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Tuesday
February 19, 1985

Selected Subjects

Aid to Families with Dependent Children
Social Security Administration

Archives and Records
General Services Administration

Aviation Safety
Federal Aviation Administration

Cable Television
Federal Communications Commission

Employee Benefit Plans
Pension Benefit Guaranty Corporation

Fisheries
National Oceanic and Atmospheric Administration

Food Stamps
Food and Nutrition Service

Income Taxes
Internal Revenue Service

Maritime Carriers
Federal Maritime Commission

Occupational Safety and Health
Occupational Safety and Health Administration

Radio and Television Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
Federal Railroad Administration

CONTINUED INSIDE

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

Selected Subjects

Satellites
Federal Communications Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Trade Practices
Federal Trade Commission

Water Pollution Control
Environmental Protection Agency

Contents

Federal Register
Vol. 50, No. 33
Tuesday, February 19, 1985

Agriculture Department
See Farmers Home Administration; Food and Nutrition Service.

Antitrust Division
NOTICES
National cooperative research notifications:
7006 Merrell Dow Pharmaceuticals Inc. et al.

Army Department
NOTICES
Meetings:
6980 Science Board (3 documents)

Arts and Humanities, National Foundation
NOTICES
Meetings:
7017 Museum Advisory Panel

Coast Guard
NOTICES
Meetings:
7024 Houston/Galveston Navigation Safety Advisory Committee

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service.

Consumer Product Safety Commission
NOTICES
Meetings:
6980 Cigarette and Little Cigar Fire Safety Technical Study Group

Customs Service
NOTICES
Tariff reclassification petitions, etc.:
7026 Color television picture tubes in receiver assemblies
Trade name recordation applications:
7026 Union Fork & Hoe Co.

Defense Department
See Army Department.

Drug Enforcement Administration
NOTICES
Registration applications, etc.; controlled substances:
7007 Bio-Fine Pharmaceuticals, Inc. (2 documents)
7007 Mallinckrodt, Inc.
7007 Johnson Matthey, Inc.

Education Department
NOTICES
Grants; availability, etc.:
6981 Strengthening program; extension of closing date

Employment and Training Administration
RULES
Aid to Families with Dependent Children (AFDC); work incentive programs; implementation; final rule with request for comments (Editorial Note: This document appearing on page 6164 of the Federal Register of February 14, 1985, was incorrectly identified in the Table of Contents for that issue.)

Energy Department
See also Federal Energy Regulatory Commission.
NOTICES
Grant awards:
6982 Battelle Columbus Laboratories; correction

Environmental Protection Agency
RULES
Water pollution control:
6939 National pollutant discharge elimination system; permit regulations; correction
6942 Ocean dumping; interim site designations extension
NOTICES
6991 Agency information collection activities under OMB review

Equal Employment Opportunity Commission
NOTICES
7028 Meetings; Sunshine Act (2 documents)

Farmers Home Administration
NOTICES
Natural resource management guide meetings:
6978 Virgin Islands

Federal Aviation Administration
RULES
Airworthiness directives:
6930 Garlick Helicopters et al.
6932 Restricted areas; correction
6931 Transition areas
NOTICES
Grants, availability, etc.:
7024 Airport improvement program; noise compatibility programs; extension of time
Organization and functions:
7024 Las Vegas, NV; address change

Federal Communications Commission
RULES
Radio and television broadcasting:
6944 Applications for voluntary assignments or transfers of control; one year holding period; reconsideration
Radio services, special:
6952 Aviation services; restricted radiotelephone operator permits; correction
Television broadcasting:
6947 Cable television operators; public inspection files and subscriber records

PROPOSED RULES
Radio services, special:
6970 Satellite communications; direct broadcast satellite service technical standards
NOTICES
6994 Agency information collection activities under OMB review (2 documents)
Hearings, etc.:
6994 Beacon Broadcasting et al.
6995 Christian Communications, Inc.
6996 GRK Productions, Inc., et al.
6996 Lamonica, Keith E., el al.
6997 Microband Corp. of America et al.
6997 Mobile TV 61, Inc., et al.
6998 Powley, John R., et al.
6999 Sanibel Broadcasting Co. et al.
6999 Telecrafter Corp. et al.
Meetings:
7000 International (high frequency) broadcasting
Radio services, special:
6993 Digital termination systems applications; lottery procedures
6992 Operational-fixed service applications; lottery procedures

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
6988 Conoco Inc. et al.
6990 Independence Electric Corp.
6990 Mountain West Hydro, Inc.
6991 NuMaineCo Corp.
6991 Wisconsin Power & Light Co.
Natural gas certificate filings:
6982 Montana-Dakota Utilities Co. et al.
Natural Gas Policy Act:
6990 Well category determinations, etc. (Northwest Exploration Co. et al.)
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
6982 Alexandria/Arlington Resource Recovery Corp.
6982 Catalyst Energy Development Corp.
6989 Hydrodynamics, Inc.
6991 Wehran Energy Corp.

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
6891 Direct investment in real estate, service corporations, and equity securities
6912 Net-worth requirements of insured institutions

Federal Maritime Commission
RULES
Agreements by ocean common carriers, etc.:
6944 Transshipment agreements
6943 Agreements by ocean common carriers, etc.; correction
NOTICES
7000 Agreements filed, etc.
Investigations, hearings, petitions, etc.:
7001 Concorde/Nopal Line; U.S./Venezuela trade conditions

Federal Railroad Administration
RULES
6952 Railroad locomotive safety standards; reporting and recordkeeping requirements

Federal Reserve System
PROPOSED RULES
Credit by brokers and dealers (Regulation T):
Options on equity securities; margin requirements (Editorial Note: This document appearing on page 5766 of the **Federal Register** of February 12, 1985, was incorrectly identified in the Table of Contents for that issue.)
NOTICES
Bank holding company applications, etc.:
7002 Evangeline Bancshares, Inc., et al.
7002 First Cordell Banco, Inc.

Federal Trade Commission
RULES
Prohibited trade practices:
6932 Southwest Sunsites, Inc., et al.

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
7027 Bond Safeguard Insurance Co.

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
7003 D'Arbonne National Wildlife Refuge, Louisiana

Food and Nutrition Service
PROPOSED RULES
6970 Aid to Families with Dependent Children (AFDC), and food stamp program, consistency; advance notice

General Services Administration
See also National Archives and Records Service.
PROPOSED RULES
Federal Information Resources Management Regulation:
6970 Records management programs and management of records; draft availability
NOTICES
Property management:
7002 Kilauea Point Light Station, Kauai, HI; wildlife order conveyance

Health and Human Services Department
See Human Development Services Office; Social Security Administration.

Historic Preservation, Advisory Council
NOTICES
6978 Meetings

Housing and Urban Development Department
RULES
6937 Non-Federal government audit requirements, mortgage and loan insurance programs, and public and Indian housing; effective dates

Human Development Services Office
RULES
Aid to Families with Dependent Children (AFDC); work incentive programs; implementation; final rule with request for comments (Editorial Note: This document appearing on page 6164 of the **Federal Register** of February 14, 1985, was incorrectly identified in the Table of Contents for that issue.)

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

Internal Revenue Service
RULES
Income taxes:
6937 Federal rates of interest; alternate method of determining applicable rate; temporary

International Trade Administration
NOTICES
Scientific articles; duty free entry:
6978 Northwestern University Medical School
6979 University of California
6979 Yale University

Interstate Commerce Commission
NOTICES
Rail carriers:
7005 State intrastate rail rate authority; Kansas
Railroad operation, acquisition, construction, etc.:
7005 Chicago, West Pullman & Southern Railroad Co.
7006 Norfolk & Western Railway Co.
Railroad operation and services abandonment:
7006 Staten Island Railroad Corp. et al.; correction
Railroad services abandonment:
7006 Maryland & Pennsylvania Railroad Co.

Justice Department
See Antitrust Division; Drug Enforcement Administration.

Labor Department
See Employment and Training Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Land Management Bureau
NOTICES
Meetings:
7003 Salmon District Advisory Council
7003 Salmon District Grazing Advisory Board

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf operations:
6969 California; air quality rules; advance notice; extension of time

National Aeronautics and Space Administration
NOTICES
Patent licenses, exclusive:
7016 Power Controls International Pty., Ltd.

National Archives and Records Service
NOTICES
Meetings:
7002 Preservation Advisory Committee

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
6953 Atlantic mackerel, squid, and butterfish
6954 Tanner crab off Alaska

National Park Service
NOTICES
Historic Places National Register; pending nominations:
7003 Alabama et al.

National Technical Information Service
NOTICES
6979 Inventions, Government-owned; availability for licensing

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
7018 Maine Yankee Atomic Power Co.
Environmental statements; availability, etc.:
7018 Kansas Gas & Electric Co.
Meetings:
7017 Reactor Safeguards Advisory Committee (2 documents)

Occupational Safety and Health Administration
PROPOSED RULES
State plans; development, enforcement, etc.:
6956 Arizona et al.; extension of time
NOTICES
Meetings:
7007 Occupational Safety and Health National Advisory Committee

Panama Canal Commission
NOTICES
7020 Agency information collection activities under OMB review

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
7009 Baton Rouge Building & Construction Industry Plan et al.
7008 ESI Profit Sharing Retirement Plan & Trust et al.

Pension Benefit Guaranty Corporation
PROPOSED RULES
Multi-employer plans:
6956 Valuation of plan benefits and plan assets following mass withdrawal

Personnel Management Office
NOTICES
Meetings:
7019 Federal Prevailing Rate Advisory Committee

Railroad Retirement Board
NOTICES
7021 Supplemental annuity program; determination of quarterly rate of excise tax

Securities and Exchange Commission
NOTICES
Applications, etc.:
7021 Faletti, Peter F.
7022 Lee, Robert E.
Self-regulatory organizations; proposed rule changes:
7021 American Stock Exchange, Inc.

Social Security Administration
PROPOSED RULES
6970 Aid to Families with Dependent Children (AFDC), and food stamp program, consistency; advance notice

State Department
NOTICES
Meetings:
7023 Private International Law Advisory Committee

Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental statements; availability, etc.:
7005 John Henry No. 1 Mine, King County, WA

Transportation Department
See also Coast Guard; Federal Aviation Administration; Federal Railroad Administration.
NOTICES
Aviation proceedings; hearings, etc.:
7024 Emerald Tours, Ltd.
7024 Aviation proceedings; standard foreign fare level; establishment

Treasury Department
See also Customs Service; Fiscal Service; Internal Revenue Service.
NOTICES
Bonds, Treasury:
7026 2015 series
Meetings:
7025 Debt Management Advisory Committee
Notes, Treasury:
7026 A-1995 series
7025 R-1988 series

Veterans Administration
NOTICES
Environmental statements; availability, etc.:
7027 Yountville, CA

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
Proposed Rules:
271 ... 6970
273 ... 6970

12 CFR
561 ... 6891
563 (2 documents) ... 6891, 6912
570 ... 6891
571 ... 6891
584 ... 6891

14 CFR
39 ... 6930
71 ... 6931
73 ... 6932

16 CFR
13 ... 6932

24 CFR
44 ... 6937
205 ... 6937
207 ... 6937
213 ... 6937
220 ... 6937
221 ... 6937
232 ... 6937
238 ... 6937
250 ... 6937
965 ... 6937

26 CFR
1 ... 6937

29 CFR
Proposed Rules:
1952 ... 6956
2676 ... 6956

30 CFR
Proposed Rules:
250 ... 6969

40 CFR
122 ... 6939
123 ... 6939
124 ... 6939
125 ... 6939
228 ... 6942

41 CFR
Proposed Rules:
201-22 ... 6970
201-45 ... 6970

45 CFR
Proposed Rules:
206 ... 6970
232 ... 6970
233 ... 6970
234 ... 6970
238 ... 6970
240 ... 6970

46 CFR
572 (2 documents) ... 6943, 6944

47 CFR
73 ... 6944
76 ... 6947
87 ... 6952
Proposed Rules:
100 ... 6971

49 CFR
229 ... 6952

50 CFR
611 ... 6953
655 ... 6953
671 ... 6954

Rules and Regulations

Federal Register
Vol. 50, No. 33
Tuesday, February 19, 1985

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, 570, 571, and 584

[No. 85-79-B]

Net-Worth Requirements of Insured Institutions

Dated: January 31, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the method of calculating the minimum amount of regulatory net worth required by all institutions whose accounts are insured by the FSLIC ("insured institutions" or "institutions"). The amendment eliminates, through a straight-line amortization over 5 years, the authority to calculate the net-worth requirement: (1) On a five-year-average basis (except for institutions having $100,000,000 or less in assets that increase their liabilities at an annual rate not exceeding 15 percent and for institutions having more than $100,000,000 in assets that increase their liabilities at an annual rate not exceeding 10 percent), and (2) by use of the twenty-year phase-in technique. As amended, the regulation will require institutions to calculate their minimum net-worth requirement at the end of each calendar quarter rather than at the beginning of a fiscal year and to have the minimum necessary amount on each quarterly calculation date rather than at the end of the fiscal year. The amendment imposes a net-worth requirement equal to a percentage of any increase in liabilities measured from the close of business on the last day of the preceding year, with the percentage varying with the amount of growth as follows: 3 percent of any liability growth is required if an institution grew at an annual rate of 15 percent or less; a graduated ratio from 3 to 5 percent is required on growth if the growth was at an annual rate between 15 percent and 25 percent; and 5 percent is required on growth if the growth was at an annual rate in excess of 25 percent. The amended regulation will permit an institution to reduce the amount of its net-worth requirement to reflect an annual decrease in liabilities. Minimum net worth will continue to include 2 percent of recourse liabilities and 20 percent of scheduled items, but an additional amount equal to 10 percent of certain direct investments will now be included in the minimum net-worth requirement. The amendment also eliminates the requirement to calculate a "statutory reserve" as a percentage of insured deposits. Instead, compliance with the net-worth requirement will be considered sufficient. In addition, the amended regulation requires institutions with assets in excess of $100,000,000 to obtain prior approval before increasing liabilities in any two consecutive quarters at an annual rate in excess of 25 percent.

The Board believes that inadequate capitalization is a principal problem faced by the thrift industry and particularly those institutions which are growing rapidly. This problem is seriously exacerbated by current regulations which permit institutions to use a five-year averaging formula in calculating their minimum net-worth requirements, and by the twenty-year phase-in of required net worth for institutions insured prior to November 3, 1983 which have not reached the twentieth anniversary of insurance. The Board is imposing a marginal net-worth requirement on the quarterly growth in liabilities because the Board believes that the long-term viability of the industry can best be ensured by limiting ability to leverage new liabilities to a ratio of 33 to 1. Further, the Board is concerned that the current lag between the date of calculation and the date upon which the requirement is to be met substantially impairs the Board's supervisory abilities.

The amended regulation will not necessarily require institutions to generate new net worth to meet current regulatory minimums. Also, institutions currently having net worth exceeding the minimun requirement can use this net worth to support additions to liabilities.

Finally, the amended regulation eliminates in its entirety 12 CFR 563.14 because that section is no longer necessary in light of the revisions being made to 12 CFR 563.13.

EFFECTIVE DATE: March 21, 1985.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Attorney, Office of General Counsel, (202) 377-6448; Edward Taubert, Deputy Associate Director, Policy Development, Office of Examinations and Supervision, (202) 377-6484; or Robert J. Pomeranz, Policy Analyst, Office of Policy and Economic Research, (202) 377-6209, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: This regulation is revised pursuant to the Board's general authority under the National Housing Act ("NHA") and specifically under section 403(b), 12 U.S.C. 1726(b), as amended by the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97-320.

Prior Reserve and Net-Worth Regulations

From the time of its enactment in 1934 until 1980, section 403(b) of the NHA, 12 U.S.C. 1726(b), contained a requirement that institutions establish a reserve of 5 percent of their insured accounts. Pursuant to its authority under section 1726(b), the Board has also imposed a regulatory reserve requirement in addition to this statutory requirement since at least the 1950's.

One early regulatory reserve requirement, adopted by the Board in 1956, required institutions annually to credit 10 percent of their net income to reserves until their reserves equalled 12 percent of insured accounts. Board Res. No. 9826, 21 FR 5,483 (July 21, 1956). The requirement of a periodic net income credit to the reserve account was preserved until 1972, but the criteria triggering the credit requirement were modified several times. In 1963, for example, the credit requirement was imposed when an institution's adjusted net worth was less then 12 percent of its "risk assets" (defined as total assets less cash, government obligations, FHLB stock, prepaid FSLIC premiums, and 60 percent of investments in insured and guaranteed loans). Board Res. No. 63–1712, 29 FR 45 (Jan. 3, 1964). Pursuant to that regulation, if an institution's adjusted net worth was less than 8 percent of its risk assets, its credit-to-reserves ratio was the greater of 10 percent of its net income or 6 percent of its growth in risk assets.

In 1972, the Board replaced the credit requirement with a requirement that an institution's net worth be equal to the greater of (i) 5 percent of insured accounts, plus 20 percent of scheduled items, or (ii) the amount determined by the so-called Asset Composition and Net-Worth Index ("ACNWI"). The ACNWI assigned minimum net-worth percentages of specific types of assets, including real estate held for development or investment (7 percent) and investments in service corporations (10 percent). Board Res. No. 72–1415, 37 FR 26,579 (Dec. 14, 1972).

In 1980, the Depository Institutions Deregulation and Monetary Control Act, Pub. L. 92–221, amended Section 1726(b) by replacing the former statutory reserve requirement of 5 percent of insured accounts with a range of 3 percent to 6 percent of insured accounts, with the specific percentage to be established by Board regulation. Following this amendment, the Board exercised its expanded discretion by establishing 4 percent of insured accounts as the minimum reserve level needed to satisfy the statutory reserve requirement. Board Res. No. 80–694, 45 FR 76111 (Nov. 18, 1980). It simultaneously eliminated the former net-worth requirement and replaced it with a new liability-based test which required insitutions to have net worth equal to at least 4 percent of liabilities. In 1982, the Board further reduced the statutory reserve requirement to 3 percent of insured accounts, and the net-worth requirement to 3 percent of liabilities. Board Res. No. 82–19, 47 FR 3543 (Jan. 26, 1982).

The DIA eliminated any specific statutory reserve requirement and left the Board discretion to establish such "statutory reserve" requirements as it considered satisfactory. 12 U.S.C. 1726(b), as amended by the DIA.

Current Regulations

Section 563.13 of the Insurance Regulations (12 CFR 563.13 (1984)) sets forth the current "statutory reserve" requirement and "minimum net worth" requirement which the Board has used, in part, to gauge capital adequacy. The minimum net-worth requirement differs from the statutory-reserve requirement in that the minimum net-worth requirement is calculated as a percentage of total liabilities rather than as a percentage of insured accounts, and the calculation of minimum net worth includes 2 percent of recourse liabilities and 20 percent of scheduled items. Both the minimum net-worth requirement and the statutory-reserve requirement permit institutions to calculate liabilities and deposits, respectively, by averaging the past fiscal year with the preceding 4 fiscal years (a technique known as "five-year averaging"). Also, institutions that have not reached their twentieth anniversary of insurance are permitted to phase-in the net-worth statutory-reserve requirements by multiplying 3 percent of liabilities and deposits, respectively, by a fraction the numerator of which is the number of consecutive years of insurance and the denominator of which is 20 (a technique known as the "twenty-year phase-in").

In the rulemaking proceeding concerning reserve requirements and other policies pertaining to insurance of accounts of *de novo* institutions (proposed: Board Res. No. 83–608, 48 FR 51720 (November 10, 1983); final: Board Res. No. 83–653, 48 FR 54320 (December 2, 1983)), the Board found sufficient cause to require *de novo* institutions to have statutory reserves and net worth equal to at least 7 percent of insured deposits, respectively, for the first full fiscal year, with the requirement gradually decreasing to 3 percent of deposits and liabilities, respectively. The Board noted in the preambles of both the proposed and final rule that it would continue to review the statutory-reserve and net-worth requirements and other areas of concern relating to existing institutions.

February Proposal

On February 15, 1984, the Board proposed a revision of the statutory-reserve and net-worth requirements of institutions other than *de novo* institutions. Board Res. No. 84–81, 49 FR 6501 (February 22, 1984). That proposal is hereafter referred to as the "February proposal". First, a requirement was proposed to maintain net worth at 3 percent on any increase in liabilities incurred after December 31, 1983. This action would limit leveraging of new liabilities to 33 to 1. All institutions (other than *de novo* institutions) would multiply increases in liabilities between December 31, 1983, and the date of calculation by 3 percent. Institutions experiencing a decrease in liabilities after December 31, 1983, would be treated as if they had experienced no growth. Second, the February proposal would gradually eliminate five-year averaging and the twenty-year phase-in. Five-year averaging would be eliminated by gradually reducing, over a five-year period, the number of years which could be averaged. Thereafter, averaging would not be permitted. The twenty-year phase-in would be gradually eliminated by permitting qualified institutions to apply this procedure only to pre-December 31, 1983, levels of liabilities. Any increase in liabilities after the date would be multiplied by 3 percent. Once all institutions insured prior to November 3, 1983 reach the twentieth anniversary of insurance of accounts, the phase-in would be entirely eliminated. Third, the Board proposed to eliminate the statutory-reserve test.

November Proposal

On November 30, 1984, in a continuation of the rulemaking proceedings initiated by the February proposal, the Board issued for further public comment another draft of proposed revisions. Board Res. No. 84–681, 49 FR 47852 (December 7, 1984). That proposal (hereafter the "November proposal") incorporated a number of the important concepts embodied in the February proposal, such as the gradual elimination of five-year averaging and the twenty-year phase-in, the establishment of a relationship between marginal growth and the minimum net-worth requirement and the elimination of the statutory-reserve test. But the November proposal also reflected a number of changes from the February proposal, many of which were made in response to the comments on the February proposal and to address more effectively the Board's objective of encouraging institutions to support growth with adequate capital.

Under the November proposal, an institution would be required to calculate its minimum net-worth requirement on a quarterly basis and meet such requirement as of the calculation date. The minimum net-worth requirement would be a combination of an "amortization factor" (by which five-year averaging and twenty-year phase-in would be eliminated over 20 quarters), a "base factor" (essentially the minimum net-worth requirement as of the last calculation), a "contingency factor" and a "growth factor" (by which the minimum required net worth would increase with liability growth on a quarterly basis).

To address the Board's substantial concerns about institutions growing at especially fast rates, as described in the February proposal and the November proposal, the November proposal imposed higher net-worth requirements on growth in excess of 15 percent and 25 percent, escalating from 4 percent to 5 percent, and required institutions with assets of $100,000,000 or more to obtain prior Principal Supervisory Agent ("PSA") approval for growth at an annual rate in excess of 25 percent. For similar reasons, the November proposal added to the minimum net-worth requirement a component based on an institution's "direct investments." Finally, the November proposal permitted institutions with total assets not in excess of $100,000,000 and annual growth not in excess of 15 percent to continue to use five-year averaging when calculating their minimum net-worth requirement.

Related Regulatory Action

The Board is also adopting today amendments to its insurance regulations creating a process of supervisory review and approval of direct investments. Board Res. No. 85–79–A, published elsewhere in the Rules section of this issue (hereafter the "Direct-Investment rule"). Since the Direct-Investment rule is, to some extent, related to this amendment, the Board has jointly considered comments on both proposals and the Board has determined to adopt both amendments at the same time.

Summary and Discussion of Comments on the November Proposal

The Board received 313 public comments in response to the November proposal. The majority were submitted by savings and loan associations. Of the remaining comments, 43 were received from Federal savings banks, 20 from trade associations, 5 from law firms, 3 from economic consultants, 3 from state regulators, 4 from financial groups, 7 from commercial banks, 3 from legislators, 2 from individuals, and 2 from federal regulators. Fifteen comments endorsed the November proposal and 139 comments opposed it. However, 59 comments which expressed general opposition to the November proposal also recognized the need to increase the net worth of institutions, and suggested certain modifications to render the November proposal acceptable. Ninety-one comments were in general agreement with specific aspects of the November proposal, but suggested modification or reconsideration of others. Eight comments indicated agreement with the modifications proposed by a thrift industry trade association. Twenty-three comments expressed no opinion on the substance of the November proposal, but requested an extension of the comment period. The Board has carefully reviewed all of the comments, which are more fully discussed below.

Statutory Authority

Only one comment expressed the view that the November proposal would exceed the Board's statutory authority. The Board based the November proposal upon its authority under Section 403(b) of the NHA, 12 U.S.C. 1726(b), as amended by the DIA. The comment contended that the language of the DIA does not authorize the Board to promulgate proposed amendments; that the legislative history of the DIA conflicts with the Board's assertion of statutory authority; and that the Board is improperly attempting to indirectly accomplish two objectives that it may not accomplish directly—the restriction of direct investments and the imposition of differential insurance premiums.

The Board believes that these assertions are without merit because they pay insufficient regard to the express grant of rulemaking authority in 12 U.S.C. 1726(b). That section, as amended by the DIA, requires that all insured institutions "provide adequate reserves in a form satisfactory to the Corporation, to be established in accordance with regulations made by the Corporation." The express language of this section consequently invests the Board with broad authority to establish and to define the minimum reserve requirements for institutions.

The Board is not persuaded by the commenter's suggestion that the legislative history of the DIA is inconsistent with the November proposal. The original source of the Board's authority to regulate reserve accounts is not the DIA but section 403(b) of the NHA, as enacted in 1934, Pub. L. 79–479, 48 Stat. 1246. That section, as originally enacted and as amended prior to 1982, contained an affirmative grant of rulemaking authority as well as certain statutory restrictions upon the Board's discretion in setting and implementing reserve requirements. The DIA eliminated three of those restrictions: (1) The reference to insured accounts as the basis of the reserve calculation; (2) the mandate to set reserve requirements within a three-to-six percent range; and (3) the direction to phase in the reserve requirements over a period not exceeding 20 years. The elimination of these restrictions expands rather than narrows the scope of the Board's pre-existing authority with respect to reserve requirements. Thus, the DIA does not bar adoption of the proposed amendments; to the contrary, it demonstrates a Congressional desire to remove prior restrictions on the Board's exercise of its expert judgment in determining appropriate net-worth requirements.

