, commercial garage, office buildings Brush & Roller	13.84	3.52
INDUSTRIAL - shall include sewage treatment plants, water works or authorities, and power plants, all skeleton steel, railroad and highway bridges, towers, tanks, furnances, machinery, corrugated ceiling and sidewalks sheeting steel sash and all steel surfaces, offices & hospital, both interior and exterior		
Brush	17.60	2.56
ZONE 2		
COMMERCIAL - shall include stores, schools, warehouses not in plant showrooms, apartment buildings, commercial garage, office buildings		
Brush & Roller	16.70	2.80
Spray	17.70	2.80
INDUSTRIAL - shall include sewage treatment plants, water works or authorities, and power plants, all skeleton steel, railroad and highway bridges, towers tanks, storage tanks, furnances, machinery, corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, offices & hospital, both interior and exterior		
Brush & Roller	17.20	2.80
Spray	18.20	2.80
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION		
CLASS 1	16.395	4.12
CLASS 1-A	16.645	4.12
CLASS 1-B	16.895	4.12
CLASS 1-C	17.145	4.12
CLASS 1-D	18.395	4.12
CLASS 2	16.245	4.12
CLASS 3	13.77	4.12
CLASS 3-A	14.27	4.12
CLASS 4	13.02	4.12
CLASS 5	11.97	4.12
CLASS 6	12.27	4.12
CLASS 6-A	12.37	4.12
CLASS 6-B	12.52	4.12
CLASS 6-C	13.27	4.12

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	Basic Hourly Rates	Fringe Benefits
PILEDRIVERMEN	16.14	28%
PLASTERERS		
ZONE 1	16.85	2.37
ZONE 2	16.80	2.35
ZONE 3	15.35	.01
PLUMBERS & STEAMFITTERS		
ZONE 1	17.08	4.40
ZONE 2	16.57	4.40
ZONE 3	16.90	4.40
ZONE 4	17.60	.35+ 19%
ROOFERS		
ZONE 1	16.33	1.73
ZONE 2	17.34	4.10
SHEET METAL WORKERS		
ZONE 1	16.49	4.96
ZONE 2	15.73	4.92
SPRINKLER FITTERS	16.92	3.23
TRUCK DRIVERS		
ZONE 1		
CLASS I	8.42	c+d
CLASS II	8.35	c+d
CLASS III	8.42	c+d
CLASS IV	8.17	c+d
ZONE 2		
CLASS I	11.86	16.8%+e
CLASS II	11.91	16.8%+e
CLASS III	11.93	16.8%+e
CLASS IV	12.01	16.8%+e
CLASS V	12.20	16.8%+e
CLASS VI	12.03	16.8%+e
CLASS VII	12.18	16.8%+e
ZONE 3		
CLASS I	7.20	.40
CLASS II	7.30	.40
CLASS III	7.40	.40
CLASS IV	7.50	.40
CLASS V	7.35	.40
CLASS VI	7.45	.40
CLASS VII	7.40	.40
CLASS VIII	7.70	.40
CLASS IX	7.80	.40
CLASS X	7.45	.40
CLASS XI	7.70	.40
ZONE 4		
CLASS I	9.12	f+g+h

AREA COVERED BY ASBESTOS WORKERS ZONES

ZONE 1 - Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson
ZONE 2 - Crawford and Venango

AREA COVERED BY BOILERMAKERS ZONES

ZONE 1 - Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Venango
ZONE 2 - Crawford

AREA COVERED BY BRICKLAYERS & STONEMASONS ZONES

ZONE 1 - Cambria
ZONE 2 - Clearfield, Jefferson, Venango and Clarion Counties
ZONE 3 - Crawford
ZONE 4 - Cameron
ZONE 5 - Bedford

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AREA COVERED BY CARPENTER & SOFT FLOOR LAYERS ZONES

ZONE 1 - Bedford, Cambria, Cameron, Clarion, Clearfield, Crawford, Jefferson Counties
ZONE 2 - Venango County

AREA COVERED BY CEMENT MASONS

ZONE 1 - Clearfield, Jefferson
ZONE 2 - Bedford, Cameron, Cambria
ZONE 3 - Crawford
ZONE 4 - Clarion & Venango

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1 - Bedford, Cambria, Clearfield, Clarion, Jefferson & Cameron
ZONE 2 - Crawford
ZONE 3 - Venango

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson Counties
ZONE 2 - Crawford & Venango Counties

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Cambria & Clarion
ZONE 2 - Bedford County
ZONE 3 - Crawford County
ZONE 4 - Venango County
ZONE 5 - Cameron, Clearfield & Jefferson

LABORERS CLASSIFICATIONS DEFINITIONS AND AREA COVERED

ZONE 1 - Clarion & Jefferson Counties
CLASS I - Laborers, carryable pumps, west brick buggy or similar (non-self-propelled) vibrator operators, walk behind forklift or similar, stripper & mover of forms, cement finisher, footers, window cleaner, all material conveyor (regardless of power used, incl. starting & stopping)
CLASS II - West brick buggy or similar (self-Propelled), power wheelbarrows & buggies, walk behind forklift or similar (self-propelled), wagon drill tender, drill mounted on truck, track or similar blaster's tenders, all operators of compacting equipment, pipe layer, burner, jackhammerman, concrete buster
CLASS III - Hod carrier, scaffold builder, bell & bottom man on furances & stacks, mortar mixer, mortar mixing machine (regardless of power used, inc. starting & stopping) grout machine feeder & pump operator, wagon drill operator, concrete saw operator wagon
CLASS IV - Gunnite nozzleman
CLASS V - Blaster
ZONE 2 - Venango County
CLASS I - Building laborer, west brick buggy or similar, walk behind forklift or similar (non-self-propelled), stripper and mover of forms, window cleaner, cement finisher, footers
CLASS II - Powered wheelbarrows, buggies
CLASS III - Mason tender, pipe layer, bottom man (10' below grade)
CLASS IV - Mortar mixer, mason plasterer, hod carrier, scaffold builder, concrete buster-jackhammer (air tool, electric, other) other mechanical or power tools concrete saw, carryable pumps and operating all operators of compacting equipment, grout machine feeder and pump operator, all material conveyors (regardless of power used, including starting & stopping), bell and bottom man on furnaces & stacks
CLASS V - Burner (demolition) groundman, jackhammerman; drill man blaster tender, wagon drill tender
CLASS VI - High (climber)
CLASS VII - Blaster, wagon drill operator
ZONE 3 - Cameron County
CLASS I - Common laborer, carpenter tender, scaffold builder for mason, window cleaner, form stripper and mover, scaffold and runways, building material handlers (loading and unloading) concrete pitman, puddler, mason tender
CLASS II - Mechanical tampers (power), powered wheelbarrows and buggies & work-lifts, sweepers and similar, mortar mixer, bell bottom man on furnances and stacks, jackhammer man, concrete buster, wagon drill tender, concrete saw operator, blaster's tender, drill runner's tender (includes drill mounted trucks, tracks of similar) sheeters and shores, vibrator operators, power tamper operators, y-gun, burner cutting torch, carryable pumps, chain saw operator, pipe layers, all material conveyors and elevators signal man, walk behind fork lift or similar, scaffold builder for plasterers; regardless of height, hod carrier, plasterers tender, form cleaning machine operator, plasterer application and/or pump machine operator, paving breaker asphalt raker, lancer, berfix cutting tool, gunnite potman, blacksmith, tool, dresser (cable tools)