Finally, the Board disagrees with the commenter's suggestion that the November proposal attempts to accomplish indirectly certain objectives, such as restricting direct investment and imposing differential insurance premiums, that the Board may not accomplish directly. The premises of the suggestion are faulty in that: the amendments place no ceiling on direct investments, nor do they alter the calculation of insurance premiums under 12 U.S.C. 1727; even if requiring adequate net worth to support direct investments or rapid growth had the effect of reducing either, such a result would not diminish the Board's express statutory authority to establish net-worth requirements; and regulation of direct investments is in any event within the scope of the Board's statutory authority. *See* the Direct-Investment Rule. Over the past 20 years, moreover, the Board has imposed various regulatory reserve requirements based on factors such as an insured institution's proportion of "risk assets," Board Res. No. 63–1712, 29 FR 45 (January 3, 1964); its growth in "risk assets" *id.*; and its "asset composition", Board Res. No. 72–1415, 37 FR 26579 (December 14, 1972). Despite ample opportunity to do so, Congress has never restricted the Board's authority to impose reserve requirements based on such factors.

Procedural Issues

Sixty-three comments stated that the comment period following publication of the November proposal was too short, and requested extensions ranging from one month to an indefinite period. One commenter suggested that the duration of the comment period violated the requirements of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.* Another commenter requested a public hearing on the November proposal.

The Board believes that the length of the comment period following the November proposal was consistent with the letter and spirit of the APA. Proposed revisions were originally issued on February 15, 1984. Board Res. No. 84–81, 49 FR 6.501 (February 22, 1984). The comment period following publication of the February proposal (originally expiring on April 23, 1984) was extended until July 23, 1984, Resolution No. 84–147, 49 FR 17,516 (April 24, 1984). Between February 15, 1984, and July 23, 1984, the Board received and considered 199 public comments in response to the February proposal. The February proposal was thereafter revised and re-issued by the Board on November 30, 1984. Board Res. No. 84–681, 49 FR 47,852 (December 7, 1984). Copies of the reports and studies cited in the November proposal were also made publicly available. A total of 276 comments responding to the November proposal were received prior to the end of the second comment period on December 31, 1984. An additional 37 comments were received between the official close of the comment period and January 22, 1985, and all of these comments have been considered by the Board. Moreover, comments concerning the proposed direct-investment regulation received through the same date have also been considered to the extent they are relevant to these proposals.

Nearly one year has elapsed since revisions in the net-worth regulations were first proposed in February, 1984, and the Board's supervisory experience confirms that new requirements for adequate net-worth levels should not be further delayed. Moreover, as explained in the November proposal, the December 31, 1984, closing date was justified because it was a reproposal in which most substantive issues had been addressed and commented upon in connection with the February proposal and there was a need to avoid undue disruption of institutions' financial planning for calendar year 1985. Board Res. No. 84–681 at 35, 49 FR 47,852 at 47,864 (December 7, 1984). The number (323), detail and quality of the comments the Board has received in connection with the November proposal also belie the suggestion that the duration of the comment period was inadequate.

Neither the APA nor the Board's own regulations require an evidentiary hearing in connection with the type of informal rulemaking involved here. *See generally* 5 U.S.C. 553; 12 CFR Parts 507–509 (1984). The net-worth regulation is one of general applicability; it is not adjudicatory in nature. The Board believes that its consideration of the written data, views and arguments submitted by interested members of the public with respect to the February and November proposals enables it to discharge its administrative responsibilities in a fully satisfactory manner without the further delay that a hearing would entail.

Purpose of the Final Amendments and Effect on the Industry

A. Capitalization of the Industry

There was general agreement by the comments, including those submitted on behalf of the same institution by Dr. Alan Greenspan and Professor George Benston, that the savings and loan industry is insufficiently capitalized.[1] This widely-held view is consistent with a recent draft memorandum on Federal deposit insurance prepared by the Department of the Treasury.[2] The Chairman of the Board of Governors of the Federal Reserve System ("Federal Reserve") also commented that "[t]he Federal Reserve Board shares [the Board's] concern about certain developments in the thrift industry, in particular the low and declining capital ratios and the unusually aggressive growth policies adopted by some savings and loan associations." The Chairman of the Federal Reserve goes on to support the November proposal but suggests that "all of the regulatory agencies should adopt common minimal capital standards" so that the thrift industry and commercial banks would be required to maintain the same levels of net worth. In this respect it should be noted that the capital requirements for commercial banks are substantially greater than for insured institutions and that the Federal bank regulatory agencies have recently proposed additional capital adequacy requirements for commercial banks. Federal Deposit Insurance Corporation, 49 FR 29399 (July 20, 1984); the Board of Governors of the Federal Reserve System, 49 FR 30317 (July 30, 1984); and Office of the Comptroller of the Currency, 49 FR 34838 (September 4, 1984). Moreover, as the Chairman of the Federal Reserve and several other commenters noted, accounting rules used by insured institutions in calculating their minimum net-worth requirements are more generous than the accounting rules used by commercial banks. Thus, commercial banks will continue to have substantially higher net-worth requirements than thrifts even after the final amendments become effective.

Several comments agreed with the Board's concern that the FSLIC fund has inadequate reserves and that there is inadequate net worth available in the industry to provide a buffer for the fund. This concern is also expressed in the Treasury Department's draft memorandum on deposit insurance referenced above. Professor Benston acknowledged in his comment the critical role that adequate net-worth levels play in reducing risk because an association is less likely to put its own capital, as opposed to the FSLIC insurance fund, at risk. The Board's concern about the under-capitalization of the industry and the resulting risk to institutions and the FSLIC fund is widely shared by not only members of the industry but also other agencies of the United States. The Board believes that adequate net worth creates substantial economic benefits for an institution, and that requiring such net worth is not a "penalty" as some comments suggested.

B. Impact on Growth, Restructuring and Industry Problems Generally

Forty-six comments criticized the November proposal on the general grounds that it would impede growth and the ability of institutions to restructure their loan and deposit portfolios to remedy the mismatch of assets to liabilities which has plagued the industry in recent years. Another 20 comments objected to the November proposal on the grounds that it did not deal with the fundamental problems of the industry, which were variously characterized as excessive credit risks, poor asset quality, brokered funds, inept management and other problems not related to growth as such. A number of comments expressed the view that the November proposal would penalize healthy, well-managed institutions solely because of the risky business practices of a small portion of the industry. At the same time, however, there was substantial agreement by the comments that the net-worth requirements should increase with growth. Forty-two industry comments generally supported the object of the November proposal and several thought it did not go far enough in imposing additional net-worth requirements on excessive growth.

1. *Relationship between growth and restructuring.* The Board does support growth that has a sound business purpose and an adequate net-worth foundation. The Board also recognizes that such growth can be beneficial to accomplishing the restructuring that many institutions still need. However, unlimited growth, unsupported by adequate capital, is neither useful nor necessary to that task. Moreover, even though the final amendments will have a greater effect on fast-growing

[1] Indeed, in a recent article, Professor Benston recommended that Federal deposit insurance be reduced and that banks and thrifts "should be given a greater incentive to avoid overlyrisky situtations by requiring them to hold meaningful amounts of capital. The capital required might be 20% of insured deposits." George J. Benston, "Brokered Deposits and Deposit Insurance Reform," *Issues in Bank Regulation*, Spring 1984, p. 24.

[2] "Recommendations for change in the Federal deposit insurance system," January 9, 1985. Submitted to the Cabinet Counsel on Economic Affairs by Thomas J. Healy, Assistant Secretary of the Treasury.

institutions, which are, as indicated in the November proposal, a source of great concern to the Board, they will not prohibit any institution from growing at a rapid rate, assuming it can match its growth with the required increases in net worth and support its growth with prudent business plans and management expertise. While the business practices of a minority of institutions are indeed a source of problems for the industry and the Corporation, chronic, inadequate capitalization is a problem that faces the entire industry. By addressing that issue in encouraging all institutions to strengthen their capital base, the Board believes that the financial strength of the industry as a whole will improve. This general objective received widespread support in the comments submitted on the November proposal.

Professor Benston claimed that the Board had no empirical evidence supporting its view that excessive growth increases the risk of loss to the FSLIC. This claim is incorrect. It ignores the empirical study of the relationship between growth and FSLIC losses described in the November proposal.[3] The Board's supervisory experience also belies Professor Benston's assertion. Indeed, rapid growth can so strain the managerial resources of an institution that prudent business practices and controls are not followed. Such extreme growth may also exhaust prudent local loan opportunities and lead to institutions making loans in areas where they are insufficiently knowledgeable to analyze properly the credit risk. Rapid growth often outstrips local sources of deposit and leads to dependence on "jumbo" certificates of deposit that are much less stable.[4] Professor Benston agreed with these observations but thought they only occurred at extraordinary growth rates.[5] To the contrary, the Board's supervisory experience suggests that growth at far less exceptional rates can lead to managerial breakdown, imprudently underwritten loans and over-reliance on "jumbo" deposits.

Indeed, the very comments opposing the November proposal sometimes provided implicit support for it. The best example is the Kaplan Smith study of 11 non-randomly selected institutions in Texas and New Mexico submitted with a law firm comment. That study revealed that one of the subject institutions, which had over $119,000,000 in liabilities and had grown over 950 percent in less than 2 years, had a net-worth requirement of only $91,000 (0.076 percent). Another of the 11 institutions studied by Kaplan Smith grew over 570 percent in less than 2 years and had a net-worth requirement of only 0.88 percent of liabilities. As of September 30, 1984, required total net worth of all institutions in that study was only 1.1 percent of liabilities, and if the strongest institution were excluded, the total required net worth for the remaining 10 institutions would be only 0.86 percent. Several of these institutions are of supervisory concern. Indeed, the Board's Director of the Office of Examinations and Supervision discussed one of the institutions at the time of the November proposal as examples of the regulatory concerns underlying the proposal. The rapid growth of some of the institutions in the study had contributed to serious supervisory problems, including breakdowns in managerial controls, poor appraisal and underwriting practices, significant appraised losses and inadequate recordkeeping. In one of these cases, the imposition of a temporary cease-and-desist order and other supervisory measures were required to prevent the continuation of such regulatory violations. The Board also found that the net worth of two of the institutions in the group is significantly less than reported to the Board and in the Kaplan Smith study because indicated losses on investments were not reflected in their financial reports. Indeed, at least one of the institutions would be insolvent if its expected losses were recognized on its books. These extraordinarily rapid growth rates, clearly inadequate net-worth requirements, managerial breakdowns and massive losses dramatically illustrate the need for the amendments to the net-worth regulation.

Many of the comments, including those of Professor Benston and Dr. Greenspan, asserted that unlimited growth, unfettered by any increased net-worth requirements, was essential to industry restructuring and the correction of asset-liability mismatches. Although mismatching is still a problem for many institutions and has been a major source of concern to the Board, these comments view the necessary balance-sheet restructuring as the only important problem affecting the entire industry and ignore the even more severe losses from bad assets that currently threaten the FSLIC fund. They also assert that rapid growth is the only means to accomplish the necessary restructuring and that the November proposal will prevent essential growth. A few industry commenters discussed their own experience, to the effect that growth had been or was essential to their ability to restructure their balance sheet and cure their asset-liability mismatch problems.

The argument of Dr. Greenspan and Professor Benston, however, is logically flawed. The savings rate is relatively inelastic.[6] An individual institution can attract more deposits away from its competitors by bidding up the interest rate it offers, but very little *new* savings are made available even if competitors respond by increasing their rates. If restructuring is an industry-wide problem and *rapid* growth is essential to correct that problem, then no industry-wide solution is possible. For example, at a 25-percent industry growth rate, which these comments apparently do not consider to be rapid, the thrift industry's total deposits would almost double every three years and FSLIC's

[3] *See also* Joseph A. McKenzie, Office of Policy and Economic Research, *Recent Deposit Growth and Asset Allocation of FSLIC-Insured Institutions*, and *An Analysis of Service Corporation Investment and Direct Real Estate Investment by FSLIC-Insured Savings Institutions*, (1984) ("McKenzie Studies"). The McKenzie Studies demonstrate that high-growth-rate institutions, particularly those involved in heavy direct investments, make relatively risky decisions in choosing both their assets and liabilities. In his comments on the proposed direct-investment rule, Professor Benston claims that the results of the McKenzie Studies were not statistically significant. In fact, in most cases the statistical tests indicate a very high degree of significance.

[4] Professor Benston's earlier study of thrift failures (submitted as a comment to the February proposal) found a substantial correlation between high levels of "jumbo" deposits and failure.

[5] While acknowledging that excessive growth may pose substantial risks including managerial overload, deliberate risk-taking and lack of expertise and comparative advantage in new areas of investment, Professor Benston assumes that "an association that plans its growth is not likely to undertake added or unusual risks." He cites no empirical or analytical support for this assumption—which contradicts his earlier warning that an association may deliberately choose risky investments. Professor Benston's earlier writings repeatedly emphasize that the presence of FSLIC or FDIC insurance, particularly where there are only low levels of net worth, creates a powerful incentive for associations to gamble on high-risk investments because the association profits if the investment succeeds, while the FSLIC bears virtually all the loss if it fails. The incentive is even greater for a failing institution. *See* George J. Benston, "Brokered Deposits and Deposit Insurance Reform," *Issues in Bank Regulation*, Spring 1984, pp. 21, 22. Thirty-seven percent of FSLIC-insured institutions have no "tangible" net worth, *i.e.*, regulatory net worth minus net-worth certificates, appraised equity capital, goodwill and other intangibles. Plainly, FSLIC's losses can be staggering when an institution engages in rapid growth to fund risky investments. Professor Benston has acknowledged that state deposit insurers of financial institutions failed previously where they lacked the power to regulate investment risk effectively. *See* McKenzie Studies, and "Deposit Insurance and Bank Failures," *Economic Review*, Federal Reserve Bank of Atlanta, March 1983, pp. 8, 9.

[6] *See* Robert H. Defina, "The Link Between Savings and Interest Rates: A Key Element in The Tax Policy Debate," *Business Review*, Federal Reserve Bank of Philadelphia, December 1984, and the empirical studies cited therein at p. 19.

ratio of reserves to deposits would decline well below its already unacceptably low lever.[7] Moreover, if the industry did try to "grow out of" the asserted industry-wide problem of maturity mismatch, extraordinary competitive pressures would develop between thrifts, banks and money market funds competing for an inelastic supply of funds. This would increase the cost of funds, harm thrift profitability, and increase the incentive to engage in riskier investments. Thus, rapid growth on an industry-wide basis is incapable of solving an industry-wide problem.

These comments also provided no empirical evidence to support their assertions that rapid growth leads to reduced interest-rate risk, and is the only means to reduce such risk. Absent regulation, there is no assurance that such growth will be used to restructure and solve mismatch problems. the McKenzie Studies cited above and discussed in the November proposal demonstrate that rapid growth has not necessarily contributed to such restructuring. The final amendments, however, require that in deciding whether growth in excess of 25 percent annually can be undertaken, the PSA must specifically review whether the institution is seeking to avoid a maturity mismatch.

The individual examples supplied by some of the comments do not support the wisdom of unlimited growth without regulatory constraints. There are, no doubt, some cases in which growth at higher levels may aid the restructuring of an institution's balance sheet and, under the final amendments, a PSA has clear authority to approve rapid growth when it is supported by adequate capital and designed to aid restructuring. Also, there are alternative means of restructuring, including the sale of assets, pricing and marketing strategies [8] and shrinkage of liabilities.[9] This further undercuts the assertion by Dr. Greenspan the "growth is essential if savings and loans are to remedy their basic structural deficiency (*i.e.*, asset-liability mismatch) . . ."

2. *Proposal seen as too restrictive.* A large number of the comments contended that the November proposal was unduly restrictive in various respects.

(i) Growth issues

Many comments felt that the November proposal would impair rather than improve the health of the thrift industry by compelling institutions either to stop growing entirely or to take extreme and imprudent steps to acquire the levels of net worth needed under the November proposal to support liability growth. Pointing either to their own situation or that of the industry as a whole, many comments suggested that, because of a lack of excess net worth in the thrift industry, if institutions wished to grow, they would be compelled to make riskier investments in order to earn the high returns needed to increase their net worth substantially.

The Board finds the comments' suggestion that the November proposal will stop growth to be unfounded, and that the thrift industry will be able to grow at a prudent rate. Much of this criticism was based on the erroneous assumption that institutions will invariably be compelled to earn new net worth if they wish to grow. The Board has found that most institutions have sufficient excess net worth to permit additional liability growth above 10 percent. The comments that claimed that extremely high rates of return would be required to fund growth generally assumed the absence of both excess net worth and earnings from existing assets. Those lacking excess net worth can obtain new capital through the issuance of stock or subordinated debt—if the market views their growth plans as prudent.[10] Moreover, as discussed above, the Board strongly believes that liability growth must be supported by adequate capital, a point with which many comments agreed. A number of the institutions, which were cited as examples demonstrating that the November proposal was too restrictive, had themselves experienced many of the problems associated with rapid growth—breakdown of managerial control, poor underwriting practices and inadequate record-keeping. These examples attest to the need for the Board to take immediate measures to control growth, even if some institutions are as a result required to "earn" new net worth in order to grow. In addition, as discussed below, the Board has changed the November proposal to expand the "safe harbor" to include institutions of any size growing at an annual rate of 10 percent or less.

A law firm comment asserted that the purpose of the Kaplan Smith study was to "assess the precise impact" on the reviewed institutions if the November proposal had been in effect from January 1 through September 30, 1984. The law firm claimed that the findings of the study were "dramatic"—that 6 of the 11 associations would have failed the net-worth requirement of the November proposal. The Board believes that the Kaplan Smith study does not support the law firm's proposition that the November proposal is *too* restrictive. Rather, it shows that the new net-worth requirements are appropriate. First, it must be noted that the 11 institutions were not randomly selected. Second, data before the Board show that these institutions could engage in substantial growth, if their actual, rather than assumed, return-on-assets figures are used. Third, the group of 11 are generally institutions that have grown at extremely rapid rates, as much as 958 percent in 21 months. Among this group, as discussed previously, are several institutions causing the regulatory concerns addressed by the final amendments. Thus, rather than being too restrictive, the amendments are essential to deal with those institutions that are growing at explosive and imprudent rates without adequate capitalization.

Some comments suggested that, even if institutions did not adopt a policy of growth, the "natural" increase in their deposit liabilities resulting from inflation and the crediting of interest could likely exceed 15 percent and compel even these "slow growers" to earn new net worth to meet the proposed networth requirement. Inflation and interest-credited, however, are not, as these comments claim, causing liabilities to grow at more than 15 percent annually. In 1983, interest-credited was approximately 7.6 percent of liabilities. Some comments overstated the amount of growth resulting from inflation and interest-credited by adding the two rates together, not taking into account the fact that interest-credited already includes a substantial component for inflation. This led to double counting. In any event, this concern is based on the erroneous view that this growth is not "real". Growth from interest-credited and inflation is

[7] At a 25-percent asset growth rate, FSLIC-insured institutions' total assets would grow from $0.958 trillion in November, 1984 to $2.925 trillion in 1989 to $8.927 trillion in 1994. At 25-percent asset growth, the ratio of the FSLIC fund to deposits would fall from approximately 1.0 percent in 1984 to 0.33 percent in 1989 to 0.08 percent in 1995 under current FSLIC premiums, returns and loss rates. The current ratio of FSLIC reserves to deposits is already universally recognized to be inadequate.

[8] *See*, Thomas J. Parliment, United States League of Savings Institutions, *Using Pricing to Control Interest Rate Risk—should you go on a deposit diet?* (1984) (paper delivered at 1984 Special Clinic on Managing Interest Rate Risk in a High Rate Environment held in Washington, D.C. on November 1, 1984).

[9] For example, one institution explained in its comment how it was able to restructure by shrinking rather than growing.

[10] *See* George J. Benston, "Brokered Deposits and Deposit Insurance Reform," *Issues in Bank Regulation*, Spring 1984, p. 24.

real growth in liabilities and poses all of the potential problems that led the Board to develop the November proposal. The suggestion by one law firm comment that interest-credited should not be counted as growth because it is purportedly "only a paper entry on a computer print-out" reveals a fundamental lack of understanding of finance and the thrift industry.

A number of commenters erroneously suggested that a Board study had concluded that deposit growth is a product of regional economic growth and is necessary to fund regional demand for housing credit that grows with the regional economy. These comments argued that the November proposal would discourage the thrift industry from accepting new deposits, and would in effect shift those deposits to commercial banks. As a result, the need for housing credit would not be met. Comments similarly suggested that even if, as an alternative, institutions did permit their deposit bases to grow to absorb this regional growth, the November proposal would discourage them from investing the new deposits in home mortgages, forcing them instead to turn to non-traditional investments that would earn the higher returns necessary to bolster their net worth. The Board does not believe that the proposal needs to be revised to accommodate regional economic growth. The Board study did not conclude that regional economic growth explained differences in deposit growth among institutions. This type of growth accounts for only a small percentage of deposit growth rates,[11] and would, in any event, be taken into account by the PSA in considering an application for growth in excess of 25 percent.

Several commenters also objected to the prior-approval process for growth in excess of 25 percent, on the grounds that it should be unnecessary in light of the modifications being made in the method for calculating the minimum net-worth requirement and particularly the addition of a "growth factor' component. Although the revisions being made in the method of calculating minimum net worth are certainly designed to require fast-growing institutions to expand and improve their capital base, the final amendments do not constitute a guarantee that a fast-growing institution will in fact continue to meet its net-worth requirement over time. Moreover, even if a fast-growing institution does meet its net-worth requirement, that is no assurance that the institution did not achieve its exceptional growth through high-risk investments and/or unstable funding sources or that the institution is capable of managing its business at a greatly increased size. For these reasons and in light of the ample basis discussed in the November proposal for the Board's concern about institutions growing at exceptionally fast rates, the Board continues to believe that prior approval of growth in excess of 25 percent is the most effective method for the Board to obtain reasonable assurance that growth in excess of 25 percent will not unduly jeopardize the FSLIC insurance fund. For all these reasons, the Board is not persuaded by the comments suggesting that prior approval for growth in excess of 25 percent is unnecessary.

Several commenters suggested that the controls on growth in the November proposal, in particular the requirement for PSA approval for growth over 25 percent, would make effective business planning very difficult and represent an unwarranted intrusion into the business judgment of thrift managers. The Board does not agree that the November proposal would unduly hamper business planning. However, revisions appearing in the final amendments will ensure prompt action on applications to the PSA, and should benefit rather than impair long-range planning. Moreover, the application requirement does not contemplate approval for each specific investment, but rather submission of an overall business plan. Therefore, institutions need not be concerned that the regulation would hamper their ability to make specific investments or the timing of those decisions.

(ii) Availability of Home Mortgages

Some comments suggested that the November proposal would have an adverse impact on the home mortgage practices of institutions because they would be required to focus on other, more profitable investments, in order to generate the income required to meet the increased net-worth requirement contemplated by the November proposal. The Board has found no convincing evidence that the November proposal would impair the availability of housing credit. As noted in the November proposal, a Board study suggested that rapidly growing institutions originate significantly lower proportions of home mortgages than the average institution. No comments received have suggested otherwise.[12] Nor have any comments demonstrated that rapid growth is necessary as a general matter to meet housing credit needs.

Furthermore, these comments ignore the fact that: (1) The amendments will continue to allow investments such as adjustable-rate mortgages that provide adequate return without undue risk and, in the case of such mortgages, continue to reduce the minimum net-worth requirement by virtue of the deduction for qualifying balances; (2) a significant majority of thrift institutions, as noted above, possess substantial "excess" net-worth which can offset increases in liabilities; and (3) additional net-worth can be obtained, as noted above, through access to the capital markets.

(iii) Effect on Competition

Other commenters suggested that the November proposal would have an adverse effect on competition. Its constraints on growth, they posited, would make it more difficult for small thrift institutions to compete with large institutions and for the thrift industry as a whole to compete with commercial banks. Several mutual association comments expressed particular concern about the effect of the amendments upon their ability to grow and to compete effectively because of their more limited access to new capital.

The proposal will not harm competition. The financial services industry is extraordinarily competitive. As discussed above, the amendments will permit institutions to continue to grow in a prudent manner and therefore should not affect their ability to compete against each other or against

[11] While *per capita* money-income growth for the District 9 and 11 states referenced in the Board study exceeds the national average, the difference is much smaller than the difference from the national average for deposit growth in the same two districts. *See* Statistical Abstract of the United States, Per Capita Money Income Growth 1969–1971.

[12] Professor Benston argues in his comment on the proposed direct-investment rule that the Board should focus on the absolute dollar value of home mortgages originated by rapidly growing institutions rather than the proportion of total institution assets placed in home mortgages. While superficially appealing, this argument is substantially overstated. Professor Benston's analysis of aggregate funding of residential mortgages is incomplete because it does not consider the sources of such deposit growth. His analysis does not provide an adequate basis for the Board to ignore the undisputed evidence that institutions engaged in heavy direct investments exhibit, in average percentage terms, less than one-half the commitment of all other institutions to home financing. Given the fact, as earlier noted, that the savings rate is relatively inelastic, the deposit growth of the institutions with excessive direct investments could well come at the expense of other institutions that would have used a larger proportion of such deposits to fund home mortgages. Thus, the Board would not be true to its statutory mandate to ensure the provision of economical home financing if it were to rely on Professor Benston's incomplete analysis of aggregate residential mortgage lending.

commercial banks.[13] The Board recognizes that mutual institutions are more limited than stock associations in their ability to raise new capital, but does not believe that the net-worth regulation needs to be modified to reflect this difference. Mutual institutions can issue subordinated debt to raise capital. Their inability to issue stock affects their ability to meet any net-worth requirement and is inherent in their decision to operate in mutual form.

(iv) Acquisitions and mergers

A few commenters also suggested that growth constraints would discourage the potential acquirers of failing thrift institutions, forcing the Corporation to liquidate more institutions at a higher cost to the FSLIC fund. The Board does not believe that the amendments will discourage the acquisition of problem institutions. The experience of the Corporation does not suggest that such acquisitions are attractive because of the potential for post-acquisition growth. As described below however, the Board has made several revisions to the November proposal to ensure that such acquisitions do not unduly increase an acquirer's net-worth requirement.

(v) Forbearance agreements

Finally, some comments questioned the effect of the November proposal on existing forbearance agreements. Several of these comments also questioned whether the November proposal constitutes a change in the Board's policies with respect to such agreements.

Given the large number of forbearance agreements currently in effect between the Corporation and institutions which have engaged in supervisory acquisitions, consolidations or mergers, and the varied provisions of such agreements, it is not possible to provide a uniform rule governing the manner in which the amendments will affect such agreements. Instead, the Board believes that it is more appropriate for the Principal Supervisory Agent to review each existing forbearance agreement on a case-by-case basis. However, the Board wishes to assure institutions that are a party to a forbearance agreement that each such agreement will be interpreted in a manner consistent with the spirit in which it was made.

Moreover, the amended regulation contains a provision intended to clarify that when an institution engages in an acquisition, consolidation or merger in a supervisory context, the Corporation may act to reduce the impact which such a transaction could have under the net-worth regulation on the acquiring institution's minimum net-worth requirement. In this respect, the Board wishes to emphasize that it will continue its long-standing policy of encouraging the Corporation to negotiate appropriately tailored forbearance agreements with institutions that are prepared to enter into supervisory acquisitions, consolidations or mergers at the Corporation's request.

C. Direct Investment Contingency Factor

1. *Basis for 10-percent reserve requirement for direct investments.* The Board received 74 comments which addressed the direct-investment component of the contingency factor included in the November proposal. A number of comments attacked the basis for the Board's proposed 10-percent reserve requirement for direct investments, maintaining that direct investments as a general matter are not riskier than traditional industry investments, do no present a serious threat to the FSLIC fund and enhance the profitability of institutions, thereby decreasing risk to the FSLIC fund. Other comments asserted that no contingent net-worth reserve should be required for the first 10 percent of such investments.[14]

The Board, in the November proposal, indicated that it had engaged in considerable research to evaluate the nature of the risk of direct investment to FSLIC and to determine whether an additional net-worth requirement is appropriate. Those studies demonstrated that greater proportions of direct investments by institutions would increase risks to them and the FSLIC fund.[15]

The Board's supervisory experience has also confirmed the theoretical and empirical demonstrations of the relatively riskier nature of direct investments set forth in the referenced studies. More specifically, severe losses have occurred, or will occur, in many institutions that have invested most heavily in direct investments (including investments that are, in economic reality, direct investments even though recorded as purported loans), at a substantial cost to the FSLIC fund. Moreover, available data may seriously understate losses that have already occurred as a result of direct investments due to the fact that expected losses resulting from poor asset quality generally do not appear on institutions' books.

For these reasons, the Board preliminarily concluded in the November proposal that the substantially greater risk of loss posed by direct investments supported a greater net-worth requirement and proposed the 10 percent contingency reserve factor for direct investments. The comments filed with respect to the November proposal did not disagree that the Board's recent supervisory experience demonstrates that many direct investments have been extremely risky. Indeed, several comments acknowledged the very severe losses that the FSLIC fund suffers in asset quality cases. A significant majority of FSLIC's current caseload of asset-quality cases involve direct investment.

Further, the Board's own economic studies, supporting the generally riskier nature of direct investments, drew very little adverse comment.[16] One law firm comment claimed that the Board should not rely on the studies because they purportedly were based on a "clearly erroneous factual assumption" concerning service corporation assets.[17] Specifically, the law firm asserted that "most" service corporation assets do not constitute direct investment under the Board's definition. This assertion was made without any supporting data and is contrary to the Board's experience. Moreover, it ignores the fact that the Board's studies examined all types of direct investment, including real estate and equity securities, and found that each was, as economic theory and the Board's supervisory experience indicates, a relatively riskier investment than alternatives such as adjustable-rate mortgages. To the extent that service corporations engage in activities designed simply to service the needs of the institution (*e.g.*, data processing), economic theory and the Board's experience would predict that such activities would show relatively small

[13] Indeed, commercial banks will have substantially higher and "harder" net-worth requirements even after these amendments become effective.

[14] The Board also received a comment addressed to the proposed direct-investment rule from the Board of Governors of the Federal Reserve System. That comment expressed the Federal Reserve Board's agreement that direct investments posed significantly increased risks to institutions and the FSLIC.

[15] For a full discussion of these studies, *see* the November proposal.

[16] Neither did commenters question the SRI study which was completed after the November proposal was released, but which was referenced in the direct-investment proposal and was available in the Board's public reading room during the comment period on the November proposal. Copies were made available to all who requested the study.

[17] This same comment is also discussed in the preamble to the Direct-Investment Rule.

variability of return, which is an economic definition and measure of risk. Therefore, to the extent that the Board's study of the variability of service corporation rates of return is affected by the inclusion of nondirect investments, the study is likely to *understate* the risks posed by direct investments in service corporations.

Professor Benston's comment criticized the Board's studies for measuring risk by the variability of returns and asserted that this "analysis wholly ignores other types of risk." He claimed that the studies, therefore provide no evidence on "total risk." Variability of return is a standard economic definition of total risk. The Board's studies contain references supporting this definition, and Professor Benston's comment contains no references disagreeing with it. Prior works by Professor Benston use this standard concept of risk. [18] Since variability of return is a measure of the "total" risk of a single investment or portfolio of investments, the Board has studied the total risk of direct investments both as single investments and in portfolios. [19]

Professor Benston also viewed direct investments as vital to solving the problems of the industry. The primary thrust of Professor Benston's comment was that direct investments were generally less risky than other investments as a matter of logic. His comment is presented without empirical support and is refuted by the Board's studies. Professor Benston based his conclusions upon a discussion of four components of risk: (1) Interest-rate risk; (2) default risk; (3) operations risk; and (4) fraud risk. He asserted, without a supporting basis, that direct investments are generally less risky than loans in all four components. Professor Benston therefore maintained that there was no rational economic basis for requiring a contingency reserve factor for direct investments.

With respect to his first risk component, however, Professor Benston cites no evidence that institutions are using direct investment to reduce interest-rate risk by curing asset-liability mismatches. In fact, direct investments could prove totally ineffectual, and harmful, if relied upon to "match" assets and liabilities. For example, classifying an equity stock or direct real estate investment as a long-term or short-term investment in an attempt to match an institution's deposit maturities would be an exercise in fiction.[20] Any institution that believed it had protected itself against interest-rate risk through, for example, substantial equity security investment would be exposed to terrible losses if stock prices fell while inflation, interest rates and the association's cost of funds increased substantially. In addition, the substantial transaction costs of disposing of most direct investments make them even more inappropriate devices for avoiding mismatch problems. Moreover, adjustable-rate mortgages offer a far more reliable protection against interest-rate risk.

Professor Benston maintains that institutions may make loans with substantial default risk, *e.g.*, new commercial construction loans. He asserts, again without support, that it would be safer for an institution to invest in such projects directly. The Board's experience is to the contrary. First, a commercial construction project can prove disastrous for an equity participant while the lender earns its full contractual rate of return. For example, a project may just cover its costs and the equity investors will earn no return on their investment, but the lender will earn its full return. Where the investor suffers a negative return and ultimately defaults on the project, the lender is frequently paid in full because of the underlying collateral. Even in cases of default early in the construction process, the lender normally assumes, by contract or foreclosure, the rights of an equity holder to control construction and financing decisions. In sum, the Board's experience is that direct equity investment in commercial construction projects is more risky than lending to the same projects.[21]

The third component of risk defined by Professor Benston is operations risk. This refers to the cost of servicing and monitoring an investment. Typically, an institution receives fees to service a loan. Thus, the interest rate on a loan normally understates the institution's return. Conversely, the costs of monitoring a direct investment are borne by the investor. The Board's experience is that servicing costs are likely to be higher for direct investments. Professor Benston provides no supporting references for his contrary conclusion. Indeed, he relies on an example that proves the Board's point—the Empire Savings & Loan Assocation failure. The purported "loans" that led to that failure were direct investments.[22]

The final category of risk listed by Professor Benston is fraud risk. Again without support, he asserts that loans entail more fraud risk than do direct investments. His premise is: "Any standard mortgage situation offers a perfect opportunity, requiring *only* that the borrower and lender be dishonest." (emphasis added). The Board's experience leads it to reject both the

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[18] *See* George J. Benston and Clifford W. Smith, Jr., "A Transactions Cost Approach to the Theory of Financial Intermediation," *Journal of Finance*, May 1976, p. 220; George J. Benston, "Savings Banking and the Public Interest," *Journal of Money, Credit and Banking*, February 1972, p. 195. Indeed, Professor Benston's January 15, 1985 comment on the proposed direct investment regulation characterizes this definition and measure of risk as a "fundamental principle of finance theory."

[19] Investments that fail totally have a zero return in all subsequent years, and therefore show no variability in return. Such investments are normally excluded from studies measuring variability of return because their inclusion could obviously understate risk seriously. This exclusion, however, itself causes some understatement of the risk of investments that are most likely to suffer complete failure, i.e., direct investments. Thus, to the extent the Sirmans Study (*see* footnote 28, *infra*) might understate slightly the risk of particular investments, it understates the risk of direct investments compared to loans.

[20] Valuation models used by some investors and brokerage firms implicitly assume that equities have extremely long durations. They also imply that these securities are highly sensitive to interest-rate changes and tend to move in the same direction as bonds. This would imply that equity investments could *add* to any mismatch problems.

[21] A very recent study has confirmed the increased credit risk posed by "equity participation loans" made by a sampling of Texas-chartered institutions. The study found that many of these "loans" were in fact viewed as direct investments by the institutions. *See* John H. Crockett, Clifford L. Fry, and Paul M. Horvitz, "Equity Participation in Real Estate by Savings and Loans: Implications for Profitability and Risk," presented to the 1984 Meeting of the American Real Estate and Urban Economics Association (Dallas, Texas, December 28–30, 1984), pp. 7–8 [hereafter "Equity Participations"]. This study was funded by the Board, but was an independent analysis not subject to the direction of the Board. The study found that "Developers putting substantial cash into a project can fund straight loans and have no incentive to share the profits." *Id.* Professor Benston disusses whether it would be more risky for an institution to make a loan to, versus a direct investment in a given project. Economic theory and this study, however, suggest that his comparison is unduly favorable to direct investment because developers will wish to retain the rewards to equity provided by their "best" investments. Thus, the projects offered to institutions for direct investment are likely to be riskier than the projects that come to them seeking loans.

[22] In economic substance, the loans were plainly direct investments, as a recent report of the House Committee on Government Operations regarding the Empire failure found. *Federal Home Loan Bank Board's Supervision and Failure of Empire Savings and Loan Assocation of Mesquite, Texas*, House Committee on Government Operations, H.R. Rep. 98-953, 98th Cong., 2d Sess., 32 (1984). The Board's recently proposed regulation concerning so-called "ADC loans" would require such transactions to be classified as direct investments. Board Res. No. 84-579 "Accounting for Certain Real Estate Activities," 49 FR 43557 (Oct. 30, 1984). The accounting profession has come to the same conclusion. *See* "Notice of Practitioners on Accounting for ADC Arrangements", Accounting Standards, Executive Committee, published in the *Journal of Accountancy*, November 1983; "Notice to Practitioners on ADC Loans", AICPA Savings and Loan Committee, published in the CPA Letter, November 26, 1984.

premise and the conclusion. If *both* parties to the transaction are dishonest, then fraud loss will occur whether the transaction is a direct investment or a loan. Moreover, the Board's experience is that fraud losses are likely to be greater for direct investment. First, because the institution's officers and appraisers are far more familiar with real estate lending than direct investments, it is more likely that an officer or appraiser (not engaged in the fraud) will spot the loan fraud. Second, loans must be repaid, usually in periodic installments. Thus, there are points at which the loan, if a payment is not made, will alert examiners, or officers not engaged in fraud, to the problem. This is usually not true of direct investments.

The increased fraud risk posed by direct investments is even more obvious in the typical situation where only *one* party to the transaction (the borrower or would-be seller of the direct investment) is engaged in fraud. The institution's employees, officers, accountants and appraisers have far more experience in spotting attempted loan fraud than direct-investment fraud. In sum, direct investments pose greater risks in each of the four categories created by Professor Benston.

Finally, Professor Benston claimed that restricting direct investments would drive good managers out of the thrift industry and lead their replacements to gamble on fixed-rate mortgages and extremely risky types of commercial loans.[23] He references no support for this claim, and the Board's studies demonstrate that adjustable-rate mortgages offer a ready alternative allowing adequate returns at relatively low risk. Although some commenters noted that many adjustable-rate mortgages have interest-rate caps and do not provide guaranteed protection against extreme interest-rate increases, even adjustable-rate mortgages with such caps provide substantial protection from interest-rate risk [24]—far better than direct investments would. The Board's supervisory experience is that adjustable-rate mortgages are now the primary investment choice of institutions.

Several comments placed primary reliance on Professor Benston's prior study supplied to the Board during the comment period on the February proposal. Some of these comments attempted to respond to the analytical and empirical flaws in his study noted in the November proposal. A law firm comment acknowledged that Professor Benston's study did not track the Board's definition of direct investments but asserted, without explanation, that the differences were "minor". In fact, the differences were major. For example, the failures of Empire Savings & Loan and San Marino Savings & Loan were primarily caused by investments that were denominated "loans" but which really were, as explained above, direct investments. The expected costs to the Corporation of resolving these two failures may well exceed $400,000,000—a very considerable part of the approximately $6 billion FSLIC fund.[25]

The law firm also acknowledged that Professor Benston's study surveyed "only a few institutions" with substantial direct investments, but claimed it was as "significant as humanly possible." The law firm again failed to cite any statistical or economic references for this proposition. That study considered a subset of direct investments (thereby excluding the Empire and San Marino failures) during a time period when virtually no institutions engaged in such investments (and those that did had invested so recently that there was no time for bad direct investments to produce losses) and came to the inevitable conclusion that such investments did not cause failures in the period studied. The study has no predictive utility for the current situation, in which institutions in many states are engaging in substantial direct investment, with which the Board's supervisory experience reveals major problems.

Various commenters proposed the assessment of a contingency factor equal to 2, 3, 5, or 20 percent of direct investments. There was no consensus on what the percentage should be. Comments recommending a decrease in the amount of the direct-investment component of the contingency factor attempted to justify the lower amount by reference to the current requirement that minimum net worth include 20 percent of scheduled items and 2 percent of recourse liabilities, respectively, with which they agreed. These comments argued that the contingency factor for direct investments should be closer to the 2 percent of recourse liabilities than to the 20 percent of scheduled items because, in their view, the risk associated with direct investments is more similar to that associated with recourse liabilities than with scheduled items. The contingency factor recommended by one comment included 20 percent of direct investments due to the commenter's belief that direct investments represent very substantial risk to the FSLIC.

The Board has considered whether the proposed amount of the contingency factor attributed to direct investments should be decreased or increased. The Board continues to be of the view, expressed in the November proposal, that the percentage should be less than 20 percent required for scheduled items—for which losses are very likely. Recourse loans, however, are substantially less risky than direct investments because the credit of the borrower provides significant protection to even a recourse lender. There is no way, of course, for the Board to know precisely what percentage figure is optimal. The Board's judgment is that a contingency factor of 2, 3, or even 5 percent of direct investments would not be sufficient to maintain adequate captial levels to support such direct investment and to protect the FSLIC fund. The Board continues to believe that direct investments, because of the greater risks they pose, particularly during this experimental period, require a substantial contingency factor in the range of 10 percent.[26] The Board is therefore adopting in final form the requirement that the portion of the contingency factor attributed to direct

[23] Professor Benston claims that the Sirmans Study found that both of these investments produced negative returns. He therefore suggests that the Board bar federal associations from holding such investments. In fact, the Sirmans Study found both returns to be positive. The Sirmans Study also found that fixed-rate mortgage investments performed poorly during the worst interest rates in the nation's history, and before associations employed "hedging." The Board has successfully encouraged the use of: (1) Adjustable-rate mortgages, (2) "hedging", through *e.g.*, financial futurés and interest-rate swaps, (3) collateralized mortgage obligations, and (4) other devices to guard against interest-rate risk.

[24] Maurice D. Weinrobe, "Analysis of Consumer Safeguards for AMIs," 3 *Alternative Mortgage Instruments Research Study*, XXI (Washington, D.C., Federal Home Loan Bank Board, November 1977), pp. 4–21.

[25] One law firm comment claimed that no institution had failed due to direct-investment losses as of June 30, 1984, and suggested that the Board could not regulate direct investments until the FSLIC fund had suffered substantial losses from such investments. The factual claim is false, as the San Marino and Empire cases demonstrate. The prevalence of direct-investment problems in the Corporation's current caseload, and the Board's recent supervisory experience portend substantial further losses to the fund from direct investments. In these circumstances, and given the current state of the FSLIC fund, it would be irresponsible for the Board to delay further a regulatory response until even greater losses are incurred.

[26] The recent study of Texas thrifts confirmed that the initial direct investments made by associations are likely to be particularly risky. "Equity Participation," *supra*. This result is consistent with economic theory and studies that demonstrate that managerial inexperience is a key determinant of business failures.

investments in determining applicable net-worth requirements shall be 10 percent of such direct investments.

2. *Relationship of the direct-investment reserve component to the direct-investment regulation.* Over one-half of the comments submitted on the November proposal maintained that the direct-investment component of the contingency factor was unnecessary in view of the direct-investment proposal.[27] The approach set forth in the Board's proposed direct-investment rule of supervisory review of direct-investment thresholds on an institution-by-institution basis was viewed as preferable to the industry-wide requirement that the net worth of institutions engaging in direct investments include a direct investment component. A number of comments maintained that the net-worth reserve requirement of 10 percent of direct investments would discourage institutions from making direct investments by significantly increasing their cost of capital for such investments, and would render new direct investments a practical impossibility for institutions without significant excess net worth.

The Board believes that the direct-investment contingency factor is in no way rendered unnecessary or duplicative by the direct-investment rule it is adopting contemporaneously. Given the increased risks posed by direct investment, additional reserves are essential to allow direct investments to be undertaken prudently.

Some commenters also argued in the alternative that, even if the Board determined that a direct-investment contingency factor was warranted, the contingency factor should not be applied to an institution's direct investments so long as such direct investments did not exceed 10 percent of total assets. Several comments argued that such an exemption from the contingency-reserve requirement would be consistent with the findings and conclusions of the Sirmans Study.[28] They cited the Sirmans Study as concluding that associations would reduce their risk and increase their returns if they invested 10 percent of their assets in direct investments, because of the benefits of portfolio diversification. The Board does not agree with this rationale, but has decided to adopt the alternative for other reasons explained below.

The Sirmans Study did not reach and does not support the conclusion urged by these comments. The initial Sirmans Study noted that the proxy it used for measuring the return and risk of direct real estate investment likely underestimated the risks of such investments. The Sirmans Reestimation, using a more appropriate proxy for such investments, demonstrated that risk increased constantly as the percentage of direct investment increased above 2.8 percent.

Moreover, economic theory predicts that many institutions will deliberately make highly risky direct investments because of three powerful incentives. First, much of the industry has virtually no tangible capital. Second, FSLIC insurance means that the FSLIC bears the overwhelming bulk of the cost of any failure, while the institution captures the entire financial gain if an investment gamble succeeds. Professor Benston has often noted the strength of these inventives to gamble. George J. Benston, "Federal Regulation of Banking: Analysis and Policy Recommendations", *Journal of Bank Research*, Winter 1983, p. 229; George J. Benston, "Deposit Insurance and Bank Failures," *supra*; George J. Benston, "Brokered Deposits and Deposit Insurance Reform," *supra*. Third, risk and expected rate of return are directly related.

The Board's supervisory experience demonstrates that decisions on direct investments by institutions have been particularly bad during the time period when their employees and officers generally have no expertise in direct investments.[29] Economic theory, as Professor Benston acknowledged in his comment, predicts that risk will increase where an institution invests in "projects of a type it [has] little experience in" and where "the assets purchased [are] types with which the association [has] little comparative advantage in handling." Direct investments will frequently fit both of these areas of increased risk. The Board's supervisory experience is replete with institutions purchasing oil wells, fast-food restaurants, race horses, broadcasting companies and other assets for which they have no experience and no comparative advantage relative to their competitors. Indeed, Professor Benston has stated that "banking authorities must prohibit banks from making investments which put depositors' funds at more than minimal risk."[30] The Board and the industry are both engaged in an experiment with direct investments.

The Board has been frank that its supervisors, as well as thrift managers, are not as expert in evaluating direct investments and in examining them to discover fraud as in supervising more traditional lending activity. Professor Benston has recommended in analogous contexts supervisory restraints on new investment authority "related to some percentage of deposits or capital and surplus" until the industry and regulators can develop the necessary expertise.[31]

Nevertheless, the Board is willing in this period of experimentation to adopt the suggestion that no net-worth contingency factor be imposed on an amount of direct investment equal to the greater of 10 percent of assets or twice regulatory net worth. This will allow broad experimentation with these new investment powers in the states authorizing them. The Board will, however, monitor developments closely, and may impose such a contingency factor if its supervisory experience indicates a need. The method for calculating this exclusion is described in more detail in the description of the amendments.

Some commenters argued both that direct investments could reduce total risk through diversification, and that the risk of particular direct investments could be diminished by diversification of such investments. As explained above, FSLIC insurance and the severe problems of the thrift industry create incentives to use direct investments in a deliberately risky manner in an attempt to maximize returns. The Board's experience and a recent study of Texas-chartered institutions confirm this view.

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[27] Four comments wholly endorsed the 10-percent direct-investment component. Two additional comments opposed the 10-percent direct-investment component only to the extent that, in their opinion, the definition of direct investment was overly broad, including, *e.g.*, "equity kicker" loans. While resolution of this issue is not within the purview of this rulemaking proceeding, the definition of direct investment has been considered by the Board in connection with the rulemaking on direct investments.

[28] *See* G. Stacy Sirmans, Office of Policy and Economic Research, *Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments*, (1984) (the "Sirmans Study") and *A Reestimation of a Thrift Institution's Efficient Frontiers*, (1984) (the "Sirmans Reestimation").

[29] The recent study of Texas thrifts confirmed that the initial direct investments made by associations are likely to be particularly risky. "Equity Participation," *supra*. This result is consistent with economic theory and studies that demonstrate that managerial inexperience is a key determinant of business failures.

[30] George J. Benston, "How We Can Learn From Past Bank Failures," *The Bankers Magazine* (Winter 1975), p. 23. Professor Bentson's concern was that depositors could not be rewarded with increased interest rates for increased risks. Currently, with rate decontrol, \$100,000 in FSLIC insurance for depositors and the unavailability to the FSLIC of the option of charging risk-based insurance premiums. Professor Benston's logic applies directly to protecting the FSLIC.

[31] George J. Benston, "Savings Banking and the Public Interest," *Journal of Money, Credit and Banking* (February 1972), p. 191.

"Equity Participations," *supra.* Absent federal regulations, there can be no assurance of appropriate diversification.

3. *Calculation of the direct-investment component.* A number of commenters suggested changes to the calculation of the direct-investment component set forth in the November proposal. Some suggested that the nature of various direct investments should be considered in calculating the required reserve. Thus, it was suggested that the 10-percent reserve requirement should not be applicable to investment in service corporations engaged solely in traditional investment activities or, alternatively, that the requirement should be reduced commensurate with the extent that service corporation investments and assets do not constitute direct investment. Other comments maintained that a flat contingency factor of 10 percent of direct investment fails to take into account different levels of risk associated with various types of direct investment. Several commenters suggested that a credit against the direct-investment component of the contingency factor should be given to institutions for direct investments repaid in any given quarter; failure to give such a credit was viewed as potentially discouraging institutions from seeking repayment of direct investments.

The Board has reviewed these suggestions and recommendations for changes to the method of calculation and has concluded that a flat contingency factor with no provision for "credits" is necessary to achieve the purposes of the amended regulation. Evaluations regarding the relative risk levels of various direct investments would be extremely subjective and, in the Board's view, an inefficient use of supervisory resources.

A few commenters also questioned how the option to consolidate the direct investments of an institution's service corporations with its own for purposes of calculating its networth requirement interacted with the similar option set forth in the Board's proposed direct-investment rule. Specifically, these comments questioned whether institutions could consolidate for purposes of the proposed direct-investment rule and not for purposes of the proposed net-worth amendments. One comment also proposed that the consolidation provisions should be revised to permit the consolidation of assets but not of liabilities.

As set forth in detail below in the description of the amended regulation, the Board has revised the consolidation provisions to permit consolidation of a parent's direct investments with those of both its service corporations and operating subsidiaries, when calculating the direct-investment contingency factor. The Board wishes to clarify that any decision by an institution to consolidate its direct investments with the direct investments of its service corporation(s) or operating subsidiary(ies) for purposes of one rule is intended to have no effect upon the institution's option to consolidate for purposes of the other rule. Where an institution does decide to consolidate its direct investments for purposes of either of the rules, however, such consolidation must be complete, including both assets and liabilities. It is the Board's view that permitting consolidation of assets while excluding liabilities would clearly subvert the purposes of the net-worth regulation.

Finally, a number of comments requested clarification of the extent to which direct investments made prior to December 1, 1984, would be included in the calculation of the direct-investment component of the contingency factor. Comments also requested that the Board amend the revised proposal to exclude from such calculation direct investments to which institutions were legally committed as of December 1, 1984, and the completion of projects pursuant to definitive plans entered into on or before such date. It was the Board's intent that the November proposal would exclude from the calculation of the direct-investment component all direct investments made, or to which an institution had made a legal or definitive business commitment, prior to December 1, 1984. In order to fully clarify its intent in this regard, the Board has adopted the recommendation described, and has additionally revised the "grandfather" date to December 10, 1984, to conform to the savings clause regarding direct investments incorporated in the final direct investment rule being adopted contemporaneously today. The amendments therefore also exempt from such calculation direct investments to which an institution was legally committed on or before December 10, 1984, or for projects with definitive plans which were in existence on or before that date.