LABORERS CLASSIFICATION DEFINITIONS AND AREA COVERED CONT'D

CLASS III - Blasters, wagon drill operator, drill runner, gunnite nozzle man, groute machine operator, walk behind power roller and tamper, welder, drill (cable tools)
ZONE 4 - Crawford County
CLASS I - Common laborers
CLASS II - Mason tender, hod carriers, mortar mixers, scaffold builder
CLASS III - Pipelayers (concrete & clay)
CLASS IV - Blaster, mechanical tampers, powered wheel-barrow, wagon drill operators
CLASS V - Material, buggy handler, blaster tender, all power tool operators, wagon drill tenders & drill runner
CLASS VI - Burners
WHEN WORKING IN PIERS, TRENCHERS, OPEN COFFER DAMS & CAISSONS AT DEPTHS MORE THAN TEN (10) FEET BELOW THE LOWEST ADJACENT GRADE:
CLASS VII - Bottom man
CLASS VIII - All power operators, drill man
ZONE 5 - Bedford & Clearfield Counties
CLASS I - Unskilled laborers
CLASS II - Ditch, trench or sumpwork exceeding 10' in depth including caissons
CLASS III - Blasters
CLASS IV - Air track men, demolition of chimneys & erection of towers, antennas, cooling towers, (on power plants) or other similar work 10' inheight, suspension or workmen in swinging-cages, suspended scaffolds, swings, busun's chair
CLASS V - Plasterer tenders
ZONE 6 - Cambria County
CLASS I - Unskilled laborers
CLASS II - Ditch, trench or sumpwork exceeding 10' depth including caissons
CLASS III - Blasters
CLASS IV - Air track men, demolition of chimneys & erection of towers, antennas, cooling towers, (on power plants) or other similar work 10' in height, suspension or workmen in swinging-cages, suspended scaffolds, swings, bosun's chair
CLASS V - Plasterer tenders

LANDSCAPE LABORERS DEFINITION AND AREA COVERED

ZONE 1 - Bedford, Cambria, Clarion, Clearfield, Crawford, Jefferson, Venango
CLASS I - Landscape laborer to include general landscaping work and the driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job
CLASS II - Landscape Tractor Operator to operate small industrial rubber tire tractor equipped with front end loader and back hoe attachment used for the sole purpose of landscape work including soil spreading, but not for heavy and highway construction work

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LANDSCAPE LABORERS DEFINITION AND AREA COVERED CONT'D

ZONE 2 - Cameron County
CLASS I - Landscape Laborer to include general landscaping work and the driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job

LINE CONSTRUCTIONS CLASSIFICATIONS DEFINITIONS AND AREA COVERED

ZONE 1 - Bedford, Cambria, Clarion, Clearfield & Jefferson Counties
CLASS I - Lineman
CLASS II - Groundman
CLASS III - Winch truck operator
ZONE 2 - Cameron, Crawford & Venango Counties
CLASS I - Linemen, dynamite man, heavy equipment operator
CLASS II - Winch truck operator
CLASS III - Groundman

AREA COVERED BY MARBLE SETTERS ZONES

ZONE 1 - Bedford & Cambria Cos.
ZONE 2 - Crawford County
ZONE 3 - Venango County
ZONE 4 - Jefferson County

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bedford, Cambria Counties, Beaver, Ringgold, Porter, Perry, Yound, Bell, Gaskill Twps., in Jefferson County; Remainder of Clearfield County
ZONE 2 - Cameron, Clarion, Crawford, Venango Counties, remainder of Jefferson County; Townships in Clearfield County - Bell, Burnside, Greenwood, Chester, Jordan, Beccaria, Knox, and Fergusen

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CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS

CLASS 1 - Austin-Western or similar type under 25 ton, austin-western similar type 25 ton or over, auto grader (CMI or similar, backhoe, batch plant when conveyors are used for direct deedling or discharge, batch plant no conveyors for direct feeding or discharge cableway, caisson drill, central mix plant, crane (excluding overhead) (truck or crawler type), cranes tower (mobile) cranes tower (stationary) (climbing type), cranes tower (climbing type) cranes hydraulic self contained over 18 ton cranes hydraulic self contained - 18 ton or less, derrick traveler (self propelled) derrick (all types), derrick boats, dragline, dredge, engineer maintenance, franki or similar type pile driver, gradall (remote control or otherwise), helicopter (when used for erection purposes), hi-lift 4 yds or over, hoist-hod (2 cages up to 10 floors) Chicago Boom attached hoist (50 ft. or over) stacks, stoves or furances) hoist (slipform jobs hop to or similar type with 180 swing hop to or similar type with 360 swing local koehring scooper, metro chip harvester or similar type, mix mobile or similar type (with self-loading attachment), mix mobiling or similar type, mucking machine (tunnel), multiple bowl machines, pipe driver (sonic or similar type) post driver-guard rail (truck mounted), post driver-guard rail (skid type), slip form paver (CMI or similar), tractors - boom mounted (all types), tractors (all types with hydraulic backhoe attached), tug boat, whirley
CLASS 1-A - Austin-Western or similar type under 25 ton with jib, austin-western or similar type 25 ton or over with jib, cranes boom or mast 100 ft. or over up & including 150 ft. +$.25)(truck or crawler type), cranes mobile (any type 15 ton or over placed on nay bldg. structure + $.25), hoist-hod (2 cages over 10 floors Class I rate +$.25, hoist single cage with
CLASS 1-B - Cranes (boom or mast over 150 ft. up to & including 200 ft. +$.50) (truck or crawler type), engineer lead
CLASS 1-C - Cranes (boom or mast over 200 ft. + .75)
CLASS 1-D - Gradall (remote control)
CLASS 2 - Asphalt plant operator, athey loader, auger - truck or tractor, mounted, back filling machine, boat material or personnel carrying (powered) boat - job work (inboard or outboard), bulldozer, cable layer, compactor with blade, compressor (1) and air tugger (1) (combination), compressor (1) and gunite machine (1) (combination), concrete belt placer, crane - overhead, crushing & screening plants, drill - davey or similar type drill - core (truck or skid mounted), drill - well & core (truck mounted), elevator (new buildings),euclid loader, excavating equipment (all other), forklift lull or similar, (grader), grader elevating, greaser-equipment (head), hi-lift-less than 4 yds., hoist - one drum (4 floors or over), hoist - hod (buildings 4 floors or more), hoist - (2 drums or more in one unit), jumbo operator, locomotive, lift slab machine (hydraulic) mixer - paving, mucking machine, pipe cleaning machine, refrigeration plant (used for construction jobs that is, cooling concrete & holding banks), ross carrier (or similar type), scoop (single bowl) (self-powered & tractor drawn), spreader - concrete, asphalt and stone, tower mobile (hoisting

CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS CONT'D

CLASS 2-CONT'D - or lowering material), trencher, well point systems, (the following machines shall be consider minor), compressors (3 within a reasonable distance); generators electric (3) (over 5 KW up to 20 KW), pumps (1½" discharge or less) (4 to 5 within reasonable distance), welding machines (4 to 6 within reasonable distance) (other than electrically driven), grout pump (10 H. P. or over), elevator (when used for alterations & remodeling all buildings), paver operator - asphalt (spreader), pumpkrete or similar type (not self-propelled), pumpkrete machine operator (stationary), tire repairman (when assigned job), welder (repairmen)

CLASS 3 - Boiler, compactor (ridden or self-propelled), compressor (over 125 CFM and air pump), compressor (1) and sand blasting machine (1) (combination), crane (carry), curb builder (selfpropelled), drills-well & horizional truck mounted, forklifts (ridden or self-propelled), hoist one drum (regardless of power used), pavement breaker (self-propelled or ridden), pipe dream, roller, saw (concrete), soil stabilizer (pump type), stone crusher, stone spreader self-propelled, tractors (when used for snaking and hauling), tube finisher (CMI or similar type) tugger, truck, (winch) truck or hydraulic boom (when hoisting & placing), compressors (2) generators (2) mortar machine over 10 cu. ft. and single unit conveyor, pumps (1¼" discharge or less (2 to 3), pumps (over 1¼" discharge (2) in back) within reasonable distance), welding machine (2 to 3), (other than electrically driven)

CLASS 3-A - Conveyors 4 units or more

CLASS 4 - Ballast regulator, boring machine, broom power (except push type), compressor - single (over 65 CFM), conveyor over 1 and up to 3 units (regardless of power used) form line machine, generator (over 5 KW), hoist (monorail) (regardless of power used), hoist roof (regardless of power used), huck machine or similar type, mixer concrete (regardless of power used) mixer mortar - over 10 cu. ft. (regardless of power used) pump (over 1¼" discharge regardless of power used) spray cure machine (power driven) steam jenny (or similar type) syphone (steam or air) welding machine single (300 amp or over) (other than electrically driven) plant, private or industrial air of steam valve

CLASS 5 - Compressor - 65 cubic ft. or under (regardless of power used) conveyor one (1) unit (regardless of power used) heaters - up to and including 6 jack motor hydraulic (single type) power driven ladavator, mixer mortar, (10 cubic ft. or under), mulching machine pin puller (powered) pulverizer, pump - 1½" discharge or less, seeding machine, spreader side delivery, shoulder (attachment) tie tamp (multiple heads) tractor farm (when used for landscaping) water blaster, oiler-truck crane 50 ton up to not incl. 100 ton

CLASS 6 - Brake man, deck hand, helicopter signalman, oiler, mechanic helper

CLASS 6-A - Crane truck oiler & fireman

CLASS 6-B - Oiler - Truck crane 50 ton up to & incl. 100 ton

CLASS 6-C - Oiler - Truck crane 100 ton and over

AREA COVERED BY PLASTERERS

ZONE 1 - Crawford County
ZONE 2 - Clearfield, Clarion, Jefferson, Venango Counties
ZONE 3 - Bedford, Cambria Counties

AREA COVERED PLUMBERS AND STEAMFITTERS ZONES

ZONE 1 - Clarion County
ZONE 2 - Twps. in Crawford County: Beaver, Spring, Cussawago, Cambridge Rockdale Bloomfield and Sparta
ZONE 3 - Venango County & Remainder of Crawford County
ZONE 4 - Bedford, Cambria, Cameron, Clearfield, Jefferson

AREA COVERED BY ROOFERS ZONES

ZONE 1 - Crawford, Venango Counties
ZONE 2 - Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson

AREA COVERED BY SHEET METAL ZONES

ZONE 1 - Cambria, Cameron, Clearfield, Clarion, Crawford, Jefferson, Venango
ZONE 2 - Bedford

TRUCK DRIVERS CLASSIFICATION DEFINITION AND AREA COVERED

ZONE 1 - Bedford, Cambria, Clearfield & Jefferson Counties
CLASS I - Service, dump, flat top, jeep, fuel & water
CLASS II - Transit mix, dump trailer, winch truck
CLASS III - Euclids & tractor trailer
CLASS IV - Helper
ZONE 2 - Clarion & Venango Counties
CLASS I - Service Truck (pickup, Jeep, Buses, Station Wagon, Pane; truck escort vehicle, including fuel and water trucks)
CLASS II - Dump and Flat Top (including Fuel and Water Trucks, Fork Lift in Warehouse or job site storage area and single axle trucks with power tailgate); distributor truck over 33,000 lbs. gross weight (oil, tar asphalt products two man operation, both
CLASS III - Transit mix, single axle
CLASS IV - Transit mix, single tandem axle
CLASS V - Heavy duty tractor and trailer with low bed, 6 to 16
CLASS VI - Distributor truck up to 33,000 lbs. gross weight (oil, tar asphalt products) one man operation; truck with dolly and scissor truck; truck with dump trailer or tandem, including fuel and water tandem axle truck with power tailgate and scissor truck; euclids or equivalent, tri-axle including mixer, drivers towing equipment
CLASS VII - Winch truck and form truck

DECISION NO. PA84-3042

TRUCK DRIVERS CLASSIFICATION DEFINITION AND AREA COVERED CONT'D

ZONE 3 - Cameron County
CLASS I - Trucks up to 30,000 lbs. includes pickups, fuel and water trucks)
CLASS III - Tri-Axle Trucks over 30,000 (includes fuel and water trucks)
CLASS IV - Low boy
CLASS V - Concrete Mixer Trucks
CLASS VI - Concrete Mixer Truck (Tri-Axle)
CLASS VII - Semi-Trailer
CLASS VIII - Earth Moving Equipment up to 35 Ton (Belly Dump, Side Dump, End Dump, etc.)
CLASS IX - Earth Moving Equipment over 35 Ton (Belly Dump, Side Dump, End Dump, etc.)
CLASS X - A-Frame and Winch Trucks (when used for hauling material on bed of truck)
CLASS XI - Distributor Truck (Oil, Tar, Asphalt, etc.)
ZONE 4 - Crawford County
CLASS I - Truck Drivers

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES
a. Holidays A through F, plus Washington's Birthday and Good Friday, providing the employee has worked 45 full days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

c. $59.90 per month

d. $14.00 per week

e. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day and Good Friday, provided the employee is available for work the day before and the day after the holiday and has been employed by the employer a minimum of 40 hours each calendar month for two consecutive months.

f. 1 week vacation after 1 year's work; two weeks vacation after five years of service.