General Alternative Solutions

A number of commenters on the November proposal also suggested two general alternative approaches to address the problems associated with the capital inadequacy of thrift institutions. Additionally, numerous comments suggested various changes to one or more aspects of the November proposal. These later comments are discussed below under the heading "Suggested Modifications to Proposal."

A. Supervisory and Case-by-Case Alternatives

Twenty-eight commenters proposed that the Board implement more effective supervisory methods rather than revise the method by which all institutions calculate their minimum net-worth requirements. Their concern was that the regulation would unfairly penalize all associations rather than target the supervisory problems associated with institutions with fast-growing liabilities. Twenty-two of the 28 comments stated that the Board should better utilize its supervisory authority to identify and monitor such institutions. These comments asserted that such case-by-case review would better target the "high fliers" and would protect the FSLIC more effectively than across-the-board restrictions on growth and investment.

Other suggestions included a requirement whereby each institution had to report to its PSA if it planned to expand at a rate that exceeded 15 percent. One comment proposed appointing a supervisory task force to monitor each institution on a monthly basis and to review its operations. Still another commenter recommended that, rather than imposing fixed, industry-wide minimum net-worth standards, adequate net worth should be determined by analyzing such factors as the thrift's earnings record and prospects, its liquidity, asset quality, diversification of assets and liabilities, internal generation of capital, and the quality of its management. Other comments recommended various other "supervisory alternatives" to the approach taken in the November proposal.

The Board continues to believe that the proposed approach is a more effective and practical solution to the problem of inadequate capitalization than any of the alternatives suggested or otherwise available. To a large extent these comments reflect a misunderstanding of the Board's objective in proposing to amend the net-worth regulation. That objective is not, as some commenter stated or suggested, to deal with the capital inadequacy of a selected group of fast-growing insitutions. Even though such institutions are a source of special concern, the Board's objective is, as has been consistently stated, to deal with the problem of inadequate capitalization faced by the industry as a whole by encouraging all institutions to improve and strengthen their capital base. The amendments are designed to accomplish that objective; merely escalating the supervisory attention already devoted to fast-growing institutions, as some of the comments suggest, would not accomplish that objective.[32] Indeed, the Director of the Board's Office of Examinations and Supervision has flatly advised the Board that the supervisory alternative would fail even if Congress were to authorize and fund a substantial increase in the Board's supervisory resources.

Moreover, even with regard to rapidly growing institutions, the Board also does not believe that simply relying on existing, or expanded, supervision is an adequate alternative to the net-worth regulation as amended today. This belief is based on the Board's supervisory experience which shows that, as a result of the deregulation of interest rates and the broader investment powers now granted to many institutions, the savings and loan industry has grown tremendously over a relatively short period of time. Some institutions have experienced what can only be termed explosive growth (*e.g.*, in the range of 50 percent to over 100 percent per year); many others have grown only slightly less rapidly. Growth at these rates not only makes it difficult for an institution to locate sound, prudent investments; it also makes it difficult, if not impossible, for the Board's staff to examine and supervise institutions in a timely fashion. By necessity, examination lags far behind the acquisition of deposits or the investment of these funds. When rapid growth is not matched with prudent increases in capital, the problems associated with such growth, *e.g.*, problem assets, may increase dramatically between examinations. In other words, the damage is done before any supervisory examination is made and well before any corrective action can be taken by the Board.[33] The necessary lag between the time an asset is acquired or a deposit is accepted and the time that those actions are reflected in statistical reports, filed quarterly by each institution, further shows that supervision is not an acceptable alternative to before-the-fact regulatory action. Moreover, even once the reports are filed, the Board cannot assume that it has accurate information about an institution's financial condition because losses on direct investments are often not reflected on the institution's books.

Even though the Board does not believe that closer supervision is an acceptable alternative to the amendments adopted today, the Board concurs in the view expressed by some comments that stronger, more vigorous supervision does have an important role to play in conjunction with regulatory approaches such as the minimum net-worth requirement. As a result, the Board has taken several steps to strengthen its ability to supervise and monitor the activities of institutions and to modernize the examination process. These measures include: increased monitoring of the use of brokered funds by institutions with low net worth (Memorandum of the Office of Examinations and Supervision No. SP–41, May 25, 1984); directives to PSAs stressing the need for prompt referral for enforcement action when corrective action is not forthcoming after substantial problems are discovered; immediate on-site evaluation of any institution exhibiting excessive growth or significant behavorial deviation; and streamlined approval procedures for the initiation of enforcement proceedings. The Board has also improved its ability to monitor the industry by implementation of a new quarterly reporting system and a greater emphasis on electronic technology, which has resulted in more frequent monitoring and accelerated examination of institutions displaying aberrant behavior. Additionally, the Board developed legislation, introduced in the last session of the 98th Congress, to increase its enforcement powers. H.R. 5739, S. 2700.

In effect, certain of the comments suggested that the Board abandon its present approach of measuring net-worth adequacy in relation to liabilities and replace that approach with one which emphasized other financial factors such as earnings or a case-by-case analysis. To the extent such comments argued for replacing the net-worth regulation with a case-by-case approach to determining adequacy of net worth, the Board notes its belief that such an approach is operationally impossible both from its standpoint and the standpoint of institutions.

B. Variable-Rate Premiums

Seventeen comments recommended that the Board raise the FSLIC insurance premium or implement a variable-rate insurance premium based on risk. As stated in the November proposal, the Board is considering such changes to the FSLIC insurance-premium system, and in that connection has requested authority for a type of risk-based insurance-premium structure in its recent legislative proposal. Given the uncertainties of the legislative process and the immediate, significant pressures created by the inadequacy of the industry's capital base, however, the Board believes that a net-worth requirement linked to growth is necessary at this time.

Suggested Modification to Proposal

A. Elimination of Five-Year Averaging; Expansion of "Safe Harbor"

Although 11 comments favored the total elimination of the five-year averaging technique, a greater number of comments urged the Board to preserve the technique or to eliminate it by a method different from that contemplated by the November proposal. A significant number of comments, primarily from institutions, also supported the concept reflected in the November proposal of allowing institutions with assets not in excess of $100,000,000 and annual growth not in excess of 15 percent to use five-year averaging in calculating their minimum net-worth requirement on marginal growth.

At the same time, many comments strongly urged the Board to continue to permit the use of five-year averaging in calculating the net-worth requirement on marginal growth of any institution which is growing at a moderate annual rate regardless of the institution's size. Many of these comments expressed the view that the November proposal would penalize institutions with assets in excess of $100,000,000 even if they were growing at a moderate annual rate and were thus not within the group of institutions whose growth rates gave rise to special concern. Although that was not the intent of the November proposal, the Board considered these comments and concluded they are well-founded. Consequently, the Board has determined that it is appropriate to continue to allow institutions with total assets in excess of $100,000,000 and experiencing an annual growth rate not in excess of 10 percent to continue to

[32] The amended regulation, particularly as adopted, is more focused than many of the commenters acknowledged. For example, 1118 institutions with assets under $100,000,000 had growth rates in the third quarter of 1984 that would have qualified for the "safe harbor" incorporated in the November proposal; 581 institutions with assets below $100,000,000 would not have qualified. An additional 693 institutions with assets exceeding $100,000,000 had growth rates in that quarter that would have qualified for the expanded "safe harbor" adopted today, while 737 of such institutions would not have qualified.

[33] Professor Benston's writings have repeatedly emphasized the severe limitations inherent in relying upon supervision to prevent losses to the FSLIC and FDIC. *See, e.g.*, "How We Can Learn From Past Bank Failures," *supra*.

use five-year averaging in calculating the net-worth requirement on marginal growth. The Board concurs with the comments' view that continuing to allow such institutions to use five-year averaging for marginal growth may serve as an inducement to planned and moderate growth.

B. Quarterly Computation and Attainment of Net Worth

A number of comments supported requiring an institution to calculate its minimum net-worth requirement on a quarterly basis. However, 44 comments expressed concern about the feasibility and necessity of requiring an institution to meet its minimum net-worth requirement as of the quarterly calculation date. Most of these comments suggested allowing an institution one calendar quarter to meet its minimum net-worth requirement as calculated at the end of the immediately preceding quarter, thus continuing the present regime of allowing a lag, albeit on a quarterly basis.

Although the Board has considered the concerns expressed about requiring an institution to meet its net-worth requirement as of the quarterly calculation date, it has concluded not to make any changes in the approach contemplated by the November proposal. Given the time allowed for institutions to submit the quarterly reports on which the minimum net-worth requirement calculation will be based and for PSAs to review these reports and to undertake the process of implementing any appropriate supervisory action with respect to institutions which do not meet their minimum net-worth requirement, the approach of allowing an institution an additional three months to meet its minimum net-worth requirement would, in the Board's opinion, add unnecessary and extremely counterproductive further delays to the time required for PSAs to implement appropriate supervisory action. Moreover, the Board believes its supervisory staff will give due consideration to any institution which has met its minimum net-worth requirement between the calculation date and the point at which any supervisory action is proposed.

C. Principal Supervisory Agent Approval

Several comments raised technical objections to the November proposal relating to the time within which a PSA must object to a growth plan and the factors to be considered by a PSA in deciding whether to take objection. The Board has considered these objections and taken them into account in altering the November proposal. Accordingly, the amended regulation requires a PSA to give written notice to an institution within 10 days after receipt of a written growth plan or any supplement thereto that the growth plan is complete or that additional information is required. After providing written notice that the growth plan is complete, the PSA will have only 30 days to take objection to the growth plan, including providing notice of approval subject to specific conditions. The proposed approach has also been modified to provide that, in determining whether to take objection to an institution's growth plan, a PSA is permitted to consider whether the growth projected is consistent with the institution maintaining its status as a "qualified institution" as defined in 12 CFR 584.2-2(b) (1984). Under that regulation, a qualified institution is one having an identifiable portfolio commitment to home finance, evidenced by investments in home mortgages, liquid assets and other housing-related instruments, equal to 60 percent of assets. Finally, in response to several comments which suggested the prior-approval process would unfairly affect institutions planning to grow at an annual rate in excess of 25 percent for only a brief period, such as a season, the final amendments require prior approval only if growth is to be at an annual rate in excess of 25 percent over two consecutive quarters. The November proposal would have required prior approval for such growth during any three-month period. Thus, for example, an institution planning growth in excess of 12.5 percent during any two consecutive quarters will require PSA approval for such growth, but an institution planning growth in one quarter of 8 percent and growth in the following quarter of 3 percent will not be required to obtain such approval.

D. "Credits" for Various Factors

Several comments also recommended the addition of net-worth "credits" to permit institutions to offset less risky assets, good asset-liability match and low interest-rate risk against their required contingency reserve. The Board believes that such "credits" would involve too much subjectivity to be made a part of the regulation and would require an excessive amount of supervisory effort. Further, the concept of "net-worth credits", as proposed by some commenters, is entirely antithetical to the purpose of the amendments, namely, to increase net-worth reserves in the industry above the present unsatisfactorily low levels. However, the PSA will be able to evaluate such factors in reviewing and approving an institution's growth plan.

E. Exclude Accrued Interest and Non-Insured Deposits

Thirteen commenters urged the Board to exclude from the "growth factor" any growth in liabilities resulting from the accrual or crediting of interest or dividends on existing liabilities. Two commenters argued that liabilities not covered by FSLIC insurance should similarly be excluded. In terms of their potential impact on an institution's financial condition, liabilities of this nature are no different than any other liabilities. Thus, the Board does not believe such liabilities should be accorded special treatment in computing an institution's minimum net-worth requirement.

F. Extension of Appraised Equity Capital and Increase in Qualifying Balance Deduction

Fifteen comments requested an extension of the appraised equity capital provisions of the net-worth regulation and 26 comments requested an increase in the qualifying-balance deduction currently allowed. The Board has determined that neither of these recommendations is appropriate at this time in conjunction with adoption of the amendments. However, the Board does wish to state that its policy will be to allow any institution which has appraised equity capital in its reserve accounts as of December 31, 1985 to use such appraised equity capital for purposes of calculating its minimum net-worth requirement after December 31, 1985.

G. Other Technical Comments

Numerous comments suggested various other technical revisions to the November proposal. These comments related to: (1) The method for calculating the base factor in 1985; (2) the treatment given to institutions with fiscal years beginning other than on January 1; (3) the base against which growth would be measured in 1985 and beyond; (4) problems caused by institutions which move into and out of "safe harbor" ranges; (5) the treatment of liability decreases; and (6) the discontinuity resulting from the treatment under the November proposal of institutions which grow more than 15 percent but less than 25 percent. Many of these comments contained constructive suggestions for improving the November proposal. As discussed below under the description of the final amendments, substantially all of the technical problems raised by the comments have been dealt with in accordance with the commenters' suggestions. Many other technical comments or recommendations were minor variants of the comments discussed above, and merit no individual discussion.

Description of the Final Rule and Discussion of Changes Made From the November Proposal

Calculation Period

As proposed in November, § 563.13(b)(5) of the regulation requires each institution to calculate its minimum net-worth requirement as of the end of each calendar quarter commencing March 31, 1985, and to meet the requirement as of the calculation date. The Board's primary objective in requiring institutions to meet their minimum net-worth requirement as of the quarterly calculation date set forth in detail in the November proposal, was to improve its ability to monitor an institution's financial condition and to respond quickly and effectively to prevent deterioration of that condition. The reasons why the Board has decided to reject alternative calculation periods suggested by various commenters on the November proposal are discussed above in the Summary and Discussion of Comments on the November Proposal (hereafter the "Summary").

Computation of Minimum Regulatory Net Worth

The amended regulation uses a combination of "factors" to calculate the minimum net-worth requirement: the requirement is the sum of the "base factor" (essentially the liability-based portion of the requirement, calculated once a year at the end of the calendar year); the "amortization factor" (the difference between having used five-year averaging and twenty-year phase-in in the base factor for 1985 and not using these techniques as of December 31, 1984, amortized quarterly over 5 years); the "growth factor" (a varying percentage of the growth in liabilities from the end of the calendar year to the quarter for which the requirement is calculated); and a "contingency factor" (including 2 percent of recourse liabilities, 10 percent of direct investments and 20 percent of scheduled items). These factors are described in greater detail below. The regulation does not alter the calculation or use of the "qualifying balance deduction" or "appraised equity capital" and, to avoid confusion, these provisions retain their designations as § 563.13 (b)(4) and (c), respectively. *De novo* institutions are required to use the "phase-down" net-worth requirement, but calculated and met quarterly, and to use all of the "factors" in computing their net-worth requirement when the "phase-down" is completed.

The Base Factor

All institutions regardless of size or growth patterns are required to calculate a base factor in the same manner as of the close of business of the last day of the calendar year. For 1985, the base factor is defined as the liability portion (*i.e.*, minimum net-worth requirement less amounts included in the contingency factor and before reduction for qualifying balances) of an institution's minimum net-worth requirement as of the beginning of the institution's most recent fiscal year that commenced prior to March 31, 1985, calculated pursuant to the minimum net-worth requirement rules in effect on the opening day of such fiscal year. For example, for an institution whose fiscal year begins October 1, its base factor for 1985 will be the liability portion of its October 1, 1984 minimum net-worth requirement calculated under the regulation as then in effect; an institution beginning its fiscal year on January 1, will calculate its 1985 base factor as of January 1, 1985.

Beginning in 1986, each institution will calculate a base factor as of January 1 regardless of when its fiscal year begins. The base factor is defined as the minimum net-worth requirement as of the preceding December 31 less the contingency factor and before reduction for qualifying balances. This means that the new base factor for each year beginning in 1986 is the sum of: (1) The base factor in the preceding year, plus (2) the sum of the quarterly installments of the amortization factor over the preceding year, plus (3) the growth factor from the preceding year. For example, the base factor in 1986 for an institution with (a) a base factor during 1985 or $2,500,000, (b) an amortization factor of $500,000, (c) December 31, 1984 liabilities of $100,000,000 and (d) December 31, 1985 liabilities of $115,000,000, would total $3,050,000. This 1986 base factor is the sum of (1) the 1985 base factor of $2,500,000, plus (2) the sum of the four quarterly installments of the amortization factor for 1985, totalling $100,000 ($500,000 multiplied by one-twentieth, multiplied by four), plus (3) the growth factor of $450,000 ($15,000,000 in new liabilities times three percent). The amortization factor and the growth factor are described in detail below.

The differences between the definition of the base factor contained in the amended regulation and the definition contained in the November proposal primarily reflect changes made in response to comments which sought clarification as to the manner in which the base factor for 1985 would be calculated. Clarification of this point appeared to be especially important for institutions whose fiscal year is not the calendar year. By requiring that the base factor be calculated on an annual basis (instead of a quarterly basis as contemplated by the November proposal) and by revising the method for calculating the growth factor (which will be described below), the Board has also sought to solve a technical issue raised by a number of comments on the November proposal.

The Amortization Factor

New § 563.13(g)(6) defines the amortization factor as the difference between 3 percent of an institution's total liabilities on December 31, 1984, and its 1985 base factor. Any institution whose 1985 base factor is greater than three percent of its total liabilities as of December 31, 1984, will have an amortization factor of zero. Since an institution will calculate the base factor for 1985 under the prior regulation, if it has used five-year averaging and twenty-year phase-in then the amortization factor will reflect the use of these techniques.

Although the definition of amortization factor contained in the amendment differs considerably from the definition contained in the November proposal, most of the changes were made in response to comments which requested a more simplified definition and clarification of its application to institutions whose fiscal year is not the calendar year. The principal changes include the following. First, the 1985 base factor must be used in the calculation of the amortization factor. As a result, an institution that has used five-year averaging and/or twenty-year phase-in the last time it calculated its net-worth requirement under the prior regulation could not elect to ignore the use of these techniques when calculating its amortization factor. Also, the use of the 1985 base factor in the calculation of the amortization factor will assign a three-percent net-worth requirement to the increase in liabilities experienced by noncalendar-year institutions between the beginning of their most recent fiscal year and December 31, 1984, but will allow them 20 quarters in which to phase in this increase. In any event, the objective of the amortization factor is the same as in the November proposal—to gradually eliminate five-year averaging and twenty-year phase-in as applied to December 31, 1984 liabilities over a period of 20 quarters. For the reasons set forth in the February proposal, the November proposal, and the Summary above, the board believes that the availability of five year averaging and twenty-year phase-in have encouraged excessively rapid growth unsupported by adequate capital, with resulting increases in risk exposure both to institutions and to the FSLIC. Also, in response to several technical comments on the November proposal, the Board has revised the definition of the amortization factor to clarify that once an institution has used this factor for 20 quarters, the factor is eliminated in computing the minimum net-worth requirement. Finally, the definition of the amortization factor has been revised to diminish the impact on an institution that qualifies for five-year averaging but subsequently loses its qualification, and on an institution previously unqualified that later is permitted to use that technique.

The Contingency Factor

Another component of the net-worth requirement is the "contingency factor." The contingency factor is calculated on a quarterly basis and is the sum of the following as of the end of the calendar quarter with respect to which minimum net worth is being calculated: (1) An amount equal to two percent of the institution's total recourse liabilities, as that term is defined in 12 CFR 561.8; (2) an amount equal to 20 percent of the institution's "scheduled items", as that term is defined in 12 CFR 561.15; and (3) an amount equal to 10 percent of the institution's "aggregate direct investment," as that term is defined in 12 CFR 563.9–8(b)(1), made after December 10, 1984. Investments by the institution in a service corporation or operating subsidiary which is consolidated with the institution for net-worth calculation purposes may be excluded from the calculation of the contingency factor, but the direct investments of such a consolidated service corporation or subsidiary must be included in the institution's direct investments.

The only substantive changes in the definition of contingency factor, as compared to the November proposal, are described below. First, an institution is permitted to exclude, when calculating this factor, its direct investments in any service corporation or operating subsidiary (as those terms are defined in 12 CFR 563.9–8(b)) which is consolidated for purposes of calculating the institution's net worth. The November proposal would have permitted such an exclusion only for consolidated service corporations. The Board has made this change to conform to a provision of the direct-investment rule, adopted contemporaneously today, governing consolidation of subsidiaries for purposes of determining the threshold level of aggregate direct investment permitted under that rule without prior supervisory review and approval.

Second, an institution is generally permitted to exclude from the direct-investment component of the contingency factor a dollar amount of such investments made after December 10, 1984, not exceeding 10 percent of assets, or twice its regulatory not worth, whichever is greater. With respect to direct investments made before December 10, 1984, or as to which the institution had made a legal commitment or adopted definitive plans, the institution could exclude the entire amount of such "grandfathered" direct investments from the calculation, even where that amount exceeds 10 percent of assets or twice regulatory net worth. If the dollar amount of such grandfathered direct investments exceeds 10 percent of assets or twice regulatory net worth, however, no further exclusion of direct investments made after December 10, 1984 is permitted. However, if the direct investments made before December 10, 1984 are less than the threshold, or subsequently fall below the threshold, then a portion of the additional direct investments will be excluded until the total of all direct investment (both pre- and post-December 10, 1984) exceeds the threshold. In such a case, the amount above the threshold will be subject to the 10-percent contingency-factor requirement.

Otherwise, except for certain minor, non-substantive changes, the definition of contingency factor contained in the amended regulation is the same as the definition contained in the November proposal. By including in the contingency factor amounts based upon an institution's recourse liabilities and scheduled items, the Rule continues the requirement of the prior regulation. The direct-investment component of the contingency factor set forth in the November proposal, however, had not previously been included in an institution's minimum required net-worth calculation. As indicated above in the Summary, a substantial number of the comments objected to any effort by the Board to include a direct-investment component in the calculation of an institution's minimum net-worth requirement. The concerns and objections raised by comments regarding the direct-investment component of the contingency factor were anticipated by the Board in the November proposal and have been fully discussed and responded to above. The Board's rulemaking regarding direct investments also addresses the necessity for regulatory action with respect to direct investments made by institutions.

The Growth Factor

All institutions are required to include in their minimum net-worth calculation an amount equal to the "growth factor." The growth factor is defined to be an amount equal to three percent of the growth in liabilities for an institution growing at an annual rate of 15 percent or less; a graduated ratio between three and five percent of such growth for institutions growing at an annual rate of more than 15 percent but not more than 25 percent; or five percent of such growth for institutions growing at an annual rate of more than 25 percent. Some institutions are permitted to calculate the growth factor on a five-year-average basis, but the use of this technique is limited to: (1) Institutions with assets greater than $100,000,000 whose liabilities are growing at an annual rate of 10 percent or less, and (2) institutions with assets of $100,000,000 or less whose liabilities are growing at an annual rate of 15 percent or less. As described more fully below, an institution that experienced a decrease in total liabilities over the entire calendar year is permitted to reduce its net-worth requirement as of the end of such year by an amount which is proportional to the decrease in total liabilities. For purposes of measuring growth in total liabilities as of the end of a quarter, the regulation provides that, for 1985 and beyond, an institution would compare its total liabilities at the end of the quarter with its total liabilities as of the end of the immediately preceding calendar year.

From the comments received on the November proposal, it is apparent that there is considerable support for the Board's approach of relating an institution's net-worth requirement on a quarterly basis to an institution's marginal growth, and the regulation as amended continues to reflect that approach. Nonetheless, as indicated above in the Summary, there were numerous technical and substantive objections to the proposed approach for linking minimum net-worth requirements to marginal growth. The Board believes that many of these comments were well-founded and contained constructive suggestions for dealing with the technical and substantive problems raised. Accordingly, the final definition of growth factor is significantly changed from the definition contained in the November proposal. The most important changes are described below.

First, both the calculation of the change in liabilities and the calculation of the dollar amount of the growth factor will now be based upon the change in liabilities from the end of the previous calendar year to the end of the quarter for which the net-worth requirement is being calculated. This method avoids problems presented by seasonal growth, in which growth in the first quarter could increase the net-worth requirement by a greater amount than the same rate of growth measured over subsequent quarters.

In computing the growth factor in 1985, an institution's growth will be measured against a base which is the lesser of: (1) The institution's total liabilities as of December 31, 1984, or (2) the institution's total liabilities as of November 30, 1984, plus an amount equal to the average monthly amount by which the institution's total liabilities grew during the period from November 30, 1983, to November 30, 1984. This calculation avoids rewarding institutions that have increased their liabilities beyond their sound, well-planned needs between November 30, 1984 (the date of the November proposal) and December 31, 1984. According to reports received by the Board, a number of these institutions intended to later divest these excess liabilities and thereby appear to have decreased in size, thus reducing their minimum net-worth requirement for purposes of this regulation.

The amended regulation applies a growth factor in an amount equal to three percent of the change in liabilities if the rate of change is between zero and 15 percent on an annualized basis (with exceptions to be described below), and in an amount equal to five percent of the change in liabilities if the rate of change is 25 percent or greater on an annualized basis. These requirements are essentially those set forth in the November proposal. For institutions whose growth exceeds 15 percent but is not more than 25 percent, the growth factor will be computed on the basis of a formula which is designed to cause the marginal net-worth requirement to increase gradually on a straight-line basis from three to five percent. Unlike the other provisions of the growth factor, which are expressed as a percentage of the amount of the change in liabilities, this formula is expressed as a percentage of the *rate* of change in liabilities multiplied by the dollar amount of the change. For example, an institution which, as of the end of a calendar quarter, has grown on a year-to-date basis at the annual *rate* of 16 percent will have a growth factor equal to 3.2 percent of the dollar amount of that change; at a 20-percent *rate* of growth, the growth factor will be 4 percent; a 22-percent growth *rate* will have a 4.4 percent marginal requirement. This change was made in response to a number of comments on the November proposal objecting to requiring institutions growing at a rate in excess of 15 percent (but less than 25 percent) to have a growth factor of 4 percent of that growth and arguing that this constituted a serious penalty for institutions whose growth rate was only slightly in excess of 15 percent per year.

Institutions with $100,000,000 or less in assets and growing at an annual rate of 15 percent or less may continue to use five-year averaging. As discussed in the Summary, any institution, regardless of size, which is increasing its liabilities at an annual rate of 10 percent or less may also use five-year averaging. In order to avoid significant discontinuity when an institution either enters or leaves the class eligible to use five-year averaging, the structure of the net-worth requirement has been made the same for those inside and outside of this exception. As a result, the marginal net-worth requirement is calculated at the five-year-average rate. This rate is set forth in § 563.13(g)(4)(ii) (*a*) and (*b*) as three percent multiplied by a fraction the numerator of which is determined by averaging the liabilities as of the end of the current quarter and as of the end of the corresponding quarters of one or more of the previous four years (provided the years are consecutive), and the denominator of which is the total liabilities at the end of the current quarter. This rate is then multiplied by the amount of the change in liabilities from the end of the preceding year to the end of the current quarter, to arrive at the dollar amount of the growth factor.

To ensure that the continued use of five-year averaging is not abused, the regulation provides a floor below which the marginal rate may not fall. The Board believes that a floor marginal rate should be established so that institutions enjoying the use of five-year averaging (in computing the growth factor) should not have a marginal capital rate *lower* than that which they would have if they had grown at the threshold rates (i.e. 10 percent for institutions with more than $100,000,000 in assets; 15 percent for institutions with less than $100,000,000 in assets) over the previous five years. Thus, for institutions having more than $100,000,000 in assets, the assumption is a constant rate of growth of 10 percent per year (the maximum rate) for five consecutive years—resulting in a minimum marginal rate of 2.5 percent. For institutions having $100,000,000 or less in assets, the assumption is a constant rate of growth of 15 percent per year for five consecutive years—yielding a minimum marginal rate of 2.35 percent.

The change to calculating five-year averaging in the growth factor, along with requiring a base factor and amortization factor for institutions permitted to use five-year averaging, does not represent a significant effective change from the November proposal. The initial base factor for such an institution is determined by using five-year averaging (for example, liabilities for 1980 through 1984). The use of five-year averaging, on the margin, in determining the growth-factor rate effectively permits the averaging of liabilities for 1981 through 1985. If an amortization factor is not included, such institutions effectively would be averaging liabilities for 1980 through 1985—six-year averaging; the following year averaging effectively would include liabilities for 1980 through 1986—seven-year averaging. Requiring such institutions to include an amortization factor effectively cures this problem by approximately eliminating the earliest year from the calculation.

With regard to calculating the effect of a reduction of liabilities on the growth factor, the regulation provides that a decrease in total liabilities occurring during a quarter will have no impact on the institution's growth factor for that quarter. However, when an institution calculates its growth factor for the last calendar quarter of a year in which a decrease in total liabilities for the year has occurred, such a decrease in liabilities will act to reduce the institution's minimum net-worth requirement. The reduction in the net-worth requirement is the change in liabilities multiplied by a fraction the numerator of which is the base factor at the beginning of the year and the denominator of which is the liabilities as of the close of business of the last day of the preceding year. This fraction represents the average ratio of the liability-based portion of the net-worth requirement to the liabilities at the beginning of the year. Thus, for example, if an institution with a 1986 base factor of $5,000,000 has total liabilities of $150,000,000 as of December 31, 1985 and total liabilities of $141,000,000 as of March 31, 1986, its change in liabilities for the first quarter of 1986 will be less than zero. Hence its growth factor for that quarter will be zero and its minimum net-worth requirement as of March 31 will not be increased or decreased by any growth factor. If, however, the same institution has total liabilities of $141,000,000 on December 31, 1986, then its growth factor for the fourth quarter will be a negative amount calculated by multiplying the change in liabilities (−$9,000,000) by a fraction the numerator of which is the 1986 base factor ($5,000,000) and the denominator of which is total liabilities as of December 31, 1985 ($150,000,000). This would produce a negative growth factor of −$300,000. This amount would be subtracted from the institution's minimum net-worth requirement as of December 31, 1986, and thereby reduce the institution's base factor for 1987.

This result differs from the November proposal which would have required accounting for a decrease in liabilities on a quarter-by-quarter basis. Although this change means that an institution which experiences growth in one quarter followed by a decrease in liabilities in the next quarter will not have its minimum net-worth requirement reduced as of the quarter in which the decrease occurs, an institution which over the course of an entire year experiences a decrease in total liabilities will be treated in the same fashion under the amended regulation as it would have been treated under the November proposal.

Several commenters pointed out that the November proposal offered institutions the incentive to artificially increase their liabilities as of the first day of a calendar quarter, promptly divest those additional liabilities and then grow at their normal rate, with the combined effect of appearing to have decreased their liabilities during that quarter and thereby decreasing the growth factor and, hence, the minimum net-worth requirement during subsequent quarters. Information made available to the Board supports the view that certain institutions were engaged in practices of this nature. The change described above will decrease the incentive for institutions to increase their liabilities without a sound economic purpose because credit for decreases in liabilities will only occur at the end of the calendar year and only if there has been a decrease as measured over the entire year. In a further effort to prohibit business practices which have as their primary purpose the evasion of the minimum net-worth requirements and the artificial reduction of an institution's minimum net-worth requirement, the amended regulation also provides that an institution's Principal Supervisory Agent may, for purposes of calculating the institution's minimum net-worth requirement, recast any transaction entered into for these purposes and require the institution to calculate its minimum net-worth requirement on the basis of the transactions as so recast. Such a determination may be appealed to the Corporation for review.

Specific Provisions Relating to Acquisitions, Consolidations and Mergers

An institution which engaged in a consolidation, merger or purchase of substantially all the assets and assumption of substantially all the liabilities of another institution, will increase its base factor, amortization factor and contingency factor by an amount equal to the base factor, amortization factor and contingency factor of the non-surviving institution as of the effective date of the consolidation, merger or acquisition. In the case of purchases of less than substantially all of the assets and assumption of less than substantially all the liabilities of another institution (such as branch acquisitions), the base factor of the acquiring institution, as of the end of the quarter in which the acquisition becomes effective, will increase by an amount equal to three percent of the amount of total liabilities acquired. In this situation the acquirer's amortization factor will not change because the liabilities being acquired will have a marginal requirement of three percent. However, the selling institution's future quarterly installments of the amortization factor will be decreased in order to reflect the fact that the institution no longer owns liabilities which were included in the calculation of its amortization factor. The amount of the decrease will be calculated by multiplying the amortization factor by a fraction the numerator of which is the total liabilities sold and the denominator of which is the total liabilities immediately prior to the sale.

In calculating the growth factor for an institution engaged in a consolidation, merger, or purchase of assets and assumption of liabilities (including branch acquisitions), the acquiring institution will be allowed to treat the liabilities acquired as if they were liabilities of the acquiring institution as of December 31 of the prior year. The purpose of this is to ensure that the liabilities acquired through these transactions are not considered to be an increase in liabilities in determining th[e] growth factor. Thus, for example, if an institution which had total liabilities of $110,000,000 as of December 31 acquir[ed] $20,000,000 of liabilities on the followi[ng] June 15, either through an acquisition o[r] through a consolidation or a merger, th[e] amount of growth experienced by the institution through the quarter ended June 30 would be measured from a December 31 base of $130,000,000 and not $110,000,000.

In the November proposal it was recognized that, for a variety of reason[s] it was not appropriate to treat an institution that had experienced growt[h] as a result of a consolidation, merger o[r] purchase of assets and assumption of liabilities in the same fashion as an institution that experienced growth through other means. Accordingly, the November proposal excluded growth resulting from these types of transactions from the computation of a[n] institution's growth factor and provide[d] that in calculating an institution's base factor, these transactions would be treated as having been accounted for o[n] the basis of "pooling of interest" accounting regardless of the method actually used by the institution to account for the transaction. Although there were few comments dealing with the treatment accorded institutions engaged in an acquisition, consolidatio[n] or merger, there were a number of potential technical problems raised by the use of the term "pooling of interest" in the November proposal. Accordingly, in order to resolve any such problems, the descriptive language on this point i[n] the amended regulation differs from th[at] of the November proposal. However, th[e] basic goal to be achieved insofar as calculating the minimum net-worth requirement for institutions involved in acquisitions, consolidations or mergers remains substantially unchanged.

Approval for Liability Growth In Exce[ss] of 25 Percent

For the reasons set forth in the November proposal and in the Summary, the Board is adopting a new regulation, § 563.13–1 (to be codified at 12 CFR 563.13–1), to prohibit any insure[d] institution having assets in excess of $100,000,000 from increasing its total liabilities during any two consecutive quarters at an annual rate in excess of 25 percent unless a growth plan has been approved in advance by the institution's Principal Supervisory Agent. In order to obtain such approval an institution would be required to submit to its Principal Supervisory Agent a detailed growth plan which would contain information necessary f[or] the Principal Supervisory Agent to determine the institution's ability to manage the resulting increase in size, whether the investments contemplated by such growth will be appropriately diversified, the stability of the funding sources and the risk of potential runs, and the interest rate and credit risk posed by the planned uses of funds. As discussed in the Summary, the text of the new regulation reflects several changes from the November proposal in response to objections and suggestions raised by commenters, and includes a provision eliminating the need for Principal Supervisory Agent approval where growth results from transactions requiring prior approval under 12 CFR 563.22 (pertaining to mergers, consolidations, purchase or sale of assets and assumption of liabilities).

Sunset Provisions

The Board thoroughly appreciates that the amended regulation may significantly affect many institutions. The Board intends to monitor, on a close and regular basis, both its impact on institutions and the various technical issues which may arise concerning computation of the minimum net-worth requirement. To ensure that this monitoring process causes the Board to review, further consider and take appropriate action, §§ 563.13 and 563.13-1 will expire on January 1, 1987 unless further action is taken by the Board.

Deletion of Section 563.14

By its action today the Board is also deleting 12 CFR 563.14. The purpose of this section was to restrict the ability of an institution to pay dividends if its statutory reserve falls below certain specified levels. In light of the elimination of the statutory reserve test, the limitations imposed by § 563.14 no longer having any meaning. In this connection, however, the Board wishes to reaffirm its belief that by virtue of 12 CFR 563.13(d) the Corporation does have the right to limit the ability of an institution to pay dividends if its net worth falls below the minimum required amount.

Studies and data cited in this preamble and in the preamble of the November proposal are available for public inspection along with comments received on both the February proposal and the November proposal.

Final 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. *Need for and objectives of the rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by public comments and agency assessment and response.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION.**

3. *Alternatives to the final Rule.* There are no alternatives to the elmination of techniques that understate the capital adequacy of small institutions that would be less burdensome in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

Lists of Subjects

12 CFR Parts 561 and 563

Insurance of accounts, Savings and loan associations.

12 CFR Parts 570, 571, and 584

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

1. Amend § 561.13(a) by removing the phrase "statutory-reserve or".

PART 563—OPERATIONS

§ 563.3-10 [Amended]

2. Amend § 563.3-10(d)(2) by removing the phrase "§ 563.13(b)(2)(iii)" both places it appears, and substituting in both places the phrase "§ 563.13(b)(2)".

§ 563.7-4 [Amended]

3. Amend § 563.7-4(l)(2) (iv) and (v) by removing the phrase "statutory-reserve requirement or".

§ 563.8-1 [Amended]

4. Amend § 563.8-1(d)(1)(iv) by removing the phrase "or Federal insurance reserve".

5. Amend § 563.13 by revising paragraph (a); by revising paragraphs (b)(1), (2) and (3); by removing the phrase "by paragraph (b)(2)" both places it appears in paragraph (b)(4) and substituting in both places the phrase "by paragraphs (b)(1), (2), or (3)"; by removing the last sentence of paragraph (b)(4); by adding new paragraph (b)(5); by removing the phrase "reserve requirements of paragraphs (a) and (b)" in the first sentence of paragraph (c)(1) and substituting the phrase "requirement of paragraph (b)"; by removing the phrase "*statutory-reserve or*" in the heading of paragraph (d); by removing the phrase "the statutory-reserve requirement set forth in paragraph (a) of this section or" in the first sentence of paragraph (d); by removing the phrase "paragraph (b)(2) of this section or the statutory-reserve requirement set out in paragraph (a)(2) of this section" from the first sentence of paragraph (e) and substituting the phrase "paragraph (b) of this section"; by revising paragraphs (f) and (g); and by adding new paragraphs (h) and (i); as follows:

§ 563.13 Regulatory net-worth requirement.

(a) *Scope.* (1) This section sets forth the requirements for the maintenance of regulatory net worth by all insured institutions. Compliance with the requirements of this section shall be considered to be compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

(2) Items previously credited to the predecessor Federal Insurance Reserve Account shall be designated "restricted retained earnings" in the list of items comprising the net-worth account, and shall be used only for absorption of losses. Items earmarked or otherwise designated but not credited to that Account may be designated as restricted retained earnings.

(b) *Minimum required amount.*—(1) *General rule.* Except as provided in paragraphs (b)(2) and (3) of this section, the minimum net-worth requirement for any calendar quarter (commencing with the quarter ending March 31, 1985) shall be an amount equal to the sum of the following:

(i) The base factor;

(ii) 1/20 of the amortization factor multiplied by the number of calendar quarters from the beginning of the calendar year;

(iii) The growth factor; and

(iv) The contingency factor.

(2) *Exception for de novo institutions.* (i) The minimum net-worth requirement for *de novo* institutions shall be an amount equal to the sum of the contingency factor plus seven percent of liabilities of the institution, which shall decline by 100 basis points for each year following the beginning of the first full fiscal year until equal to five percent; thereafter, upon the approval of the Principal Supervisory Agent pursuant to paragraph (b)(2)(iii) of this section, the minimum net worth shall be equal to the amount specified by paragraph (b)(1) of this section.

(ii) *De novo* institutions which elect to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this Subchapter but which do not additionally qualify under § 571.6(a)(3), shall have, for the period between the commencement of operations and the beginning of the first full fiscal year and for three years following the beginning of the first full fiscal year, a minimum net worth equal to the sum of the contingency factor plus seven percent of all liabilities; thereafter, upon the approval of the Principal Supervisory Agent pursuant to paragraph (b)(2)(iii) of this section, the minimum net worth shall equal the amount specified by paragraph (b)(1) of this section.

(iii) The Principal Supervisory Agent of the institution's Federal Home Loan Bank district has delegated authority to approve a change in the minimum net-worth requirement for a *de novo* institution from the amount specified by paragraph (b)(2) of this section to the amount specified by paragraph (b)(1) of this section: *Provided*, that the Agent does not take supervisory objection to the probable effect of such reduction on the institution's safe and sound operating condition. If approval is withheld, the institution may seek review and final decision by the Corporation.

(3) *Mergers, consolidations, or purchases of assets and assumption of liabilities.* (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph (b)(3), for any merger, consolidation, or purchase of assets and assumption of liabilities, the minimum net-worth requirement, beginning in the quarter in which the transaction became effective, shall be equal to the sum of the current base factors, amortization factors, and contingency factors of the combined institutions, plus the growth factor determined as if both institutions had been combined as a single entity as of the close of business of the last day of the calendar year preceding the year in which the merger, consolidation, or purchase of assets and assumption of liabilities became effective.

(ii) For any acquisition of less than substantially all of the liabilities of an institution in which the selling institution continues in operation as a separate entity (including, but not limited to, branch acquisitions), the minimum net-worth requirement of the acquiring institution beginning in the quarter in which the transaction became effective shall be equal to the base factor of the acquiring institution calculated to include an amount equal to three percent of liabilities so acquired, plus the acquiring institution's amortization factor and contingency factor, plus the growth factor determined as if the liabilities so acquired had been included in the acquiring institution's total liabilities as of the close of business of the last day of the calendar year preceding the year in which the acquisition became effective.

(iii) The provisions of this paragraph (b)(3) may be superseded by the Corporation if the Corporation determines that such consolidation, merger, or purchase of assets and assumption of liabilities (including, but not limited to, branch acquisitions) is instituted for supervisory purposes.

* * * * *

(5) *Calculation period and maintenance requirement.* An institution shall calculate its minimum net-worth requirement pursuant to this section as of the end of each calendar quarter commencing with the quarter ending March 31, 1985, and shall maintain regulatory net worth in an amount not less than the minimum requirment, so calculated, from the end of the quarter for which the minimum requirement was calculated until the end of the next succeeding calendar quarter.

* * * * *

(f) *Charging of losses to reserves.* Losses charged to reserves shall exhaust all net-worth accounts before constituting a charge against mutual capital certificates.

(g) *Definitions.* For purposes of this section:

(1) "Total liabilities" means total assets net of loans in process, specific reserves and deferred credits other than deferred taxes, minus net worth as defined in § 561.13 of this Subchapter.

(2) "Base factor" means the minimum required amount of net worth calculated as of the close of business of the last day of the preceding calendar year, excluding the contingency factor and before reduction for qualifying balances, *except that* for calendar year 1985, "base factor" means the minimum required amount of net worth calculated as of the beginning of the institution's current fiscal year determined under the minimum net-worth requirement rules in effect as of the beginning of that year, excluding two percent of resource liabilities and 20 percent of scheduled items and before reduction for qualifying balances;

(3) "Change in liabilities"

(i) Means an amount equal to the difference between the institution's total liabilities calculated as of the close of business of the last day of the calendar quarter for which the minimum net-worth requirement is calculated and as of the close of business of the last day of the preceding calendar year;

(ii) During calendar year 1985, means an amount equal to the difference between the institution's total liabilities calculated as of the close of business of the last day of the calendar quarter for which the minimum net-worth requirement is calculated and the lesser of the total liabilities as of the close of business (*a*) on November 30, 1984, increased by the average monthly rate of growth from November 30, 1983, to November 30, 1984, or (*b*) on December 31, 1984;

(iii) Provided that

(*a*) Total liabilities calculated as of the close of business of the last day of the preceding calendar year shall include any increases in liabilities resulting from a merger, consolidation, or purchase of assets and assumption of liabilities that occurs during the current calendar year;

(*b*) For purposes of paragraph (g)(3)(ii) of this section, any liabilities obtained through a merger, consolidation, or purchase of assets and assumption of liabilities taking effect during December 1984, shall be treated as if the liabilities had been obtained as of November 30, 1984.

(4) "Growth factor" means:

(i) In the case of any change in liabilities less than or equal to zero: (*a*) If the change in liabilities is calculated as of the close of business of the last day of the first, second, or third calendar quarter, then zero percent of the change in liabilities; and (*b*) if the change in liabilities is calculated as of the close of business of the last day of the calendar year, then a negative amount determined by multiplying the change in liabilities by a fraction the numerator of which is the base factor as of the beginning of the calendar year and the denominator of which is the total liabilities as of the close of business of the last day of the preceding calendar year; and,

(ii) In the case of any change greater than zero:

(*a*) If the change in liabilities is at an annual rate of 10 percent or less and the institution has more than $100,000,000 in assets, the greater of: (*1*) Three percent of the change in liabilities multiplied by a fraction the numerator of which is the average amount of liabilities at the end of that calendar quarter and on the corresponding quarters of one or more of the four immediately preceding years (provided all such years are consecutive) and the denominator of which is the total liabilities as of the close of business of the last day of that calendar quarter, or (*2*) 2.5 percent of the change in liabilities;

(*b*) If the change in liabilities is at an annual rate of 15 percent or less, and the institution has $100,000,000 or less in assets, the greater of: (*1*) Three percent of the change in liabilities multiplied by a fraction the numerator of which is the average amount of liabilities at the end of that calendar quarter and on the corresponding quarters of one or more of the four immediately preceding years (provided all such years are consecutive) and the denominator of which is the total liabilities as of the close of business of the last day of that calendar quarter, or (*2*) 2.35 percent of the change in liabilities;

(*c*) If the change in liabilities is at an annual rate of 15 percent or less, three percent of the change in liabilities;

(*d*) If the change in liabilities is at an annual rate greater than 15 percent but not more than 25 percent, 20 percent of the annual rate of change in liabilities multiplied by the change in liabilities. (*Example:* an institution experiencing a change in liabilities of $90 million at an annual rate of change in liabilities of 18 percent, would have a "growth factor" equal to 20 percent multiplied by 18 percent multiplied by $90 million, which is equal to 3.6 percent multiplied by $90 million, which is equal to $3.24 million);

(*e*) If the change in liabilities is at an annual rate in excess of 25 percent, five percent of the change in liabilities.

(5) The "contingency factor" is the sum of:

(i) Two percent of recourse liabilities (as that term is defined in § 561.8 of this Subchapter) resulting from the sale of any loan;

(ii) 20 percent of the institution's scheduled items (as that term is defined in § 561.15 of this Subchapter); and

(iii) (*a*) Subject to the provisions of paragraph (g)(5)(iii)(*b*) of this section,

(*1*) If the dollar amount of aggregate direct investment as defined in § 563.9–8(b)(1) of this Subchapter, made on or prior to December 10, 1984, is equal to or exceeds the greater of 10 percent of the institution's total assets or twice its regulatory net worth (as defined in § 561.13 of this Subchapter), an amount equal to 10 percent of the dollar amount of aggregate direct investment made after December 10, 1984; or

(*2*) If the dollar amount of aggregate direct investment as defined in § 563.9–8(b)(1), made on or prior to December 10, 1984, is less than the greater of 10 percent of the institution's total assets or twice its regulatory net worth (as defined in § 561.13), an amount equal to 10 percent of the dollar amount by which total aggregate direct investment exceeds the greater of 10 percent of the institution's total assets or twice its regulatory net worth;

(*b*) For the purposes of paragraph (g)(5)(iii)(*a*) of this section,

(*1*) "Made on or prior to December 10, 1984" includes such investments to which the institution was legally committed on or before that date, or such projects for which definitive plans were in existence on or before that date;

(*2*) Investments made in any service corporation or operating subsidiary may be excluded if an institution elects to calculate its minimum net-worth requirement on a consolidated basis including that service corporation or operating subsidiary: *Provided*, any aggregate direct investment as defined in § 563.9–8(b)(1) made by such service corporation or operating subsidiary shall be included in the total of such investments of the parent institution.

(6) "Amortization factor" means the amount by which three percent of an institution's total liabilities as of the close of business December 31, 1984, exceeds the institution's base factor for calendar year 1985; *Provided*,

(i) If an institution's base factor for calendar year 1985 exceeds three percent of its total liabilities as of the close of business December 31, 1984, then its amortization factor shall be zero;

(ii) If an institution continues to operate as a separate entity after selling less than substantially all of its liabilities (including, but not limited to, branch sales), then its amortization factor may be decreased, beginning with the calendar quarter in which the transaction becomes effective, by an amount equal to its amortization factor (at the time of the transaction) multiplied by a fraction, the numerator of which is the liabilities sold, and the denominator of which is its total liabilities as of the close of business of the day immediately preceding the effective date of the sale; and

(iii) If an institution has included its amortization factor in its minimum net-worth requirement for 20 calendar quarters, its amortization factor is thereafter equal to zero.

(7) "*De novo* institution" means any savings and loan association, homestead association, cooperative bank or savings bank which has filed with the appropriate Federal Home Loan Bank an application for insurance of accounts, or an application to organize a Federal association, which was not approved prior to November 3, 1983, and the business of which has not been conducted previously under any charter.

(h) *Transactions for purpose of evasion.* An institution's Principal Supervisory Agent may disregard any transaction entered into primarily for the purpose of reducing the minimum required amount of net worth or otherwise evading the requirements of this section. An institution may seek review and final decision by the Corporation of any such determination.

(i) *Expiration date.* This section shall expire on January 1, 1987.

6. Add a new § 563.13–1, as follows:

§ 563.13–1 Liability growth.

(a) (1) No insured institution having total assets in excess of $100,000,000 shall increase its total liabilities within any two consecutive quarters at an annual rate greater than 25 percent without prior approval of the institution's Principal Supervisory Agent.

(2) Notwithstanding the provision of paragraph (a)(1) of this section, an insured institution having total assets in excess of $100,000,000 which increases its liabilities through merger, consolidation, or purchase of assets and assumption of liabilities, for which prior review and approval under § 563.22 of this Part is required, shall not be required to file an application under paragraph (b) unless such institution otherwise increases its liabilities within any two consecutive quarters at an annual rate greater than 25 percent.

(b) To obtain the prior written approval of the Principal Supervisory Agent, an institution shall submit a written growth plan. A growth plan shall cover a period of time not to exceed one year, and shall include the following information:

(1) The institution's net worth as of the end of the preceding calendar quarter and its estimated net worth as of the end of the period covered by the growth plan;

(2) The amount of liabilities the institution expects to obtain;

(3) A listing of the proposed sources from whom, and methods by which, the liabilities will be obtained;

(4) The costs, rates, and maturities of liabilities sought to be obtained; and

(5) The planned uses of any liabilities obtained.

(c) No institution shall alter a written growth plan upon which approval has been granted or materially diverge from such a plan without the prior approval of its Principal Supervisory Agent.

(d) Within 10 days of the filing of a growth plan or any additional information, the Principal Supervisory Agent shall notify the applicant in writing either that all information required under paragraph (b) of this section has been filed or that additional specified information must be filed. Unless the Principal Supervisory Agent takes objection to, or conditionally approves the plan within 30 days of the date of written notice that all required information has been filed, the plan shall be deemed to be approved. In determining whether to take objection to, or conditionally approve, a completed growth plan, the Principal Supervisory Agent shall consider the following factors:

(1) The impact of the plan upon the institution's net worth;

(2) The risk of the corresponding investments, the likelihood of obtaining the projected return, the level of diversification, and the ability of the institution to underwrite the incremental volume of investments;

(3) The relative maturities of the liabilities and corresponding investments;

(4) The extent to which the liabilities are derived from or through a single source;

(5) Whether the interest to be paid on the liabilities corresponds with generally prevailing rates for similar liabilities;

(6) The financial strength of the institution, including the level of its net worth which shall not be less than three percent of total liabilities;

(7) The stability of the institution's earnings over the six preceding calendar quarters; and

(8) The extent to which the institution's overall policies are consistent with economical home financing, as evidenced by whether the institution would comply with the definition of "qualified institution" set forth in § 584.2-2(b) of this Chapter.

(e) *Expiration date.* This section shall expire on January 1, 1987.