DECISION NO. PA84-3042

FOOTNOTES (CONT'D)
g. $137.27 per month

h. Contributes $26.00 per week

j. Employer contributes 6% of basic hourly rate for 5 years or more of service or 8% hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

k. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc.84-32362 Filed 12-13-84; 8:45 am]
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federal register

Friday
December 14, 1984

Part III

Department of Commerce

Economic Development Administration

Applications for Loan Guarantees; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 41263-4163]

Applications for Loan Guarantees

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Notice.

SUMMARY: EDA is prepared to guarantee up to eighty percent (80%) of the principal and interest of loans to be made to private borrowers for the purchase of fixed assets and/or for working capital purposes, for projects located in areas eligible for EDA assistance. EDA loan guarantees are made available to help businesses expand, establish, or maintain operations in both urban and rural eligible areas throughout the Nation.

Preapplication Procedures

Interested applicants should contact the appropriate Regional Office Business Loan Division to discuss their proposals. EDA will screen proposals before authorizing the submission of a formal application. Proposals will be evaluated based upon the conformance with the following:

(1) Statutory requirements contained in Public Law 89-136, 42 U.S.C. 3142-3246(h);

(2) Regulatory requirements contained in 13 CFR Part 306 and 309; and restated in this notice; and

(3) Provisions of Office of Management and Budget (OMB) Revised Circular A-70, dated August 24, 1984.

EFFECTIVE DATE: December 14, 1984.

SUPPLEMENTARY INFORMATION:

A. *Amount of funding available:* EDA is authorized to commit to guarantee loans not to exceed in the aggregate $150 million of contingent liability for loan principal, available in EDA's fiscal year 1985, which ends September 30, 1985.

B. *Type of Financial Assistance:* EDA will entertain application for the guarantee of loans by private lending institutions to private borrowers to finance the costs of fixed assets or for working capital purposes, upon application of such institutions and upon such terms and conditions as the Assistant Secretary for Economic Development may prescribe. EDA will not ordinarily guarantee revolving type or open-end working capital loans, or financial assistance to refinance the existing debt of a prospective borrower. Nor will EDA normally accept applications for projects which involve real estate development for either investment or speculation purposes.

C. *Who May Apply:* Applications shall be submitted only by private lending institutions (the "applicant") for the guarantee of loans to private business enterprises. Agents or third parties may assist the proposed borrower and the applicant in the origination, preparation and submission of an application, subject however to the restrictions of 13 CFR 309.7.

D. *Long-Term Employment:* EDA seeks to create or retain permanent private-sector jobs in eligible areas. Accordingly, the project for which financial assistance is sought must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the eligible area where it is for or will be located.

E. *Repayment Ability:* The private lender and EDA must find that there is reasonable assurance of repayment of the guaranteed loan.

F. *EDA Guarantee Required:* No guarantee shall be executed by EDA unless the application is supported by evidence that the financial assistance applied for is not otherwise available to the prospective borrower either from private lenders without a guarantee or from other Federal agencies on terms which in the opinion of EDA will permit accomplishing the project.

General Conditions of Assistance

A. *Amount of Loan:* EDA will not ordinarily approve an application for a guarantee of a loan with a face value over $10 million or less than $550,000.

B. *Term of Loan:* The term of a guaranteed fixed asset loan cannot exceed the weighted average estimated useful economic life of the project fixed assets, but in no event can the term of such a loan exceed twenty-five (25) years. The term of a guaranteed working capital loan ordinarily may not exceed five (5) years and it should be amortized in full during its term.

C. *Interest Rate:* No guarantee shall be extended when EDA determines that the interest rate is excessive. Although EDA will not establish administrative ceilings on interest rates for guaranteed loans, the applicant shall submit information to justify the reasonableness of the rate charged.

D. *Guarantee Percentage:* Pursuant to OMB Revised Circular A-70, EDA may guarantee up to eighty percent (80%) of the face value of a loan. However, in those applications for a eighty percent (80%) guarantee the applicant shall submit to EDA written justification for the percentage of guarantee requested, which substantiates why a lesser guarantee percentage would not be acceptable. EDA shall give priority consideration to those project which propose an EDA guarantee of seventy-five percent (75%) or less.

E. *Guarantee Fee:* Pursuant to the OMB Revised Circular A-70, EDA will charge the applicant a guarantee fee payable quarterly.

F. *Lender's Risk:* The portion of the loan that is not guaranteed by EDA must be at risk to the applicant throughout the term of the loan. This precludes the applicant from obtaining any additional security, guarantee or compensating balances separately securing the unguaranteed portion of the loan. This does not preclude normal loan participation arrangements by the Lender provided that any such participation is acceptable to EDA.

G. *Other Lender-Borrower Relationships:* Where an applicant has other creditor-debtor relationships with the prospective borrower, EDA will scrutinize those relationships to seek to assure that they would not create conflicts of interests inconsistent with EDA's interests in the applicant's servicing of the loan for which a guarantee is sought and the applicant may be asked to demonstrate the absence of such conflicts. Ordinarily, EDA will not accept an application from an applicant who has existing short-term revolving working capital financing extended to the borrower.

H. *EDA Investment Per Job:* EDA will give priority consideration to projects entailing an EDA investment exposure of $10,000 or less per permanent job to be created or saved.

I. *Repayment Ability and Adequate Collateral:* Only projects that demonstate reasonable assurance or repayment can receive EDA financial assistance. The applicant must document why it is reasonably sure that the borrower will be able to repay the loan and that adequate collateral coverage exists. For closely-held borrowers, EDA will ordinarily require the full guarantees of controlling personal and/or corporate stockholders. Such documentation shall include but not be limited to:

(1) Applicant's normal detailed credit analysis and/or reporting including any narrative discussion of management repayment ability (with ratio analysis compared to industry standards), collateral and market conditions,

(2) A minimun of three (3) years historical financial and operating statements of the prospective borrower, which statements should be audited (for projects that do not involve a new venture);

(3) Financial statements of the prospective borrower, current at least within ninety (90) days of the date of the application;

(4) Pro forma income and cash flow statements of the prospective borrower on a month by month basis for the first year and on a quarterly basis for the next two (2) years;

(5) Pro forma balance sheet statements of the prospective borrower on a month by month basis for the first year and on a quarterly basis for the next two (2) years;

(6) Current appraisal as to the value of the collateral to support the loan. If the purchase of new machinery and equipment constitutes all or part of the prospective project cost, current-cost data for such assets may be submitted in lieu of an appraisal. Where real property is to be pledged as collateral, a description and evidence of ownerhsip must be included;

(7) Current financial statements of proposed personal and/or corporate guarantors;

(8) One copy of the proposed note and loan agreement between the applicant and the prospective borrower.

J. *Equity Requirements:* All applications for EDA financial assistance shall be supported by adequate existing and/or proposed equity so as to enhance the success of the proposed project and lessen EDA's potential exposure. All proposed projects shall be supported by minimum equity capital to the following extent:

(1) For guaranteed *fixed asset loans* EDA requires an equity contribution of at least fifteen percent (15%) of the aggregate project cost. EDA will give priority consideration to projects in which the equity contribution is cash.

(2) For guaranteed *working capital loans,* EDA requires the prospective borrower to have existing net working capital equal to not less than fifteen percent (15%) of its total working capital needs. A prospective borrower that does not meet this requirement should bring its net working capital up to this level by obtaining sufficient new cash equity.

K. *Feasibility Report:* An independent technical, financial and economic feasibility report by a firm acceptable to EDA will be required for all applications for new ventures involving a total project cost of $1 million or more. Such independent feasibility report will also be required for applications for all projects involving tourism or recreational facilities. Such a report must be related to the pro forma operating statements associated with the application. Such an independent feasibility study may be required for other applications as deemed necessary by EDA.

Ongoing Applicant Responsibilities

Upon approval of a guaranteed loan, the applicant's responsibilities shall include, but are not limited to:

A. Executing such care and diligence in the disbursement, servicing, collection and liquidation of the guaranteed loan as would be exercised by a reasonable and prudent commercial lender in dealing with a loan of its funds without the EDA guarantee.

B. In the event of the subsequent default on the loan, unless EDA elects otherwise, conducting the liquidation of the failed project prior to making demand on EDA for payment under the EDA guarantee.

Application Requirements

A. The application shall include:

(1) A signed statement by the borrower assuring that it will not use the EDA financial assistance to relocate from one labor area to another;

(2) Approval of the application by the appropriate agency or instrumentality of the State or political subdivision in which the project is located together with a signed statement by that local authority that the project is consistent with an Overall Economic Development Program approved by EDA;

(3) Certification of the names of all attorney, agents or other persons engaged by or on behalf of the applicant or borrower for the purpose of expediting the application and the fees paid to such persons. Fees and charges levied for services provided by a party with no interest in the applicant or borrower in conjunction with the origination, preparation or closing of a loan may be an allowable project cost, if the amount of the levy is found to be reasonable and appropriate;

These levies are generally related to accounting, legal, engineering, appraisal, or packaging services. "Finder's fees" will not be considered appropriate and are not an allowable project cost. Payment of fees and charges may not be contingent upon loan approval. EDA will require full disclosure of all fees and charges;

(4) An agreement by the applicant and the borrower that for a period of two years, after such assistance is rendered by EDA that neither will employ, tender any office or employment to or retain for professional servcies any person who on the date of any EDA assistance or within one year prior thereto, shall have served as an officer, attorney, agent or employee, occupying a position or engaging in activities which EDA shall have determined involve discretion with respect to the granting of assistance under the Act;

(5) Completed Name Check forms CD–346 for each officer, the chief financial manager, and for each individual owning or controlling at least twenty percent (20%) of the borrower. (Approved by the Office of Management and Budget under Control No. 0605–0001.)

(6) Documentation satisfactory to EDA to substantiate that the guaranteed loan will not create unfair competition within the meaning of Section 702 of the Act. Section 702 unfair competition results if the project would increase the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises.

B. Loan guarantees are also subject to the following statutes:

(1) Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251–1376;

(2) Davis-Bacon Act, as amended, 40 U.S.C. 276a–276a–5;

(3) The Architectural Barriers Act of 1954, as amended, 42 U.S.C. 4151–4157; See 13 CFR 309.14;

(4) The National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4370; See CFR 309.18;

(5) The National Historic Preservation Act of 1966, 16 U.S.C. 470–470W–6;

(6) The Wild and Scenic River Act, as amended, 16 U.S.C. 1271–1287;

(7) The Clean Air Act, as amended, 42 U.S.C. 7401–7626;

(8) The Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4001–4128.

Program Priorities

EDA shall give priority consideration to otherwise acceptable applications which exhibit at least three (3) of the following characteristics:

A. EDA guarantee liability is seventy-five percent (75%) or less.

B. The financing is for the purchase of fixed assets for business expansion.

C. The job cost ratio is $10,000 or less.

D. The project contributes to at least two of these three major Department of Commerce goals: increasing America's competitiveness in the world economy through exports; stimulating productivity; and managing effectively the oceanic and atmospheric resources of the U.S.

Application Submission

Completed applications should be submitted as soon as possible to the

appropriate EDA regional office. While there is no deadline for submission, applications received after July 1, 1985, cannot be assured of final processing during the fiscal year ending September 30, 1985.

FOR FURTHER INFORMATION CONTACT: For Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia, contact: Edward J. Morris, Chief, Business Loans Divisions, Philadelphia Regional Office, Mall Building, 325 Chestnut Street, 4th Floor, Philadelphia, Pennsylvania 19106, (215) 597–7538.

For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee contact: Ronald C. Rachels, Acting Chief, Business Loans Division, Atlanta Regional Office, 1365 Peachtree Street, NE, Suite 750, Atlanta, Georgia 30309, (404) 881–2841.

For Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin contact: Donald Goostrey, Chief, Business Loans Division, Chicago Regional Office, 175 West Jackson Blvd., Suite A–1630, Chicago, Illinois 60604, (312) 353–8143.

For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas contact: Henry N. Troell, Chief, Business Loans Division, Austin Regional Office, Suite 201, Grant Building, 611 East 6th Street, Austin, Texas 78701, (512) 482–5217.

For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming contact: Joseph Tritchler, Acting Chief, Business Loans Division, Denver Regional Office, 333 West Colfax, Suite 300, Denver, Colorado 80204, (303) 844–4403.

For Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington contact: Allan Kozu, Chief, Business Loans Division, Seattle Regional Office, Lake Union Building, 1700 Westlake Avenue North, Seattle, Washington 98109, (206) 442–4731.

Dated: November 29, 1984.

J. Bonnie Newman,

Assistant Secretary for Economic Development.

[FR Doc. 84–32490 Filed 12–13–84; 8:45 am]

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Federal Register

Friday
December 14, 1984

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 548

Control, Custody, Care, Treatment, and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

Control, Custody, Care, Treatment, and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons is publishing its final rule on religious beliefs and practices of committed offenders. The rule is intended to provide an inmate reasonable opportunities to pursue religious beliefs and practices, within the constraints of budgetary limitations and the security and orderly running of the institution and the Bureau of Prisons.

EFFECTIVE DATE: January 14, 1985.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 1st Street NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724–3062.

SUPPLEMENTARY INFORMATION: In this document, the Bureau is publishing its final rule on religious beliefs and practices of committed offenders. A proposed rule on this subject was published in the **Federal Register** January 3, 1984 (at 49 FR 194 et seq.). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

1. Section 548.10—In paragraph (a), the phrase "to pursue" replaces the phrase "for pursuing". A commenter objected to including "creed" in proposed § 548.10(b), stating, "By the terms of this provision a warden can force a religious group to accept a prisoner who has been previously rejected by that group if the rejection is based on 'creed'." The commenter states this will require the Warden or staff to determine the *content* of the belief or philosophy of the group and the individual concerned. This, the commenter says, is a task not allowed government officials under the First Amendment.