§ 563.14 [Removed]

7. Remove § 563.14.

PART 570—BOARD RULINGS

§ 570.5 [Removed]

8. Remove § 570.5.

PART 571—STATEMENTS OF POLICY

§ 571.6 [Amended]

9. Amend § 571.6(a)(2) by removing the phrase "§ 563.13(a)(2)(ii)(*b*) and (b)(2)(iii)(*b*)" and by substituting the phrase "§ 563.13(b)(2)(ii)".

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

§ 584.4 [Amended]

10. Amend § 584.4(g)(1)(iv) by removing the phrase "statutory-reserve and".

(Secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, as amended; 12 U.S.C. 1724, 1725, 1726, 1728. Reorg. Plan No. 3 of 1974, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-3867 Filed 2-15-85; 8:45 am]

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12 CFR Part 563

[No. 85-79-A]

Regulation of Direct Investment by Insured Institutions

Dated: January 31, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting an insurance regulation concerning investments in equity securities, real estate, service corporations, and operating subsidiaries ("direct investment") by institutions whose accounts are insured by the FSLIC ("insured institutions" or "institutions"). The purpose of the regulation is to create a process of supervisory review and approval of certain types of direct investment and of aggregate direct investment above certain threshold amounts. The amendment also includes qualitative criteria for investment by institutions in equity securities, as well as diversification requirements applicable to investment in any one issue of securities and in any one real-estate project. The regulation is designed to allow institutions the flexibility to exercise their investment powers, as independently authorized by applicable law, in a manner that would not expose either the institutions themselves or the FSLIC insurance fund to an unacceptable level of risk, while at the same time ensuring that these institutions continue to fulfill their obligation to provide economical home financing.

EFFECTIVE DATE: March 21, 1985.

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, Federal Home Loan Bank Board, 1700 G St., NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: During the past few years, changes in federal and state legislation have provided institutions with new investment powers, 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 investment powers of institutions which they charter. As institutions gain experience with such investments, the prudent exercise of these new direct-investment powers, together with their more traditional powers, may allow them to diversify their assets more effectively. However, the Board has found that the exercise of these nontraditional investment powers can expose 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 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 November 26, 1984, proposed a rule that would regulate direct investments made by its insured banks. 49 FR 48552 (Dec. 13, 1984).

May Proposal

On May 10, 1984, the Board proposed to amend its insurance regulations by adding two rules to regulate direct investment by institutions (Board Res. No. 84-227, 49 FR 20719 (May 16, 1984)) ("May proposal"). The May proposal would have provided for a process of supervisory review and approval of certain types of direct investment and of aggregate direct investment above certain threshold amounts.

The May proposal tied the amount of aggregate direct investment institutions could make without prior approval to their net worth. Institutions having a special-purpose "snapshot" net worth of approximately three percent of liabilities could have made direct investments in an amount equal to the greater of 10 percent of assets or twice regulatory net worth without prior approval. Institutions meeting their regulatory-net-worth requirement, but whose dollar amount of net worth was less than the amount required by the special-purpose standard, could have made direct investments in an amount equal to twice regulatory net worth. An institution not meeting its regulatory-net-worth requirement could have made direct investments only upon prior review and approval. For an institution not qualifying for either threshold and for a qualifying institution wishing to make direct investments exceeding its threshold, the proposal set out an application process to be administered by the Principal Supervisory Agents ("PSAs") which provided state supervisors the opportunity to submit written recommendations. A saving clause would have "grandfathered" aggregate direct investment exceeding applicable thresholds on May 10, 1984.

The second proposed rule set qualitative and quantitative limitations on investment by institutions in most equity securities, subject to Corporation waiver in appropriate circumstances. It generally would have limited investment to common and preferred stocks listed on the New York and American Stock Exchanges, although the Director of the Office of Examinations and Supervision could have permitted investment in stocks traded elsewhere. The proposal also would have prohibited investment in more than five percent of the outstanding equity securities of any one issuer. It furthermore would have applied the limitation on aggregate loans of the loans-to-one-borrower rule (12 CFR 563.9-3) to the aggregate of an institution's debt and equity investment in any one borrower-issuer. Finally, the proposal would have required an institution investing in the common stock of other institutions or of nondiversified savings-and-loan holding companies to acquire enough stock for it to be deemed a savings-and-loan holding company pursuant to 12 U.S.C. 1730a(1)(D).

December Proposal

On December 10, 1984, in continuation of the rulemaking proceedings initiated by the May proposal, the Board issued for public comment a revised draft of the proposed rules (Board Res. No. 84-715, 49 FR 48743 (Dec. 14, 1984)) ("December proposal"). The December proposal preserved the basic concept of the May proposal: namely, the process for supervisory review and approval of certain types of direct investment and of aggregate direct investment above threshold amounts tied to net worth. This concept was clarified by the reorganization of the two regulatory sections of the May proposal into a single regulation and by textual changes.

Moreover, the December proposal made significant substantive changes to the May proposal in response to the comments on that proposal and in furtherance of the Board's objectives. In brief, the Board desired to allow institutions the flexibility to exercise their investment powers, as independently authorized by applicable law, in a manner that would not expose either the institutions themselves or the FSLIC fund to an unacceptable level of risk, while at the same time ensuring that these institutions would continue to fulfill their obligation to provide economical home financing.

The December proposal retained the direct-investment thresholds and related net-worth tests of the May proposal, but it permitted an institution to consolidate the direct investments of any or all of its subsidiaries with its own direct investments and then to exclude its investments in such consolidated subsidiaries from the calculation of its aggregate direct investment. The December proposal also added stocks quoted on the National Association of Securities Dealers Automated Quotation System to the list of permissible equity-security investments and increased the level of permissible investment in the stock of one issuer to 25 percent of the issuer's outstanding stock.

The diversification requirement was expanded to apply the limitation on aggregate loans of the loans-to-one-borrower rule to the aggregate of an institution's debt and equity investment in any one issuer or in any one investment in real estate. Diversification of investments in service corporations was not required, but diversification of direct investments made by service corporations was required if they were consolidated with those of the institution in the calculation of its aggregate direct investment.

The December proposal clarified that the application process for additional direct-investment authority extended to types of direct investment as well as to the amount of aggregate direct investment. Additionally, the December proposal established a presumption favoring the approval of applications. It also required the PSA to notify an applicant whether the application was complete within 10 days of its filing and deemed a complete application to be approved unless disapproved within 30 days. Applications on which PSAs and state supervisors disagreed were to be referred to the Corporation for decision. Adverse PSA decisions were appealable to the Corporation.

The saving clause in the December proposal was expanded to "grandfather" not only direct investments made but also those legally committed to or begun pursuant to definitive development plans on December 10, 1984. Additional conforming direct investments would not have been permitted without prior approval until an institution's aggregate direct investment complied with the applicable threshold.

Finally, a sunset provision was added in the December proposal to provide for its expiration on January 1, 1987, unless further action were taken by the Board.

Related regulatory action. The Board is also adopting today amendments to its net-worth regulations. Resolution No. 85-79-B, published elsewhere in the Rules section of this issue. Since these amendments are, to some extent, related to the rulemaking on direct investment, the Board has considered comments on both proposals jointly and has determined to adopt both amendments at the same time.

Summary and Discussion of Comments on the December Proposal

The Board received 53 public comments in response to the December proposal. The majority (31) were submitted by savings-and-loan associations. Of the remaining comments, seven were received from trade associations, three from federal savings banks, three from state savings-and-loan regulators, two from economic consultants, four from law firms, and one from a federal financial regulator.

Nine comments (six savings-and-loan associations, one federal savings bank, one federal regulator, and one trade association) expressed support for the December proposal. Twelve comments (eight savings-and-loan associations, two trade associations, one federal savings bank, and one law firm) supported the December proposal with certain suggested modifications. Twenty-one comments opposed the December proposal (twelve savings-and-loan associations, three state regulators, two economic consultants, two trade associations, and two law firms). Two comments (one federal savings bank and one trade association) opposed the December proposal but suggested various modifications. Finally, seven comments (five savings-and-loan associations, one trade association, and one law firm) requested an extension of the comment period but expressed no opinion on the substance of the December proposal. The Board has carefully reviewed all comments, which are discussed more fully below, as well as relevant comments addressing the direct-investment component in the companion net-worth rulemaking.

Statutory Authority

One commenter asserted that promulgation of the December proposal would exceed the Board's statutory authority. The commenter argued that regulation of a state-chartered institution's direct investments is not authorized by the statutory sections cited in the May and December proposals and, more generally, that such regulation would unjustifiably infringe upon the regulatory powers reserved to the states under the dual chartering system.

The Board believes that this comment takes an unduly restrictive view of its authority and responsibility to carry out the purposes of Title IV of the NHA (12 U.S.C. 1724–30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421–29). Among the paramount purposes of these two acts is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is the protection of the FSLIC fund from undue risk. The direct-investment regulation is carefully crafted to enable the Board to carry out both of these objectives without intruding upon the regulatory power of the states.

It has been the Board's longstanding position, supported by legislative history and prior administrative practice, that the NHA authorizes the Board to regulate state-chartered institutions in furtherance of these two purposes. Section 402(a) of the NHA (12 U.S.C. 1725(a)) empowers the Board, as the operating head of the FSLIC, to prescribe rules and regulations "for carrying out the purposes of this [Act]." Since the direct-investment regulation is designed to maintain safe, sound, and economical home financing, as well as to protect the FSLIC fund from undue risk, the rule carries out the purposes of the NHA and so represents a permissible exercise of regulatory authority under section 402(a). Moreover, under section 407 the Board has authority to terminate insurance coverage entirely (12 U.S.C. 1730(b)) and to initiate cease-and-desist proceedings pursuant to "rules and regulations" promulgated by the Board (12 U.S.C. 1730(m)) in order to prevent "unsafe or unsound practices" that threaten the integrity of the FSLIC fund. These powers encompass the less drastic power to prevent or unsound practices through regulations such as the direct-investment rule.

Section 17 of the Bank Act expressly grants the Board the "power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of [this Act]." 12 U.S.C. 1437(a). As noted above, one of the paramount purposes of the Bank Act is the maintenance of sound and economical home financing. The Board is therefore empowered to adopt regulations, such as the direct-investment rule, which are designed to carry out that purpose.

As a matter of administrative practice, the Board has often cited its authority under the Bank Act as support for regulations governing the deposit-insurance system administered by the FSLIC. This practice is supported by the close interrelationship between the Bank Act and the NHA, including their common purpose and similar design.

Procedural Issues

Twelve commenters argued that the comment period following publication of the December proposal was inadequate, and some requested various extensions of the comment period. One commenter asserted that the duration of the comment period violated the requirements of the Administrative Procedure Act ("APA") (5 U.S.C. 551 *et seq.*). Five comments also requested a public hearing on the proposed regulation.

The Board believes that the length of the comment period following the December proposal was consistent with the letter and spirit of the APA, which does not set forth a minimum number of days for public comment on proposals. As noted above, the rulemaking was initiated on May 10, 1984. The comment period following publication of the May proposal extended until July 16, 1984. Prior to the issuance of the revised proposal on December 10, 1984, the Board received and considered 252 public comments, many of which were late-filed comments. Copies of the reports and studies cited in the December proposal were made publicly available. A total of 51 comments responding to the revised proposal were received by the end of the second comment period on January 16, 1985. Two additional comments, received after that date but before January 22, 1985, have also been considered.

Almost nine months have elapsed since the initiation of the rulemaking in May 1984, and the Board's supervisory experience confirms that regulation of direct investment should proceed in a prompt and responsible manner. Moreover, as explained in the December proposal, the January 16, 1985, closing date was justified because it was a reproposal which addressed the many substantive issues raised in response to the May proposal. The much smaller number of comments the Board has received and the issues raised in response to the December proposal confirm that the duration of the comment period was adequate.

Neither the APA nor the Board's regulations require a public evidentiary hearing in connection with the type of informal rulemaking involved here. *See generally* 5 U.S.C. 553; 12 CFR Parts 507–509 (1984). The rule is one of general applicability; it is not adjudicatory in nature. The Board believes that its consideration of the written data, views, and arguments submitted by interested members of the public with respect to the direct-investment proposal enables it to discharge its administrative responsibilities in a fully satisfactory manner without the delay that a hearing would entail.

Economic and Factural Basis for the Rule

A. The Nature of the Problem and the Purpose of the Rule

As stated above, the Board is concerned that expanded investment powers, which are increasingly being conferred upon state-chartered institutions, not result in either an increased risk for such institutions and the FSLIC insurance fund or a decreased commitment by the thrift industry to the provision of economical home financing. The Board of Governors of the Federal Reserve System ("Federal Reserve") and the FDIC have similar concerns regarding the risks of direct investments to commercial banks. Thus, in his comment on the December proposal, the Chairman of the Federal Reserve stated that it "shares [the Board's] concern about the risks that heavy investment in certain types of assets, particularly those associated with equity in real estate and real estate development, imply for depository institutions." The Chairman then concluded that the Federal Reserve "fully support[s] the thrust of" the Board's approach, but recommended making the December proposal more stringent. As noted above, the FDIC also shares these concerns and has proposed its own direct-investment regulation.

The Board believes that there is a strong factual basis for regulating direct investments. Economic theory, empirical studies, and the Board's own experience all support the Board's judgment that such regulation will reduce the risk of failure of institutions and consequent loss to the FSLIC and better ensure the provision of economical home financing. As the Board noted in the December proposal, many of the comments reflected misunderstandings of the purpose of the Board's direct-investment rulemaking and, indeed, of the Board's view of the direct-investment authority now granted many institutions. The Board does *not* believe that all direct-investment authority, however exercised, is *per se* unsound. When supported by adequate capitalization, a sound business plan, managerial expertise, and proper diversification, the Board believes that direct investments can be prudent and desirable.

The Board also notes that states have granted expanded direct-investment powers only recently. Likewise, the Board's current supervisory experience with the problems caused by excessive amounts of direct investments, while quite troubling, has not been of long duration. Both the increased direct-investment powers and the regulation adopted today are, to some extent, experimental. The Board has accordingly adopted a "sunset provision" providing for automatic termination of the rule on January 1, 1987, absent further Board action. During this experimental period, the 10-percent investment threshold could permit almost $100 billion to be placed in direct investments by the industry without prior regulatory review and approval if all states granted expanded direct-investment powers. The Board believes that this threshold will allow for ample experimentation by the industry. A higher threshold would, in the Board's judgment, expose the industry, the $6-billion FSLIC fund, and the goal of economical home financing to an unreasonably high probability of harm.

B. Risk Posed for the Industry and The FSLIC Fund by Direct Investment

As indicated in the December proposal, the Board has engaged in considerable research to evaluate the nature of the risk of direct investments to institutions and to the FSLIC fund. Those studies demonstrate that greater proportions of direct investments by institutions increase the risk of loss to them and the FSLIC fund.[1]

The Board's supervisory experience also confirms the theoretical and empirical demonstrations of the relatively riskier nature of direct investments set forth in the cited studies. More specifically, severe losses have occurred, or will occur, in many institutions that have invested most heavily in direct investments (including assets that are, in economic reality, direct investments even though recorded as purported loans). Moreover, available data may seriously understate losses that have already occurred as a result of direct investments because expected losses resulting from poor asset quality generally do not immediately appear on an institution's books.

For these reasons, the Board preliminarily concluded in the December proposal that the substantially greater risk of loss posed by direct investments supported a system of prior review and approval by the PSAs for direct investments beyond a 10-percent threshold. The comments filed with respect to the December proposal did not disagree that the Board's recent supervisory experience demonstrates that many direct investments have been extremely risky. Indeed, several comments acknowledged the very severe losses that the FSLIC fund suffers in asset-quality cases.

Several comments put forth various theoretical propositions which they asserted undermined the basis of, and the need for, the Board's December proposal. These comments challenged the economic studies of the Board's staff; some discussed other economic analyses which they asserted reached conclusions contrary to those contained in the staff studies.

Professor George Benston, an economic consultant writing on behalf of a savings-and-loan association, asserted that there were a number of "serious defects" in the Board studies assessing the additional risk created for the industry, and thus the FSLIC fund, by direct investments. The principal "defect" alleged by Professor Benston was that the Board studies did not properly analyze "total risk." Thus, he criticized the Board's studies generally for measuring risk by variability of return and asserted that this "analysis wholly ignores other types of risks," thereby providing no evidence on "total risk." Variability of return, however, is a standard economic definition of total risk. The Board's studies contain references supporting this definition, and Professor Benston's comment contains no references disagreeing with it. Indeed, prior works by Professor Benston use this standard concept of risk.[2] Because variability of return is a measure of the "total" risk of a single investment or portfolio of investments, the Board has studied the total risk of direct investment both as single investments and in portfolios.[3]

Professor Benston also criticized a paper by Donald G. Edwards, Office of Policy and Economic Research, *Rates of Return From S&L Investments in Service Corporations, 1979-83,* (1984) ("Edwards Study"), because the paper allegedly excluded direct real-estate investments from its analysis and therefore did not measure total portfolio risk. A law firm comment also claimed that the Board should not rely on the Edwards study because it was based on a "clearly erroneous factual assumption" concerning service-corporation assets. Specifically, the law firm asserted that "most" service-corporation assets do not constitute direct investment under the Board's definition. Both criticisms, which were made without any supporting data, are unfounded. While the Edwards Study specifically analyzed only the rates of return from investments in service corporations, not direct real-estate investments, it did not exclude real-estate investment entirely from the analysis, since approximately one-third of the portfolio held by wholly owned service corporations consists of real-estate investments.[4] This study did not purport to be a study of risks posed by all types of direct investment. The Board believes that the study provided a reliable and accurate analysis of one major component of direct investment—service-corporation investment.

To the extent that service corporations engage in activities that are not investments in real estate or equity securities, but are designed simply to service the needs of the

[1] See the December proposal for a fuller discussion of these studies, including the study done for the Board by SRI International. SRI International, *Possible Regulations of the FHLBB to Limit Direct Investment of State Chartered, Federally Insured Savings Associations* (1984).

[2] *See* George J. Benston & Clifford W. Smith, Jr., "A Transactions Cost Approach to the Theory of Financial Intermediation," *Journal of Finance* (May 1976), p. 220; George J. Benston, "Savings Banking and the Public Interest," *Journal of Money, Credit and Banking* (Feb. 1972), p. 195. Indeed, even Professor Benston's comment characterizes this definition and measure of risk as a "fundamental principle of finance theory."

[3] Investments that fail totally have a zero return in all subsequent years and therefore show no variability in return. Such investments are normally excluded from studies measuring variability of return because their inclusion could obviously understate risk seriously. This exclusion, however, itself cause some understatement of the risk of investments that are most likely to suffer complete failure, *i.e.*, direct investments. Thus, to the extent that the Board studies might understate slightly the risk of particular investments they would understate the risk of direct investments compared to loans.

[4] Moreover, service corporations have investments in other activities covered by the December proposal. Indeed, because wholly owned service corporations hold nearly 40 percent of their assets in first-mortgage loans, "other" loans, and cash and investment securities, and also hold approximately one-third in real estate plus other direct investments, the service-corporation industry could be considered the best available proxy for a savings-and-loan industry heavily committed to direct investments. The Edwards Study thus provides empirical evidence of variable rates of return from portfolios heavily committed to direct investments as well as to traditional loans and investments.

institution (*e.g.*, data processing), economic theory and the Board's experience predict that such activities would show relatively small variability of return. Additionally, their inclusion in a service corporation's portfolio would further reduce overall service-corporation risk through their effects upon diversification. Therefore, to the extent that the Edwards Study is affected by the inclusion of such service-corporation investment, that study is likely to *understate* the risks posed by direct investments.

Similarly, a law-firm comment asserted that no correlation exists between the considerable variation in returns of particular direct investments found by the Board's studies and the proposition that institutions with direct investments pose additional risk to the FSLIC fund. The premise of this argument is that the addition of "riskier" investments to a portfolio can reduce overall portfolio risk through the benefits of diversification. The law firm cites the Sirmans Study [5] as support for the proposition that diversification reduces total portfolio risk and suggests that the Sirmans Study supports a threshold greater than 10 percent. The Board agrees that the Sirmans Study supports the general concept that diversification reduces portfolio risk. However, the study does not support, as the law firm seems to suggest, that a portfolio containing "an unlimited amount of" direct investments is therefore desirable. For example, overall portfolio risk increased continually in the Sirmans reestimation after direct investments exceeded 2.805 percent of assets.[6] The Sirmans Study derived the historical rates of return on various types of investments and then mapped the efficient frontier of portfolio choices. The study did not assume that institutions would be able to choose portfolios that after the fact would prove optimal.

More fundamentally, however, the law firm ignores the more refined analysis of the Sirmans reestimation. In the Sirmans Study, the potential bias of using appraisal-based real-estate data was acknowledged. The Sirmans reestimation was designed to avoid that bias by using real estate investment trust ("REIT")-based data. The Board accepts the validity of the Sirmans reestimation and therefore finds the law-firm comment unconvincing.

Moreover, flat-rate FSLIC insurance, the absence of substantial tangible net worth, and the severe problems of the thrift industry create incentives to use direct investments in a deliberately risky manner in an attempt to maximize expected returns.[7] The Board's experience and a recent study of Texas-chartered institutions confirm this view.[8]

Another Board study provided evidence of this tendency to gamble. *See* Joseph A. McKenzie, Office of Policy and Economic Research, *An Analysis of Service Corporation Investment and Direct Real Estate Investment by FSLIC—Insured Institutions*, (1984) ("McKenzie Study") (analyzing the risk generated by excessive direct investments). Professor Benston asserted that the McKenzie Study was "badly flawed" because it failed to show any "necessary relationship" between growth in liabilities and increase in direct investments, or between higher levels of direct investments and higher levels of acquisition, development, and construction ("ADC") loans. Neither the author nor the Board claimed such a "necessary relationship." Plainly, an institution *could* engage in substantial direct investments without imprudent growth or other highly risky asset and liability behavior. Such institutions will be precisely the types of institutions most likely to receive PSA approval to exceed the 10-percent threshold. The McKenzie Study demonstrates, however, that the relatively small number of institutions currently engaging in direct investments in excess of 10 percent of their assets are in fact generally operating in a very risky manner.[9] For example, compared to the industry as a whole, such institutions have approximately four times as much of their assets in ADC loans, three times as much of their assets in construction loans, twice as many "jumbo" deposits, eight times as many brokered deposits, and grew on the average by 181 percent between mid-1983 and mid-1984 (almost nine times the average rate of growth).[10] The Board has found that all of these characteristics are associated with increased risk of loss to the institutions and the FSLIC fund.

In addition, the Board's supervisory experience is that decisions on direct investment by institutions have been particularly poor during the time period when their employees and officers generally have no expertise in direct investment.[11] Economic theory, as Professor Benston acknowledged in his comment, predicts that risk will increase when an institution invests in "projects of a type it [has] little experience in" and when "the assets purchased [are] types . . . which the association [has] little comparative advantage in handling." Direct investments will frequently be riskier for both of these reasons. In light of this risk to the

[5] G. Stacy Sirmans, Office of Policy and Economic Research, *Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments* (1984) ("Sirmans Study"), and *A Reestimation of a Thrift Institution's Efficient Frontiers* (1984) ("Sirmans reestimation").

[6] The law firm also asserted that a higher return at the same level of risk would have been possible with a 25-percent, rather than a 10-percent, threshold. Although this is suggested by the Sirmans Study, the Sirmans reestimation demonstrates that the higher expected return at approximately a 25-percent level of direct investment carries a risk burden 150 percent greater than direct investment at the 10-percent level, which has an expected return almost as high.

[7] Professor Benston's earlier writing repeatedly emphasize that the presence of FSLIC or FDIC insurance, particularly where there are only low levels of net worth, creates a powerful incentive for institutions to gamble on high-risk investments because the institution profits if the investment succeeds, while the FSLIC fund bears virtually all the loss if it fails. The incentive is even greater for a failing institution. *See* George J. Benston, "Brokered Deposits and Deposit Insurance Reform," *Issues in Bank Regulation*, (Spring 1984), pp. 21, 22. Thirty-seven percent of FSLIC-insured institutions have no "tangible" net worth, *i.e.*, regulatory net worth less net-worth certificates, appraised equity capital, goodwill, and other intangibles. The Sirmans reestimation demonstrates that institutions choosing the portfolio holding the largest proportion of direct investments would bear 900 percent more risk than institutions at the 10-percent threshold. The expected rate of return for the portfolio with the highest proportion of direct investments is only 40 percent greater than the expected return for the portfolio containing 10-percent direct investments. Thus, the greatly increased risks posed by portfolios consisting primarily of direct investments are grossly disproportionate to the small increase in expected rate of return. Plainly, the FSLIC's losses can be staggering when an institution engages in rapid growth to fund risky investments. Professor Benston has acknowledged that state insurers of financial-institution deposits have failed in the past when they lacked the power to regulate investment risk effectively. *See* George J. Benston, "Deposit Insurance and Bank Failures," *Economic Review*, Federal Reserve Bank of Atlanta (March 1983), pp. 8, 9.

[8] John Crockett, Clifford Fry, and Paul Horvitz, "Equity Participation in Real Estate by Savings and Loans: Implications for Profitability and Risk," presented to the 1984 Meeting of the American Real Estate and Urban Economics Association (Dallas, Texas, Dec. 28–30, 1984) ("Equity Participation Study"), pp. 17–18. This study was funded by the Board, but was an independent analysis not subject to the direction of the Board.

[9] According to Professor Benston, of the 1155 institutions, both state- and federally-chartered, located in the 11 states that have granted expanded asset powers beyond the Board's regulatory threshold, only 34 institutions had 10 percent or more of their assets in direct investments as of June 30, 1984. At the Board meeting at which the December proposal was considered, the Board staff provided a similar statistic—47 of 2,953 institutions.

[10] The McKenzie Study found a similar pattern for institutions heavily engaged in service-corporation investments.

[11] The recent study of Texas thrifts confirmed that the initial direct investments made by associations are likely to be particularly risky. Equity Participation Study, *supra*. This result is consistent with economic theory and studies that deomonstrate that managerial inexerience is a key determinant of business failures.

industry and the FSLIC fund, the Board has determined that it is necessary to impose a prior-approval requirement for direct investments above the 10-percent threshold during the next two years.