The Bureau considers its rule reasonably related to the legitimate governmental interest of maintaining institution security and good order, and as such, compatible with the First Amendment. It is not feasible to delete "creed" from § 548.10(b), since this would allow one religious group to "pick and choose" which other religious groups could attend its activities. This can have an adverse effect on institution security and good order. However, the Bureau does recognize that, on occasion, a specific religious activity should be available only to its members. Accordingly, § 548.10(b) now states an inmate's attendance or participation in a religious activity "ordinarily" may not be restricted on the basis of creed. An exception may occur when the Warden, after consulting with the institution chaplain, determines the nature of the specific religious activity (e.g., a ceremonial meal) supports such a limitation. This determination may require a board review of a religion and specific religious practices, but more likely the review will be based on administrative considerations such as expense and space.

We disagree with a comment that the constraints of budgetary limitations are not a legitimate consideration when restrictions on religious practices are the issue. Neither do we consider it appropriate to adopt language suggested by another commenter that the Bureau "seeks to extend to inmates of all religious faiths the greatest amount of religious freedom and opportunity to pursue individual religious beliefs and practices in a manner consistent with the maintenance of security and the orderly running of the institution and the Bureau of Prisons". The United States Supreme Court in *Cruz* v. *Beto*, 92 S. Ct. 1079, 405 U.S. 319 (1972), stated there would be religious discrimination and a First Amendment violation if an inmate was prevented from pursuing his or her faith in ways allowed to followers of other religions. In discussing this aspect, the Court used the term "reasonable opportunity". The Bureau's policy is consistent with this position. The Bureau's rule provides inmates of all religious faiths with reasonable and equitable opportunities for pursuing individual religious beliefs and practices. Budgetary limitations, as well as the security and good order of the institution, are factors considered in providing reasonable and equitable opportunities for the variety of religious faiths within federal institutions. For example, while reasonable opportunities must be afforded inmates to exercise religious freedom, there is no requirement, nor would budgetary limitations allow for a requirement, that every religious group or sect within a prison have identical facilities or resources.

A commenter objects to the Bureau establishing rules governing "religious behavior", saying rules which do not provide equal protection to those inmates who have sincerely held secular beliefs are "morally and legally repugnant". The commenter suggests that Part 548 be modified to reflect the required neutrality between church and state by referring to "freedom of conscience" rather than "religious beliefs". The commenter also wants the rules modified to encompass those beliefs which are "premised on reason" as well as those "premised on the unproven assumptions of a religion". Not doing this, the commenter suggests, aids religion to the detriment of secular beliefs and is unconstitutional.

We do not consider the suggested changes appropriate. The Bureau's rule clearly evidences the required neutrality. In *Abington School District* v. *Schempp*, 374 U.S. 203 (1963), the U.S. Supreme Court stated that to withstand the "strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion".

The Bureau's rule is consistent with this position. The rule recognizes that inmates have the constitutional right to freedom of religious belief. Since government has deprived inmates of the opportunity to practice their faith at places of their choice, government may, in order to avoid infringing the free exercise guarantees, provide substitutes, such as chaplains and opportunities to meet and worship. See *Abington* at 299. A primary purpose of the proposed amendments is to clearly state the Bureau policy of providing an inmate with reasonable opportunities for pursuing individual religious practices comparable to those afforded inmates who adhere to other faiths. In effecting its rule, the Bureau does not deprive others of their right to hold secular beliefs. While these individuals are not within the scope of the rule on religious beliefs, they may request recognition in accordance with the Bureau of Prisons rule on inmate organizations (see Part 551, Subpart D).

Based on public comment, proposed § 548.12(e) is expanded, becoming final § 548.10(c). This paragraph states that the Bureau's rule does not require an

inmate to profess a religious belief. The rule recognizes that an inmate may designate any or no religious preference, and may change the designation at any time.

2. Section 548.12—The extraneous phrase "in the inmate's personally held religious beliefs" is deleted from § 548.12(a). For clarity, the phrase "under this paragraph (b)" is added to § 548.12(b). We do not agree with a comment that says it is unfair and improper for the federal government to hire clergy to perform religious functions in the prisons, that this constitutes a direct support of religion in violation of the prohibitions contained in the First Amendment, and that the provisions for staff chaplains to schedule and coordinate religious activities lends itself to arbitrariness and discrimination because the chaplain can discriminate against inmates of other faiths.

In *Theriault* v. *Silber,* 547 F.2d 1279 (1979), the United States Court of Appeals, Fifth Circuit, held that the Bureau's employment of chaplains does not violate the First Amendment. The court said the contention that employment of chaplains in federal prisons by the United States violates the establishment clause overlooks the balancing that is required between the Free Exercise and Establishment clauses of the First Amendment.

Bureau of Prisons staff are expected to conduct themselves in a professional manner. Section 548.12(e) clearly states that institution chaplains are available to provide pastoral care and counseling "upon request". Section 548.12(d) prohibits any person from disparaging the religious beliefs of an inmate, or coercing or harassing an inmate to change religious affiliation. An inmate who believes he or she has been subject to arbitrary or discriminatory action by a chaplain may file a complaint through the Administrative Remedy Procedure (see Part 542, Subpart B). The complaint will be investigated, the inmate will receive a response, and, where appropriate, corrective action will be taken.

In § 548.12(c), the phrase "in the pursuit of" is substituted for "to pursue". A commenter misreads proposed § 548.12(d) as prohibiting "fair criticism" of the religious beliefs of others, stating that such prohibition is in violation of the constitutional right of free speech. The rule does not prohibit critical discussion of religion, but is intended to state that one cannot degrade the religious beliefs of another. Such action can adversely impact on institution security or good order.

Proposed § 548.12(f)–(i) become final § 548.12(e)–(g). A commenter to proposed § 548.12(g)–(h) believes these provisions do not clearly address whether religious apparel may be worn in an inmate's cell or room, nor do they identify the Bureau's rule for items that are not worn. Another commenter suggests the sections be revised to allow an inmate to wear, retain, or use religious apparel or objects subject to reasonable considerations of institutional security and the maintenance of good order and discipline. In response to these comments, the Bureau has combined proposed § 548.12 (g) and (h) into a new final § 548.12(f). The final rule uses the broader term "religious items" rather than the proposed language of appropriate personal liturgical or ceremonial apparel, or religious headgear or other apparel of religious significance. The final rule is modified to read "ordinarily shall be allowed to wear or use", as opposed to "may wear", personal religious items during devotional services. The final rule recognizes the Warden's discretion, consistent with maintaining institutional security, safety, and good order, to allow religious items to be worn or used in the institution, including in the inmate's cell or room. Internal instructions to staff provide examples (prayer rugs, robes, beads, etc.) of religious items and also states that the wearing of religious headgear is ordinarily permitted within the institution. For clarity, the final rule recognizes that the Warden may prohibit a religious item from being worn or used within the institution, but still allow it to be worn or used during devotional services. As suggested in the proposed rule's language, the final rule clearly states that the Warden may request the institution chaplain to obtain a determination from representatives of the inmate's faith group and/or other appropriate sources concerning the religious significance of the items. The revised rule deletes the proposed rule's reference to storage of these items. The Bureau's internal instructions advises staff that secure storage space is to be provided for a religious item not permitted to be worn or used within the institution, but which may be worn or used during devotional services. Proposed § 548.12(i), now final § 548.12(g), is revised to reference the Bureau's rule on incoming publications.

3. Section 548.13—The ambiguous phrase "based upon documented necessity" is deleted from § 548.13(b). Inserted is clarifying language requiring the religious group to supply information on the religious significance of the items. The Warden may request the institution chaplain to obtain a determination from representatives of the inmate faith group and/or other appropriate sources on the religious significance of the items. The final rule deletes language allowing funds for the purchase of specially prepared food items to be provided from inmate commissary accounts. Food items for the once-a-year ceremonial meal may be provided from either the chaplain's budget or by community organizations. Within this context, inmates may send funds to community organizations for the purchase of approved food items. This allows an adequate substitute for the existing procedure, while reducing the possibility of inmates being pressured to contribute funds to a religious group.

We do not believe it is practicable to adopt a suggestion that this concept be extended beyond the once-a-year accommodation for a ceremonial meal. The rule as written is an example of providing inmates with reasonable and equitable opportunities for pursuing individual religious beliefs and practices. Extension of the rule to allow inmates "to receive such ceremonial foods as may be necessary to facilitate their private observance of ceremonial meals or other religious ceremonies consistent with the inmate's religious beliefs" is not within the constraints of budgetary limitations and the maintenance of security and good order.

4. Section 548.14—A commenter to proposed §§ 548.13–14 states that neither of these sections provides procedures for an inmate to receive an exemption from a work or program assignment for legitimate religious reasons. Based on this comment, a new § 548.14, entitled Institution Work Assignment, has been developed. This section states that except where necessary for maintaining security, safety, and good order, an inmate may not be given a work assignment which violates the specific requirements of that inmate's religious faith. The inmate is responsible for initiating the request for a different work assignment. This section does not apply to program assignments, as these may be considered within the provisions of proposed § 548.14, now final § 548.15.

5. Section 548.15—Based on new § 548.14, proposed § 548.14 becomes final § 548.15. Proposed § 548.14(a), now final § 548.15(a), is revised to state that the provisions of paragraph (a) apply consistent with maintaining security, safety, and good order in the institution. The general intent of the section is unchanged. As suggested by a commenter, the final rule specifies information (nature of the observance and the particular accommodation

requested) that the inmate is expected to provide when requesting to observe a religious holiday or celebration. The Warden may request the institution chaplain to verify the specified religious requirement with representatives of the inmate's faith group and/or other appropriate sources. If the request is approved, the inmate is ordinarily allowed, consistent with maintaining security, safety, and good order in the institution, to take a vacation day, or to make-up for missed work, or to change work assignments to facilitate the observance of a religious holiday or celebration. This change is made in response to public comment.

In proposed § 548.14(b), now final § 548.15(b), the phrase "institution program or assignment" is substituted for "institution assignment". A commenter to proposed § 548.14(b) suggests the rule be revised to read the Warden "shall" (was "may") relieve an inmate from an institution assignment if a religious activity is also scheduled at that time. While it is not considered practicable to make this a mandatory requirement, it is the Bureau's expectation that the more central the religious activity is to the tenets of the inmate's religious faith, the greater the presumption for relieving the inmate from the institution program or assignment. Where appropriate, the Warden may consult with the chaplain concerning the nature of the religious activity.

Two general comments were also made. A commenter who suggested that the Bureau allow an inmate to receive an exemption from an assignment asked that such a provision be drafted and published for comment. While comment is invited, and will be considered during a future internal review of the rule, the Bureau has decided to publish new § 548.14 as a final rule. The section is within the scope of this rulemaking, and its development was prompted by a comment on the proposed rule. Section 548.14 is responsive to the commenter's concern and is considered less restrictive in its impact on the inmate. For these reasons, the Bureau finds good cause under 5 U.S.C. 553 not to publish § 548.14 as a proposed rule.

A second commenter suggested that the chaplain or other religiously ordained person be excluded from the process of evaluating and deciding on the merits of its comments, or from communicating with decision-makers on the substance of its comments, other than by the formal process of public notice and comment. This commenter also requested an opportunity to orally address the matters contained in its comments. As pertains to informal rulemaking, the Administrative Procedure Act does not require oral hearings nor does it prohibit agency personnel from advising the decision-maker. One purpose of a rulemaking procedure is to set forth the policy of an agency. In doing this, it is appropriate for the chief executive officer of that agency to rely upon staff members with expertise in the area of concern. As stated in its proposed rule, the Bureau did not, nor does it now, believe oral hearings are necessary.

List of Subjects in 28 CFR Part 548

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V is amended as set forth below.

Dated: December 7, 1984.

Norman A. Carlson,

Director, Bureau of Prisons.

In consideration of the foregoing, 28 CFR Chapter V is amended as follows:

In Subchapter C, Part 548, Subpart B is revised to read as follows:

Subchapter C—Institutional Management

PART 548—RELIGIOUS PROGRAMS

Subpart B—Religious Beliefs and Practices of Committed Offenders

Sec.

548.10 Purpose and scope.
548.11 Definition.
548.12 Procedures.
548.13 Diet.
548.14 Institution work assignment.
548.15 Scheduling to observe religious holidays, celebrations, and activities.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 42 U.S.C. 1996; 28 CFR 0.95–0.99.

Subpart B—Religious Beliefs and Practices of Committed Offenders

§ 548.10 Purpose and scope.

(a) The Bureau of Prisons provides inmates of all religious faiths with reasonable and equitable opportunities to pursue individual religious beliefs and practices, within the constraints of budgetary limitations and the security and orderly running of the institution and the Bureau of Prisons.

(b) When it is considered necessary for the security or good order of the institution, the Warden may limit attendance at or discontinue completely a religious activity. The Warden may not restrict nor allow the religious group itself to restrict attendance at or participation in a religious activity on the basis of race, color, nationality, or (ordinarily) creed. The Warden, after consulting with the institution chaplain, may limit participation in a religious activity to the members of that religious group when the nature of the religious activity (e.g., a ceremonial meal) suggests a need for this limitation.

(c) The Bureau of Prisons rule on religious beliefs and practices does not require an inmate to profess a religious belief. An inmate may designate any or no religious preference. An inmate may change this designation at any time.

§ 548.11 Definition.

For purposes of this rule, the term "religious activity" includes religious diets, services, ceremonies, and meetings.

§ 548.12 Procedures.