Absent federal regulation, there can be no assurance of appropriate diversification. The new regulation encourages risk-reducing diversification in two ways. First, it is likely to discourage excessive portfolio concentration in aggregate direct investment. Absent the rule, thrifts in at least one state could theoretically place 100 percent of their assets in direct investments. Second, the regulation would encourage internal diversification through the general restriction on acquiring more than 25 percent of any one class of outstanding equity securities of one issuer or an amount of all classes of outstanding equity and debt securities of such issuer which, when aggregated with loans to such issuer, are greater than the institution's regulatory net worth. Absent this regulatory restriction, an association with $100 million in assets and a three-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.

The primary thrust of Professor Benston's comment was that direct investments are generally less risky than other investments. His comment is presented without empirical support and is refuted by the Board's studies. Professor Benston based his conclusions upon a discussion of four components of risk: interest-rate risk, default risk, operations risk, and fraud risk. He asserted, without any supporting basis, that direct investments are generally less risky than loans in all four components. Professor Benston therefore maintained that there was no rational economic basis for regulating direct investments.

With respect to his first risk component, Professor Benston suggested that direct investment lowers interest-rate risk by curing asset-liablity mismatches. However, he cited no evidence that institutions are in fact using direct investments in this way; nor do any of the other comments which argued that direct investments in excess of 10 percent of assets are critical to improved asset-liability matching. These comments are generally premised on the assumption that the only major problem plaguing the industry was mismatched maturities. Although mismatching is still a problem for many institutions and has been a major source of concern to the Board, these comments ignore the even more severe losses from bad assets that currently threaten the FSLIC fund.

Direct investments could prove totally ineffectual, or even harmful, if relied upon to "match" assets and liabilities. For example, classifying an equity stock or direct real-estate investment as a long-term or short-term investment in an attempt to match an institution's deposit maturities would be an exercise in fiction.[12] For example, any institution that believed it had protected itself against interest-rate risk through substantial equity-security investment would be exposed to terrific losses if stock prices fell at a time when inflation, interest rates, and the association's cost of funds increased substantially. Many direct investments (*e.g.*, construction and operation of a major commercial building) are far longer-term than fixed-rate mortgages and would exacerbate the existing mismatch. In addition, the substantial transaction costs of disposing of many types of direct investments make them inappropriately expensive devices for avoiding mismatch problems.

Conversely, the Board's studies demonstrate that adjustable-rate mortgages offer a ready alternative for purposes of asset-liability matching, allowing adequate returns at relatively low risk.[13] Although some comments noted that because many adjustable-rate mortgages have interest-rate caps they do not provide guaranteed protection against extreme interest-rate increases, adjustable-rate mortgages provide substantial protection from interest-rate risk,[14] and far better protection than direct investments would. The Board's supervisory experience is that adjustable-rate mortgages are now the primary investment choice of institutions.

Finally, absent regulation there is no assurance that direct investments will result in portfolio restructuring and amelioration of mismatch problems. In any event, the new regulation will permit the PSAs to approve a business plan designed to accomplish restructuring through prudent use of direct investments.

With respect to his second component of risk, Professor Benston maintained that institutions may make loans with substantial default risk, *e.g.*, new commercial construction loans. He asserted, again without support, that it would be safer for an institution to invest in such projects directly. The Board's experience is to the contrary. First, a lender can earn its full contractual rate of return on a commercial construction project even though it proves disastrous for an equity participant. For example, a project may just cover its costs and the equity investors will earn no return on their investment, but the lender will earn its full return. While the investor suffers a negative return and ultimately defaults on the project, the lender is frequently paid in full because of the underlying collateral. Even in cases of default early in the construction process, the lender normally assumes, by contract or foreclosure, the rights of an equity holder to control construction and financing decisions. In sum, the Board's experience is that direct equity investment in commercial construction projects is more risky than lending to the same projects.[15]

The third component of risk identified by Professor Benston is operations risk, which refers to the cost of servicing and monitoring an investment. Typically, an insitution receives fees to service a loan. Thus, the interest rate on a loan normally understates the institution's return. Conversely, the costs of monitoring a direct investment are borne by the investor. The Board's experience is that servicing costs are likely to be higher for direct investments. Professor Benston provides no supporting references for his contrary

[12] Valuation models used by some investors and brokerage firms implicitly assume that equities have extremely long durations. They also imply that these securities are highly sensitive to interest rate changes and tend to move in the same direction as bonds. This would imply that equity investments could add to any mismatch problems.

[13] Moreover, although the Board's studies found that fixed-rate mortgage investments performed poorly during the worst interest rates in our history, and before associations employed "hedging," the Board has successfully encouraged the example, financial futures and interest rate swaps; collateralized mortgage obligations; and other devices to guard against interest-rate risk.

[14] Maurice D. Weinrobe, "Analysis of Consumer Safeguards for AMIs," 3 *Alternative Mortgage Instruments Research Study*, XXI (Washington, D.C., Federal Home Loan Bank Board, Nov. 1977), pp. 4–21.

[15] A very recent study has confirmed the increased credit risk posed by "equity participation loans" made by a sample of Texas-chartered institutions. The study found that many of these "loans" were in fact viewed as direct-investments by the institutions. *See* "Equity Participation Study," *supra*. The study also found that "[d]evelopers putting substantial cash into a project can fund straight loans and have no incentive to share the profits." *Id.* Professor Benston discussed whether it would be more risky for an institution to make a loan on the security of, rather than an equity investment in, a given project. Economic theory and the Equity Participation Study, however, suggest that his comparison is unduly favorable to direct investment because developers will wish to retain the rewards to equity provided by their "best" investments. Thus, the projects offered to institutions for direct investment are likely to be riskier than the projects for which straight loans are sought.

conclusion. Indeed, he relies on an example that proves the Board's point—the Empire Savings & Loan Association failure. The purported "loans" that led to that failure were in fact direct investments.[16]

The final category of risk listed by Professor Benston is fraud risk. Again without support, he asserts that loans entail more fraud risk than do direct investments. His premise is "Any standard mortgage situation offers a perfect opportunity for fraud, requiring *only* that the borrower and lender be dishonest" (emphasis added). Neither logic nor the Board's experience supports either the premise or the conclusion. If *both* parties to the transaction are dishonest, then fraud loss will occur whether the transaction is a direct investment or a loan. Moreover, the Board has found that fraud losses are likely to be greater for direct investment. Because the institution's officers and appraisers are far more familiar with real-estate lending than direct investments, it is more likely that an officer or appraiser not engaged in the fraud will spot the loan fraud. Further, loans must be repaid, usually in periodic installments. Thus, there are points at which the loan, if a payment is not made, will alert examiners, or officers not engaged in the fraud, to the problem. This is usually not true of direct investments. The increased fraud risk posed by direct investments is even more obvious in the typical situation in which only *one* party to the transaction (the borrower or would-be seller of the direct investment) is engaged in fraud. The institution's employees, officers, accountants, and appraisers have far more experience in spotting attempted loan fraud than direct-investment fraud. In sum, direct investments pose greater risks in each of the four categories identified by Professor Benston.

Finally, in an attempt to show that direct investments are not riskier than traditional thrift assets, several comments placed primary reliance on Professor Benston's prior study, supplied to the Board during the comment period on the May proposal. Some of these comments attempted to respond to the analytical and empirical flaws in this study noted in the December proposal. A law firm comment acknowledged that Professor Benston's study did not track the Board's definition of direct investments but asserted, without explanation, that the differences were "minor." In fact, the differences were dramatic. For example, the failures of Empire Savings & Loan and San Marino Savings & Loan were primarily caused by investments that were denominated "loans" but which really were, as explained above, direct investments. The expected costs to the Corporation of resolving these two failures may well exceed $400 million—a very considerable part of the approximately $6 billion FSLIC fund.[17]

The law firm also acknowledged that Professor Benston's study surveyed "only a few institutions" with significant direct investments, but claimed it was as "significant as is humanly possible." The law firm again failed to cite any statistical or economic references for this proposition. Professor Benston's study considered a subset of direct investments (which excluded the Empire and San Marino failures) during a time period when virtually no institutions engaged in such investments (and those that did had invested so recently that there was no time for bad direct investments to cause loss) and came to the inevitable conclusion that such investments did not cause failures in the period studied. The study has no predictive utility for the current situation, in which institutions in many states are engaging in substantial direct investment, with which the Board's supervisory experience reveals major problems.

In sum, the Board's supervisory experience is replete with institutions purchasing oil wells, fast-food restaurants, race-horses, broadcasting companies, and other assets for which they have no experience and no comparative advantage relative to their competitors. Indeed, Professor Benston has stated that "banking authorities must prohibit banks from making investments which put depositors' funds at more than minimal risk."[18] The Board and the industry are both engaged in an experiment with direct investments. The Board has been frank that its supervisors, as well as thrift managers, are not as expert in evaluating direct investments and in examining them to discover frauds as in supervising more traditional lending activity. Professor Benston has recommended in analogous contexts supervisory restraints on new investment authority "related to some percentage of deposits or capital and surplus" until the industry and regulators can develop the necessary expertise.[19]

C. The Impact of Direct Investment on Housing

In the December proposal, the Board expressed its concern that excessive direct investment may be contrary to the statutory goal of ensuring the availability of economical home financing.

A number of comments—principally from economic consultants—suggested this concern was unfounded. Dr. Greenspan, in his comments on the May proposal and the December proposal, argued that the savings-and-loan industry is no longer necessary to maintain a viable home-mortgage market due to the development of mortgage pooling and mortgage-backed securities. In its December proposal, the Board explained that Dr. Greenspan had not considered the very large share of such mortgage-backed securities held by the thrift industry. Dr. Greenspan's January 15, 1985, comment argues that the industry's huge holdings of mortgage-backed securities should not be considered important because any institution can substitute for savings-and-loan associations as holders of mortgage-backed securities, while no institution can effectively fill the

[16] In economic substance, the loans were plainly direct investments, as a recent report of the House Committee on Government Operations regarding the Empire failure found. *Federal Home Loan Bank Board's Supervision and Failure of Empire Savings and Loan Association of Mesquite, Texas*, House Committee on Government Operations, H.R. Rep. 98-953, 98th Cong., 2d Sess., 32 (1984). The Board's recently proposed regulation concerning ADC loans would have required such transactions to be classified as direct investments. Board Res. No. 84-579, "Accounting for Certain Real Estate Activities," 49 FR 43557 (Oct. 30, 1984). The accounting profession has come to the same point. *See* Task Force on Real Estate Lending Activities of Financial Institutions, AICPA Accounting Standards Executive Committee, "Professional Notes/Certain Real Estate Lending Activities of Financial Institutions," *Journal of Accountancy* (Nov. 1983), pp. 51–56; AICPA Savings and Loans Associations Committee, "Notice to Practitioners on ADC Loans," *The CPA Letter* (Nov. 28, 1984), at 3.

[17] One law firm comment claimed that no institution had failed due to direct-investment losses as of June 30, 1984, and suggested that the Board could not regulate direct investments until the FSLIC fund had suffered substantial losses from such investments. The factual claim is false, as the San Marino and Empire cases demonstrate. The prevalence of direct-investment problems in the Corporation's current caseload and the Board's recent supervisory experience portend sustantial further losses to the fund from direct investments. In these circumstances, and given the current state of the FSLIC fund, it would be irresponsible for the Board to delay further a regulatory response until even greater losses are incurred.

[18] George J. Benston, "How We Can Learn From Past Bank Failures," *The Bankers Magazine* (Winter 1975), p. 23. Professor Benston's concern was that depositors could not be rewarded with increased interest rates for increased risks. Currently, with rate decontrol, $100,000 in FSLIC insurance for depositors and the unavailability to the FSLIC of the option of charging risk-based insurance premiums, Professor Benston's logic applies directly to protecting the FSLIC.

[19] George J. Benston, "Savings Banking and the Public Interest," *Journal of Money, Credit and Banking* (Feb. 1972), p. 191.

mortgage originating-servicing role. He asserts that the "appropriate measure" of the industry's importance to the provision of economical home financing is the mortgages that they originate and service. This "measure," however, disproves his argument that the thrift industry has an insignificant and declining role in home financing. The market share of one-to-four-family permanent residential mortgages originated by the industry rose from 42 percent to 52 percent between 1983 and September 30, 1984 (rising in aggregate terms from $76.64 billion to $85.60 billion).

The McKenzie Study demonstrates that the average institution with direct real-estate investments in excess of 10 percent of assets placed less than 25 percent of its loan funds into one-to-four-family mortgages, while all other institutions placed over twice as much, almost 57 percent, in such mortgages.[20] Professor Benston argued that the Board should have focused on the absolute dollar value of home mortgages originated by rapidly growing institutions rather than the proportion of total institution assets placed in home mortgages in determining whether direct investment has detracted from home finance. As the McKenzie Study demonstrates, institutions engaging in more-than-10-percent direct real-estate investments are generally also rapid growers (with average growth of 181 percent between mid-1983 and mid-1984—almost nine times the average growth of all other institutions).[21] The essence of Professor Benston's argument is that the aggregate amount of new funds that institutions with greater-than-10-percent direct investment place into new residential mortgages will be relatively higher than other institutions even though the percentage of their loans going to residential mortgages is less than half that of all other institutions.

While superficially appealing, this argument is substantially overstated. Professor Benston does not discuss the source of the deposits funding the average 181-percent growth of these high-direct-investment institutions. If these deposits represent, in large part, funds that would have been placed with other institutions, then the attraction of such deposits by high-direct-investment institutions putting a proportionately lesser amount of their funds into home loans will reduce the aggregate provision of residential mortgages by the industry. In sum, Professor Benston's analysis of aggregate funding of residential mortgages is incomplete because it does not consider the sources of such deposit growth. His analysis does not provide an adequate basis for the Board to ignore the undisputed evidence that institutions engaged in heavy direct investments exhibit, in average percentage terms, less than one-half the commitment of all other institutions to home financing. Given the fact that the savings rate is relatively inelastic,[22] the deposit growth of the institutions with excessive direct investments could well come at the expense of other institutions that would have used a larger proportion of such deposits to fund home mortgages. Thus, the Board would not be true to its statutory mandate to ensure the provision of economical home financing if it were to rely on Professor Benston's incomplete analysis of aggregate residential mortgage lending.

In any event, the Board questions the relevance of Dr. Greenspan's argument as to the role of the thrift industry in home financing. As Dr. Greenspan suggests, under the NHA and the Bank Act, the Board is charged by Congress to ensure that the thrift industry continues to fulfill its mandate to provide economical home financing. If the industry's role in home financing had diminished, as Dr. Greenspan suggests, the Board would have even greater reason to adopt this regulation as one step in restoring the industry to the role that Congress designated for it as provider of economical home financing.

For these reasons, and the reasons set forth in the December proposal, it remains the Board's view that the thrift industry is vital to the provision of economical home financing, that excessive direct investment could undermine the congressional mandate to institutions to provide such financing, and that these considerations justify the regulation of direct investment.

D. Asserted Advantages of Direct Investments

Several comments argued that direct investments, whether or not they are riskier, are necessary to the financial well-being of the thrift industry. Many of these comments begin with the premise that the only problem facing the industry continues to be asset-liability mismatching. That and the typically low profit margins in the industry lead these comments to press for unfettered direct-investment authority to produce needed profits and portfolio diversification and restructuring. Some comments also asserted, without empirical support beyond recitations of the commenters' own experience, that direct investments do provide economical home financing. With one exception—that direct investments produce higher returns—all of these asserted advantages have been discussed above.

A law-firm comment asserted that, taken together, all available studies indicate that direct investments offer a higher rate of return, that associations can increase portfolio performance by making prudent quantities of direct investments, and therefore that the Board should not discourage direct investment. Several institution comments reached the same conclusion based upon their own claims of success with direct investments. Professor Benston asserted, based on a study "not yet completed," that "on average" nondirect-investment returns are negative while direct-investment returns are "quite high." These comments do not rebut the Board's studies, which demonstrate that actual returns for direct investments in equity securities and service corporations had been less than the thrift industry's average cost of funds from 1979 through 1983. In addition, the Board's examiners have often found that purported book returns on direct investments in real estate are greatly overstated.

Moreover, any study of the returns of nondirect investments during the 1979–83 time period is a "worst case" study, combining record, unexpected surges in cost of funds with portfolios consisting almost wholly of unhedged fixed-rate mortgages.[23] As noted earlier, adjustable-rate mortgages are now the primary new asset of institutions. The Board's studies demonstrate that such mortagages could have provided adequate returns at relatively low risk even during the 1979-83 time period.

The Board does not believe that these comments demonstrate that institutions should be given unlimited direct-

[20] Indeed, some of the institutions with greater than 10-percent direct investments have ceased entirely to provide residential mortgages. *See* "Equity Participation Study," *supra*.

[21] The McKenzie Study used the most recent data available to the Board as of June 30, 1984. Professor Benston's criticism that the data were based on a single quarter is unpersuasive. There is no reason to doubt that this time frame is atypical; Professor Benston proffers no reason why the typicality of this quarter should be questioned. Further, the results of the McKenzie Study generally show very high levels of statistical significance.

[22] *See* Robert H. DeFina, "The Link Between, Savings and Interest Rates: A Key Element in the Tax Policy Debate," *Business Review*, Federal Reserve Bank of Philadelphia (Dec. 1984), and the empirical studies cited therein at p. 19.

[23] In any event, Professor Benston errs in claiming that the Sirmans Study found that returns for fixed-rate mortgages and commercial loans were negative during the 1979–83 time period. In fact, they were positive.

investment authority. To the extent direct investments do offer higher expected returns, they do so only at the cost of higher risk. The Board has an obligation to ensure that those risks to the industry and to the FSLIC fund do not become unreasonable. Those institutions with adequate capitalization and prudent business plans will, through the threshold provisions and the PSA review process, continue to have the opportunity for higher expected returns provided by direct investments.

General Alternative Solutions

A number of comments on the December proposal suggested three general alternative approaches for addressing the problems associated with imprudent direct investment by thrift institutions.

A. Supervisory and Case-by-Case Evaluation

Twelve commenters proposed that the Board implement more effective supervisory methods rather than impose the review-and-approval process for direct investments contained in the proposal. Their concern was that the proposed process would penalize unfairly all institutions rather than target the supervisory problems associated with institutions making imprudent direct investments. These comments asserted that case-by-case review would better target the "high fliers" and would protect the FSLIC fund more effectively than across-the-board restrictions on direct investment. Some of these comments, including two from state regulators, also suggested that state supervision was an effective alternative.

Other comments recommended that, rather than impose industry-wide requirements, the Board control excessive direct investment through "guidelines" applied during the examination process or by preapproved direct-investment plans. The comments also suggested varying the threshold for aggregate direct investment on the basis of the economic health of the institution and the quality of its management. One comment suggested that the staffing problems entailed by a case-by-case approach could be avoided by exempting health institutions from such review.

The Board continues to believe that the regulatory approach chosen is a more effective and practical solution to the problem of excessive direct investment than any of the alternatives suggested or otherwise available. To a large extent, these comments reflect a misunderstanding of the Board's objective in proposing to adopt the new regulation. That objective is not, as some commenters stated or suggested, to deal with the direct investments of a select group of fast-growing or reckless institutions. Even though such institutions are a source of special concern, the Board's objective is to deal with the generic problem of direct investment at imprudently high levels by any institution. Debt investments are generally less risky than the direct investments authorized by an increasing number of states. Thus, as stated in the December proposal, the issue is not merely the abuse or misuse of such augmented investment powers, but the fact that even their permissible use generally entails greater risk, the price of higher expected returns.

In the Board's view, these comments also mischaracterize the operation of the proposed regulation. Thus, while the new regulation is designed to address risk in the thrift industry created by direct investment, the approach to controlling such risk is not a flat, industry-wide standard which ignores the economic health of institutions. To the contrary, the approach set forth in the regulation is sensitive to the economic health of individual institutions and will be applied on an institution-by-institution basis.

Moreover, even with regard to rapidly growing institutions or those with identified supervisory problems, merely relying on existing or expanded supervision would not be an adequate alternative to the new regulation. By necessity, examination lags far behind the acquisition of deposits or the investment of funds. Imprudent direct investments, and hence problem assets, may increase dramatically between examinations, especially with the ready access to "brokered funds" currently possible. Irreparable damage can be done before the Board can make any supervisory examination and well before it can take any corrective action.[24] The unavoidable lag between the time an asset is acquired and the time that the acquisition is reflected in statistical reports, filed quarterly by each institution, further shows that supervision is not an acceptable alternative to before-the-fact regulatory action. The Board's Director of the Office of Examinations and Supervision spoke to these issues at the time of the December proposal. His conclusion was that the proposed review process gave the Board "an opportunity to take a look at what the institution proposes to do, not what the institution has done . . . [T]he key point for OES is the ability to take a look at [these direct-investment decisions] ahead of time." Transcript of Agendum S-54, Board Meeting Dec. 10, 1984, pp. 23, 24. Thus, merely escalating the supervisory attention already devoted to problem institutions, as some commenters suggested, would not accomplish the Board's objective of controlling risk.

The Board does concur in the view expressed by some comments that stronger, more vigorous supervision has an important role to play in conjunction with regulatory approaches such as the regulation adopted today. As a result, the Board has taken several steps to strengthen its ability to supervise and monitor the activities of institutions and to modernize the examination process. These measures include increased monitoring of the use of brokered funds by institutions with low net worth (Memorandum of the Office of Examinations and Supervision No. SP-41, May 25, 1984); directives to PSAs stressing the need for prompt referral for enforcement action when corrective action is not forthcoming after substantial problems are discovered; immediate on-site evaluation of any institution exhibiting excessive growth or significant behavioral deviation; and streamlined approval procedures for the initiation of enforcement proceedings. The Board has also improved its ability to monitor the industry by implementing a new quarterly reporting system and increasing emphasis on electronic technology, measures which have resulted in more frequent monitoring and accelerated examination of institutions displaying aberrant behavior. The Office of Examinations and Supervision has increased both the number and qualifications of its supervisory staff during the past year. Additionally, the Board developed legislation, introduced in the last session of the 98th Congress, to increase its enforcement powers (H.R. 5739, S. 2700).

B. Variable-Rate Premiums

Two comments recommended that the Board implement a variable-rate insurance premium based on risk. As stated in the December proposal, the Board is considering such changes to the FSLIC insurance-premium system, and in that connection has requested authority for a type of risk-based insurance-premium structure in its recent legislative proposal. Given the uncertainties of the legislative process, and the immediate, significant pressures created by excessive direct investment,

[24] Professor Benston has repeatedly emphasized the severe limitations of relying upon supervision to prevent losses to the FSLIC and the FDIC. *See, e.g.*, George J. Benston, "How We Can Learn From Past Bank Failures," *supra*.

however, the Board believes that the new regulation is necessary at this time.

C. Increased Net-Worth Requirements

Five comments suggested that rather than having a direct-investment review-and-approval procedure, the Board's proposed net-worth revisions (adopted today as a final rule in conjunction with this rule) or some additional net-worth requirement would be a more appropriate method of addressing the issue of imprudent direct investments. Two comments specifically stated that no regulation beyond the net-worth revisions promulgated today was necessary. Three comments proposed additional net-worth requirements as a condition to increased direct-investment authority.

The Board believes that direct investment at any level must be supported by adequate capital. Thus, in the companion regulation adopted today revising themethod of computing the minimum net-worth requirement for institutions, additional net worth is required for institutions engaging in direct investments. Imposing more stringent net-worth requirements for direct investments, however, does not address the Board's concerns regarding either the quality, liquidity, and diversification of direct investments or the need to ensure that the thrift industry accomplishes its congressional purpose, *i.e.*, the provision of economical home financing. For this reason, the Board regards as necessary both this rule and the net-worth rule.

Specific Changes Suggested by Comments

A. Percentages (Alternative Direct-Investment Formulas)

A number of comments criticized the 10-percent threshold. Two savings-and-loan associations noted that their state laws allowed substantially greater levels of direct investment than the proposed regulation and indicated that a restriction of aggregate direct investment to 10 percent of assets or twice net worth would unnecessarily restrict their operations. One association felt that the 10-percent threshold would effectively bar any greater level of investment because the PSAs would lack incentives to approve applications for exceptions. The state regulator felt that the 10-percent threshold was far too broad in its impact and was a usurpation of state authority. One commenter suggested leaving the threshold requirement as is, but phasing it in over a three- to five-year period. One *de novo* institution inquired whether it could invest twice its net worth in direct investments even though its operating agreement would restrict it to 10 percent of assets.

After careful evaluation of these comments, the Board continues to believe, for the reasons explained above, that the thresholds for aggregate direct investment are the most effective way to address the Board's concerns regarding direct investment. The Board believes that a threshold of 10 percent of assets or twice net worth provides ample room for the economically beneficial use of direct-investment authority while ensuring prudent support of that authority by an institution's capital base. The Board also disagrees with those comments attacking the 10-percent threshold as an absolute barrier. As the Board notes below in its response to comments critical of the exceptions procedure, there is a presumption of approval absent specific findings by the PSA that the institution warrants supervisory concern. The 30-day limit on PSA consideration, as well as on FSLIC decision or review, underscores this presumption. Adequately capitalized institutions with prudent and balanced direct-investment business plans need not fear wholesale PSA disapproval of exception applications. Finally, the Board notes that the final rule is not an independent grant of investment authority, which derives from other law, whether statutory, regulatory, or contractual.

B. Definitions

1. Real-Estate Investment

Seven comments recommended specific changes to the proposed definition of this term. One comment noted that the definition of "investment in real estate" included investments which create housing. This comment posited that because the creation of housing is more beneficial than merely lending money after the constuction of housing, the Board should except from the definition investments in real estate which create housing.

After carefully considering these comments, the Board believes that the definition of "investment in real estate" must retain its definitional scope in this regard to effectuate the Board's policies. While economical home financing is a primary objective for the thrift industry, direct investments that create additional housing involve the same risks posed by other types of direct investments with which this rulemaking is concerned. There is, therefore, an inadequate basis for excluding direct investments that create housing from the definition.