(a) Institution chaplains are available upon request to provide pastoral care and counseling.

(b) Under the general supervision of the Warden, institution chaplains shall schedule and coordinate the institution's religious activities. If an institution has no staff chaplain, a staff member designated by the Warden shall exercise the authority of the chaplain under this paragraph (b).

(c) Institution staff may contract with representatives of faith groups in the community and are encouraged to accept the services of volunteers to assist inmates in the pursuit of their religious beliefs.

(d) No one may disparage the religious beliefs of an inmate, nor coerce or harass an inmate to change religious affiliation.

(e) Attendance at all religious activities is voluntary.

(f) An inmate ordinarily shall be allowed to wear or use personal religious items during devotional services. Upon request of the inmate, the Warden may also allow an inmate to wear or use personal religious items within the institution. The Warden's decision on whether an inmate may wear or use personal religious items during devotional services and/or within the institutions shall be based on considerations of security, safety, and good order. If the Warden determines that wearing or using the religious items within the institution would violate considerations of security, safety, or good order, the Warden may nonetheless permit the inmate to wear or use the religious items during devotional services. The Warden may request the institution chaplain to obtain a determination from representatives of

the inmate's faith group and/or other appropriate sources concerning the religious significance of the items.

(g) Each inmate who wishes to have religious books, publications, or materials must comply with the general rules of the institution regarding ordering, purchasing, retaining and accumulating personal property. Literature, publications or books about religion or religious teaching are permitted in accordance with the procedures governing incoming publications (Part 540, Subpart F).

§548.13 Diet.

(a) An inmate who wishes to observe religious dietary laws will be provided a diet which meets or exceeds recommended daily allowances established by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and which complies with religious dietary laws to the extent practicable within the constraints of budget limitations and the security and orderly running of the institution and the Bureau of Prisons.

(b) As a once-a-year accommodation, staff may make arrangements with an inmate religious group to have a ceremonial meal. If the inmates representing the organization request, staff may purchase from a food supplier specially prepared food items which meet religious requirements. The inmate religious group is to include with its request, information on the religious significance of the items. The Warden may request the institution chaplain to obtain a determination from representatives of the inmate's faith group and/or other appropriate sources on the religious significance of the items. Funds for the purchase of special food items may be provided from:

(1) Funds from the chaplain's budget; or

(2) Funds provided by community organizations.

§ 549.14 Institution work assignment.

Except where necessary for maintaining security, safety, and good order in the institution, an inmate may not be given a work assignment which violates the specific requirements of that inmate's religious faith. The inmate must initiate the request for a different work assignment.

§ 548.15 Scheduling to observe religious holidays, celebrations, and activities.

(a) Consistent with maintaining security, safety, and good order in the institution, the Warden shall endeavor to facilitate the observance of important religious holidays or celebrations in accordance with specific requirements of a faith group, such as fasting, worship, diet, or work proscription. The inmate must initiate request for observance of a religious holiday or celebration, and must specify in this request the nature of the observance and the particular accommodation requested. The Warden may request the institution chaplain to verify the specified religious requirements with representatives of the inmate's faith group and/or other appropriate sources. Consistent with maintaining security, safety, and good order in the institution, the Warden is ordinarily to allow an inmate to take non-consecutive vacation days, or to make-up for missed work, or to change work assignments in order to facilitate the inmate's observance of a religious holiday or celebration.

(b) The Warden may relieve an inmate from an institution program or assignment if a religious activity is also scheduled at that time.

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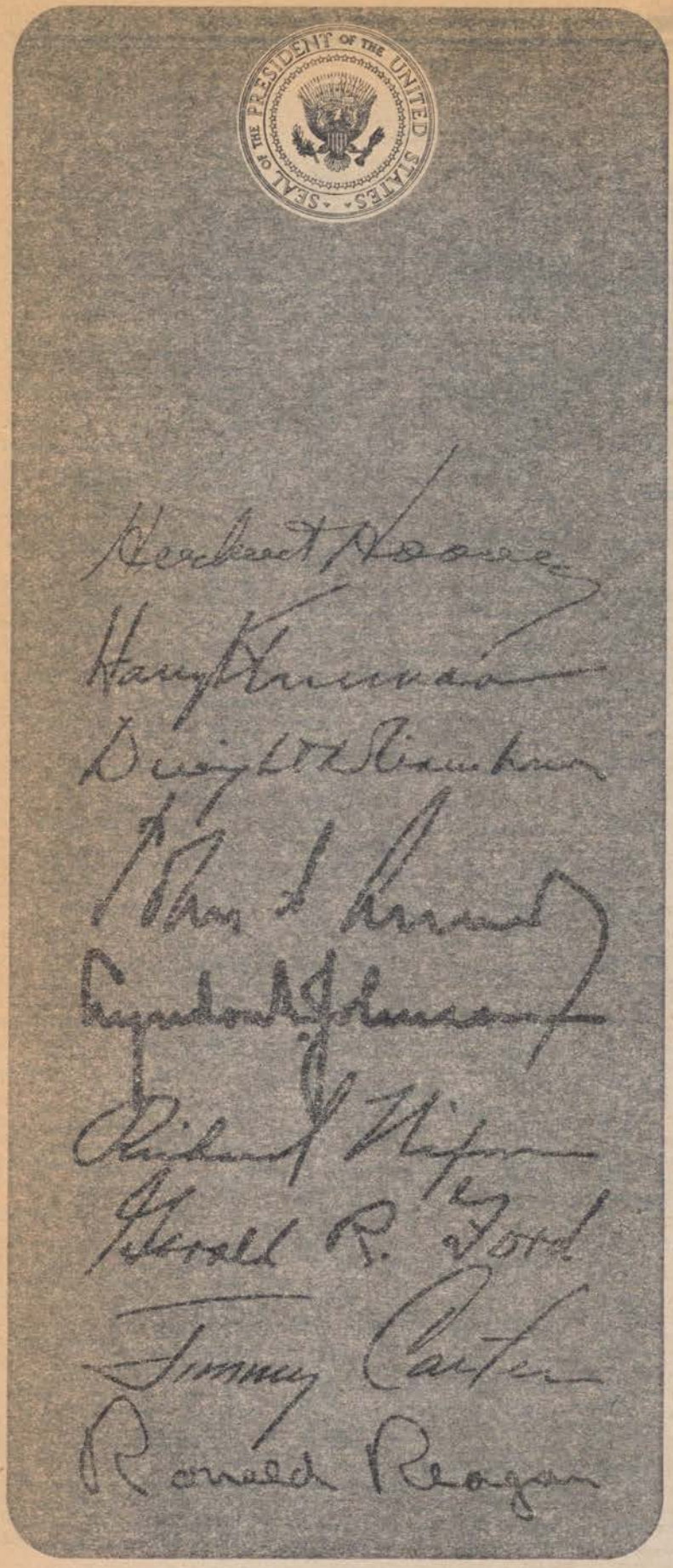
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