Another comment suggested that real estate received in trade for scheduled items should be excluded from the definition. This comment is presumably based on the rationale that scheduled items pose greater risks than equity investments in real estate and therefore such trades should not be discouraged. While the Board is in general agreement with the underlying principle, the Board notes that as a general matter a PSA would not withhold approval of a transaction which reduced the risk exposure of an institution, if such approval were needed. [25]

Other comments also suggested that construction loans, prudently underwritten and containing valid personal guarantees, should be excluded from the definition. These comments pointed to the traditional savings-and-loan function of real-estate lending and asserted that the existence of an "equity-kicker" feature in the loan should not cause the loan to be treated as an "investment in real estate." To address this concern, one comment suggested an amendment which would exempt those loans subject to reclassification as direct investments in real estate from the calculation of aggregate direct investment if the transaction was originally classified in good faith as a loan. This comment also suggested a provision specifically requiring federal associations to divest reclassified loans.

The Board is of the view that concerns about the impact of reclassifying loans are greatly exaggerated. These comments ignore the Board's proposed policy statement regarding accounting for real-estate loans with equity features, which provides the detailed guidance necessary to ensure consistent treatment of these transactions, not all of which would be classified as investments in real estate. *See* Board Res. No. 84–579, 49 FR 43557 (Oct. 30, 1984) (proposed effective date of Oct. 28, 1984). Moreover, transactions entered into prior to notice of this policy statement will likely fall under the saving clause of the new regulation. Finally, the Board hereby advises institutions that, while it will require an institution to include a reclassified loan in its calculation of aggregate direct investment, PSAs will consider the good-faith nature of the original classification

[25] It should be noted that any such lessening of risk would already be taken into account by a change in the institution's net-worth requirements. More specifically, the 20-percent reserve for scheduled items would be replaced by a 10-percent reserve for direct investments under the final net worth rule.

when acting on applications to permit nonconforming direct investments.

As to the suggestion that the rule specifically require federal associations to divest reclassified loans, the Board is of the view that such a requirement is unnecessary because reclassified loans would violate existing regulations applicable to federal associations and would thus be subject to the exercise of supervisory discretion by the PSAs.

Finally, one comment suggested that the Board should address direct-investment in real estate in a separate rulemaking rather than in conjunction with the regulation of other direct investment activities. However, because direct investments in real estate are such an important component of the direct investments which give rise to the need for the new regulation, the Board believes that any direct-investment regulation which did not deal with real-estate investments would be largely ineffective to accomplish the Board's objectives.

2. Service Corporations

Seven comments proposed changes to the scope of the definition of "investment in service corporation." The comment from the Federal Reserve Board suggested that the Board place even more constraints on service-corporation investment, citing the indirect risks to the FSLIC associated with such service corporation investment. Taking an opposing view, several comments suggested that service=corporation investments should be excluded from the direct-investment review-and-approval process. As demonstrated by Board studies discussed in detail in the December proposal, investments in service corporations can expose an insured institution to high degrees of risk. Accordingly, their inclusion in the regulation is appropriate and essential given their potentially adverse effect on the financial stability of an institution and, ultimately, the integrity of the FSLIC fund.

In fact, upon further consideration of the definition provided in the December proposal, the Board believes that a narrower definition of "service corporation" and a new definition of "operating subsidiary" are required to address its concerns regarding diversification and risk posed by direct investments. The final rule therefore contains a definition of "service corporation" that includes a proviso limiting the definition to those corporations whose entire capital stock is available for purchase only by "insured institutions," as defined in 12 CFR 561.1. As explained more fully below, the final rule adds a new definition of "operating subsidiary," which means a corporation the majority of whose capital stock is owned by a single institution and which engages exclusively in activities which are part of or incidental to the business of the institution. These changes will effectively require that investments in subsidiaries which do not meet these definitions be classified as direct investments in real estate or in equity securities, rather than as service-corporation or operating-subsidiary direct investments.

Several comments expressed concern about the inclusion of credit extensions to a service corporation as an investment in a service corporation (the final rule treats credit extensions to operating subsidiaries in an identical fashion). These comments pointed out that existing regulations contain exemptions permitting federal associations to make certain conforming loans to service-corporation subsidiaries which are not attributed to the parent's overall investment limit of three percent of assets in such service corporations. The commenters urged the Board to adopt this approach in the direct-investment rule, and to allow such loans to service corporations without PSA approval. One objective of the new regulation is to limit an institution's exposure by virtue of service-corporation and operating-subsidiary investments; excluding loans to such corporations would be inconsistent with this objective. Thus, although the Board has fully considered these suggested modifications, it has concluded that giving effect to them would likely expose institutions and the FSLIC fund to an unacceptable degree of risk and undermine the effectiveness of the regulation.

Several commenters also asked the Board to clarify whether the consolidation provision could be applied on a "pick-and-choose" basis; one comment suggested that the Board clarify whether consolidation could be used for direct-investment requirements but not for net-worth requirements. It has been the Board's intention throughout this rulemaking procedure to permit consolidation on a selective basis, as indicated by the "any or all' language set forth in the consolidation provision in the December proposal. In response to the request for clarification, the Board wishes to state that an institution which chooses to consolidate with its service corporations and operating subsidiaries for purposes of the direct-investment rule is not required to do so for purposes of computing the direct-investment contingency reserve factor in the net-worth rule.

Another comment expressed concern regarding the rule's effect on, and application to, second- and third-tier service corporations. As indicated above, due to the revision of the definition of "service corporation" and the new definition of "operating subsidiary," an institution's investment in subsidiaries which do not meet the definitions will be classified as direct investments in real estate or in equity securities. The final rule would not be applicable to direct investments made by second- and third-tier subsidiaries, except in the event that such subsidiaries meet the definition of "operating subsidiary" set forth in the direct-investment regulation and the institutions opts to consolidate with such subsidiaries for purposes of that regulation. Only in those circumstances would the requirements be applicable to direct investments of second- and third-tier subsidiaries.

3. Equity Securities

Five comments discussed the December proposal's definition of "equity security." These comments—submitted by three savings-and-loan associations, one trade association, and one law firm representing a group of savings-and-loan associations—criticized the ambiguity and breadth of the definitional language and particularly the inclusion of the "any profit-sharing agreement" language; other comments objected to the inclusion of certain equity interests in real estate within the definition of "equity security."

Given the extremely diverse and ever-changing nature of investment vehicles, the Board believes that to accomplish its objectives the definition of "equity security" must be broad one. Otherwise, investments which the Board intends to address will potentially escape the scope of the rule. At the same time, the Board has concluded that a number of the comments are well-founded. As a result, the definition of "equity security" has been revised to exclude any security, or loan subject to reclassification under GAAP, or RAP if applicable, which also meets the definition of an "investment in real estate." Therefore, investments in equity securities which are more properly classified as investments in real estate will not be subject to the quantitative or qualitative standards applicable to equity-security investments. In further response to the comments, the Board has amended the definition of "equity security" to include loans or pools of loans with profit-sharing features, and participation interests in such loans, only in the event that such loans would be reclassified as equity investments under GAAP, or RAP if applicable.

C. Saving Clause

Five comments addressed various aspects of the saving clause contained in the December proposal. Two comments asserted that the effective date of the provision should be the date of the final rule. One of these comments argued that without this alteration the Board would be regulating retroactively. Two comments expressed concern over the PSA's ability to "degrandfather" certain direct investments and questioned whether this was intended to enlarge the authority of PSAs to require divestiture.

The Board remains of the view expressed in the December proposal that it was imperative to eliminate any incentive for institutions to increase their direct investments in anticipation of the final rule, and that the effective date of December 10, 1984, is therefore appropriate. Moreover, in comparison with the rather substantial changes made in the May proposal by the December proposal, which necessitated the extension of the saving clause date to the date of adoption of the December proposal, the final rule incorporates relatively minor changes from the provisions of the December proposal.

The Board believes comments concerning the PSA's so-called "degrandfathering" authority misapprehend the Board's intention and the current law. The Board's intention in including that sentence was merely to note that the December proposal did not affect existing PSA authority, including, for example, the power to require institutions not in compliance with the minimum net-worth requirement to take a wide variety of corrective measures. *See* 12 CFR 563.13(d). The sentence is intended merely to preserve the authority of PSAs under present law.

One comment expressed concern regarding the effect of the saving clause on aggressive state-chartered institutions. This comment asserted that although direct investment in excess of 10 percent of assets would be "grandfathered," an institution would have to curtail all other direct investments until such time as sufficient "grandfathered" investments were sold to permit an institution to reinvest and remain below its threshold level. The comment asserted that institutions had no reasonable alternative to this "waiting period" because the PSA approval process was too time-consuming to allow an institution to take advantage of attractive investment opportunities.

The Board finds this comment unfounded. An institution with "grandfathered" direct investments in excess of threshold levels may seek PSA approval for additional investment opportunities. Thus, the institution need not stagnate merely because its "grandfathered" direct investments exceed its threshold. The Board also points out that, as explained below, the PSA approval process of the final rule will not inhibit an institution from securing attractive investment opportunities, provided such investments are included in an approved investment plan implementing an augmented threshold level. Any alternative which would circumvent this approval process would undermine the rule's fundamental purpose with regard to excessive direct investment. Merely because an institution has direct investments in excess of its threshold level on the "grandfathering" date clearly is no reason to permit that institution to make even more direct investments without PSA approval.

D. Permissible Equity-Security Investments

Comments dealing with the list of permissible investments suggested: (1) Including equity securities issued by subsidiaries, joint ventures, and partnerships engaged in a business related to the business of the institution; (2) allowing investment in companies whose securities are not publicly traded (with a lower quantitative limitation than for listed or quoted securities); (3) establishing Board criteria for permissible investments rather than relying on the fact that a security is listed on an exchange or quoted on a service; and (4) allowing investment in any company approved by a PSA after review of a direct-investment plan submitted by an institution.

The Board believes that comments suggesting expansion of permissible equity-security investments to include equity securities issued by joint ventures and partnerships engaged in businesses incidental to the business of the institution are well-founded. As a result, the definition of permissible equity-security investments has been expanded to permit such investments, and a companion change has been made in the diversification provision of the final rule setting forth the single-issuer limitations. Because in the final rule, as in the December proposal, securities issued by operating subsidiaries are excluded from the definition of "equity security," it is unnecessary to include such securities in the list of permissible equity-security investments.

The Board believes that the twin considerations of quality and liquidity of investment, discussed at length in the December proposal, prevent any further expansion of the list of permissible equity-security investments. The concept of liquidity is especially important in considering the desirability of investments in nonpublic entities due to the fact that equity interests in such entities may be difficult to sell because of a limited market. Indeed, in many instances the disposition of equity interests in nonpublic entities is restricted or prohibited by federal and state securities laws. The exceptions process will, however, allow institutions to petition their PSAs when investment outside the scope of the permissible list seems appropriate. The Board believes that investments in other companies are best handled on a case-by-case basis through the flexible PSA-approval process.

E. Diversification; Single-Issuer Requirement

Several comments addressed those sections of the December proposal dealing with the diversification of and quantitative limitations on investments. The two comments dealing with diversification recommended exempting real-estate transactions from the diversification provision and defining an "affiliate" as an owner of a 25-percent, rather than 10-percent, interest in a real-estate project.

After review of these comments, the Board had determined to simplify the diversification provision set forth in the December proposal and consolidate its requirements with the single-issuer provision. While real-estate projects are still subject to the diversification provision in the final rule, the requirement with respect to persons with 10-percent interests in real estate has been deleted. In addition, the exceptions procedure has been amended to incorporate considerations regarding the extent of diversification of direct investments of an insured institution and its service corporations and operating subsidiaries.

Three comments from savings-and-loan associations criticized the limitation on investments in one issuer set forth in the December proposal, claiming that it was unduly restrictive, prevented the investor from asserting sufficient management control over an investment, and hampered consolidation for tax purposes of profitable entities with institutions experiencing losses. The comments variously proposed eliminating the requirement entirely or allowing investment above the 25-percent level if an institution's net worth was above 4 percent and direct investments were below 10 percent of assets.

Placing quantitative restrictions on the level of an institution's investment in any single issuer is a reasonable and necessary means of accomplishing the Board's objective of diversifying an institution's portfolio of direct investments, thereby reducing risk potential. Giving blanket approval for investments above 25 percent would, in the Board's judgment, create too great a potential risk that an institution could concentrate its direct investments in a single issuer and thereby undermine the purpose of the new regulation. Moreover, the Board does not believe that such a step is necessary to ensure access to an issuer's financial information or for control purposes. For these reasons, the Board does not believe any increase in the 25-percent limit is appropriate, unless, of course, otherwise approved by the PSA pursuant to the exceptions process. As discussed more fully below, the Board has further modified the provision to apply the 25-percent limit to any one class of outstanding equity securities and to apply the regulatory net-worth limit to an institution's total equity and debt investment in any one issuer. As to the comment concerning the effect of the quantitative limitation on tax consolidation, the Board believes the concern has been fully addressed by the PSA-approval procedure and by excluding from the limitation investments in joint ventures and partnerships engaged in business incidental to that of the institution.

F. Approval Process

The Board received 25 comments addressing various aspects of the PSA-approval process for exceptions from direct-investment limitations. Three comments objected to the approval process in its entirety. Other comments objected to the requirement of PSA approval for all direct investment when an institution is below its regulatory net-worth level. Another comment suggested that PSA-approved direct investments should not be subject to the direct-investment reserve requirement of the companion net-worth proposal. A substantial number of comments also expressed concern about the effect of the approval process on an institution's ability to make investment decisions. One comment suggested a blanket approval mechanism for transactions involving specified dollar amounts over a given period of time.

Other comments suggested various modifications to the timing provisions of the approval process. One comment suggested shortening the time frame to 10 days after all required information had been received, while another suggested limiting the PSA to one request for additional information and requiring that such request include a justification for the request for additional information. Another suggested flexible time limits, which increased with the perceived riskiness of the investment decision under review. Another comment noted a perceived problem with the 30-day automatic approval mechanism and the possibility of disagreement between a PSA and a state supervisor over an application. Comments also expressed concern over the timetable for Board appeals, objected to a perceived ability on the part of a PSA to threaten disapproval unless a time extension was negotiated, and suggested that the PSA would automatically disapprove all exception applications because of the excessive burden of the approval process or because of a desire to avoid regulatory responsibility for investments which turned sour. The comments maintained that the 20-percent threshold would, as a result, become an absolute bar to additional investment.

Several comments also viewed the criteria for disapproval as too subjective, granting the PSA unlimited discretion. One comment suggested that the Board define "supervisory objection" as that phrase is used in the disapproval criteria, and one comment suggested defining the phrase "likely to increase risk." One comment suggested deleting the economical-home-financing criterion, while another insisted that this criterion was the only valid one of the three. Two comments suggested that applicants submit evidence of their policies regarding economical home financing to the PSA as part of the approval process. Finally, one comment requested that the PSA's written denial include a statement of the reasons for the denial.

Several comments supported portions of the approval process, including the limited disapproval criteria, the 30-day limit on PSA action, and the 10-day limit on requests for information. One comment objected to the presumption of approval and suggested that the burden should be on the institution to satisfy the regulatory criteria.

As to those comments questioning the objectivity of PSAs and their sense of responsibility, the Board rejects these suggestions and fails to see any basis for the assumption of bad faith on the part of the PSAs in performing their responsibilities. The Board is not currently aware of complaints about such misbehavior by the PSAs. The Board does, however, intend to monitor this review-and-approval process and will take steps, if necessary, to prevent any such abuse.

The Board also remains convinced that the approval process, substantially as set out in the December proposal, is essential to effectuate Board policy. However, the Board has made the following modifications in response to the comments. The Board has instituted a 30-day time limit on Corporation determinations once the Corporation receives petitions for reconsideration or applications for resolution of a disagreement between a state supervisor and a PSA. This change, which addresses the well-founded concerns of some commenters, is fully explained below. Also, the Board has determined that an institution will not need to seek PSA approval for direct investment above threshold levels if the direct investment is the result of any corporate transaction (*e.g.*, merger) which already requires PSA or Board approval under certain existing regulations.

The Board, however, finds that concerns regarding the impact of the approval process on individual institutions' investment decisions to be unfounded. Institutions may submit a general business plan establishing the parameters of their investment activity over a given time period. The approval process was never intended to be solely an investment-specific process, a fact which the final rule clarifies. The Board is cognizant of the dynamics of the financial marketplace and recognizes the need for proper business planning. As structured, the approval process meets these concerns.

The Board also notes that the December proposal contained substantial modification of the disapproval criteria which should address those comments objecting to the subjectivity of the criteria. Although comments again suggest these criteria remain too subjective, the Board has determined that the criteria as reproposed provide adequate guidance to all concerned. Therefore, no additional modifications will be made. Specifically, the likelihood-of-increased-risk criterion is not intended to be, nor does the Board believe it will be, applied in as broad a manner as postulated by some commenters.

Description of the Final Direct-Investment Rule and Discussion of Changes Made in the December Proposal

Summary

The final direct-investment rule, as adopted by the Board, is substantially similar to the December proposal in form and purpose. While the final rule incorporates a number of technical and clarifying changes, the purpose of the rule remains to create a process of supervisory review and approval of certain types of direct investments and of aggregate direct investment above certain threshold amounts. Thus, the overall objective of the rule is to allow institutions the flexibility to exercise their investment powers, as independently authorized by applicable law, in a manner that does not expose either the institutions themselves or the FSLIC fund to an unacceptable level of risk, while at the same time ensuring that these institutions continue to fulfill their obligation to provide economical home financing. The changes made in the final rule are discussed below.

Definitions

1. *Aggregate Direct Investment.* The Board has added a definition of "aggregate direct investment," which means the sum of investments in equity securities, real estate, service corporations, and operating subsidiaries, provided that upon the sale, liquidation, retirement, or other disposition of any such investment, the amount of aggregate direct investment shall be reduced to the extent that the original investment is recovered. Any gain realized upon the disposition of such investments shall not reduce the aggregate direct investment. However, any loss realized upon the disposition of such investments shall be deemed to be an outstanding direct investment, and shall be included in aggregate direct investment, except to the extent that such loss can be netted against gains realized upon the disposition of other direct investments. Thus, profits from any disposition of direct investments would increase direct-investment authority only to the extent that they increased net worth and total assets, thereby potentially increasing the applicable direct-investment threshold.

For example, assume that an institution had a threshold for aggregate direct investment of $10 million and invested $5 million in each of two investments, subsequently selling one investment for $6 million and the other for $3 million. The institution would be deemed to have outstanding $1 million in direct investments, which is the amount of the net loss on the investments. If the institution's threshold remained unchanged, it would thus have leeway to make $9 million in new direct investments. However, to the extent that the institution's net loss of $1 million on the sale of its direct investments reduced its net worth and total assets, its applicable threshold for aggregate direct investment would also be reduced.

The Board considers that this definition and the results that it achieves are appropriate because they encourage prudent investment by requiring that net losses incurred as a result of the disposition of such investments must be included as outstanding direct investments in the calculation of aggregate direct investment. The application of this definition to investments in equity securities, real estate, service corporations, and operating subsidiaries is discussed further below.

2. *Equity Security.* The December proposal set forth an extensive definition of interests constituting equity securities for purposes of the direct-investment rule. In response to comments filed with respect to this definition, a number of changes were made in the final rule. The Board amended the December proposal, clarifying its intent that only debt securities immediately convertible at the option of the holder without payment of substantial additional consideration into equity securities shall be deemed to constitute equity securities for purposes of the rule. The inclusion of treasury stock and guarantees in the definition of "equity security" was determined to be unnecessary and, therefore, deleted. After consideration of the possibilities of double counting of investments in equity securities and investments in real estate when any one investment meets the definitions of both "equity security" and "investment in real estate," the Board determined to modify the definition to exclude securities representing an "investment in real estate," as defined in paragraph (b) of the rule. The Board also expressly modified the definition of "equity security" to include any loan with profit-sharing features, or any participation interest in such loans, which would be reclassified as equity investments under GAAP, or RAP if applicable, but to deem such loans to be investments in real estate rather than investments in equity securities when appropriate.

3. *Issuer.* The final rule quotes in full the Securities Exchange Act of 1934 definition of the term "issuer," which the December proposal only incorporated by reference.

4. *Investment in Equity Securities.* For purposes of clarity and consistency, the Board has defined "investment in equity securities" as an amount equal to the historical book value of equity securities held as of December 10, 1984, or an amount equal to the purchase price of such securities acquired after that date. No definition of the term was included in the December proposal.

5. *Investment in Real Estate.* The December proposal defined "investment in real estate" to include all "direct or indirect" ownership of equity interests in real property, as determined in accordance with GAAP, or RAP if applicable, except for equity interests in real property used primarily by an institution for offices or related facilities and in real property acquired through foreclosure or default. Although the Board received a number of comments suggesting revisions of this definition, for the reasons indicated in the "SUMMARY AND DISCUSSION OF COMMENTS" section above, the Board has decided to adopt it as proposed, but with three clarifying additions. Thus, the Board has added two provisions to this definition specifically to include: (1) Loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which the institution holds an interest which would be classified as an equity interest in real property under GAAP, or RAP if applicable, and (2) interest capitalized in accordance with GAAP. Finally, the Board has clarified its intent regarding the use of purchase price for purposes of calculating the amount of investment in real estate. The Board has also made a minor change to decrease the potential for double counting, particularly with respect to real-property equity interests of subsidiaries: namely, the deletion of the reference to "direct or indirect" ownership of investments in real estate.

6. *Investment in Service Corporation and Investment in Operating Subsidiary.* The December proposal defined "investment in service corporation" to include all equity and debt investments made by an institution in a service corporation. In the final rule, this definition is also applied to the term "investment in operating subsidiary." The definition has been clarified to exclude profit or loss recorded by an institution with respect to such corporations due to its use of equity method accounting. A further proviso has also been added to reflect the Board's intent that the amount of investments in service corporations and operating subsidiaries shall be reduced

by the repayment of any advance or loan, the expiration or cancellation of any guarantee of indebtedness, or the redemption or sale of any security of such corporations held by an institution.

7. *Service Corporation.* The December proposal defined "service corporation" to mean a corporation as defined in § 561.26 of the Board's regulations or as authorized by state law. The Board has added a proviso to the definition to address its concerns regarding the proper classification of direct investments under the rule (*i.e.*, as equity security, real estate, service corporation, or operating subsidiary) to ensure the accurate evaluation of the extent of diversification of such investments. The proviso requires that the entire capital stock of a service corporation must be available for purchase only by "insured institutions," as defined in § 561.1 of the Board's regulations. This proviso does not prohibit investments in corporations which fail to meet the revised definition but, rather, subjects such investments to those provisions of the rule regarding investments in equity securities, real estate, or operating subsidiaries, as applicable.

8. *Finance Subsidiary; Operating Subsidiary.* The Board has added two new definitions to specify the meanings of potentially ambiguous terms used in the December proposal. "Finance subsidiary" is defined to mean a corporation which meets the requirements of § 545.82, the Board's finance-subsidiary rule, except that the institution owning it may be state- or federally chartered. "Operating subsidiary" is defined to mean a corporation, the majority of whose capital stock is owned by an insured institution, which engages exclusively in activities which are part of or incidental to the business of the institution.

Qualitative Criteria

In addition to the definition of "equity security" discussed above, the December proposal also set forth qualitative criteria regarding permissible equity-security investments. Due to the Board's concerns regarding liquidity of investments, the December proposal generally would have limited equity-security investments to common and preferred stocks listed on the New York and American Stock Exchanges or quoted on the National Association of Securities Dealers Automated Quotation System, although the Director of the Office of Examinations and Supervision could permit investment in stocks traded or quoted elsewhere.

As discussed above, although a number of comments suggested modifications to these qualitative criteria, the final rule incorporates the provisions regarding permissible equity-security investments set forth in the December proposal with only two changes. First, in response to a perceived ambiguity in the rule, the description of permissible stock investments has been expanded to include explicity any security immediately convertible at the option of the holder without payment of substantial additional consideration into an otherwise permissible stock, any security carrying any warrant or right to subscribe to or purchase such stock, or any warrant or right to subscribe to or purchase such stock, provided that any such security, warrant, or right is itself listed or quoted on the enumerated exchanges. Certificates of interest or participations in or temporary certificates or receipts for such stock have also been included. Second, a fifth category of permissible investments has been added to authorize investment in equity securities issued by a partnership or joint venture engaged exclusively in activities which are part of or incidental to the business of the institution.

Quantitative Limits

The December proposal generally would have prohibited investment in more than 25 percent of the outstanding equity securities of any one issuer and prohibited institutions from investing in the common stock of other insured institutions or nondiversified savings-and-loan holding companies unless the investing institution was deemed to be a savings-and-loan holding company within the meaning of 12 U.S.C. 1730a(1)(D). While the Board has adopted the provisions set forth in the December proposal with respect to investments in savings-and-loan stock essentially without change except for the deletion of the reference to beneficial ownership, revisions have been made to the quantitative limit on investments in equity securities of other issuers, as discussed immediately below under "Diversification."

Diversification

The Board has deleted the diversification provision of the December proposal as unnecessarily complex, and it has instead included in the final rule a simplified provision which incorporates aspects of the proposed quantitative-limitation and diversification provisions. The new provision consists of two subparagraphs, one dealing with equity securities and the other dealing with real estate.

The equity-security provision of the final rule provides that no institution shall own, control, or hold for its own account more than 25 percent of any one class of an issuer's outstanding equity securities nor an amount of all classes of outstanding equity and debt securities which, when aggregated with loans to the issuer, exceeds the institution's regulatory net worth. The May proposal included a five-percent limitation on ownership of the outstanding equity securities of one issuer in order to control risk, enhance diversification, and ensure the continued provision of economical home financing. Based on comments filed concerning the unavailability of favorable equity accounting under the five-percent limit, the Board was persuaded to increase the limitation to 25 percent in the December proposal. After further reflection, however, the Board has concluded that the increase to a 25-percent limitation could obviate the purposes of the rule if it is not related to an institution's regulatory net worth.

For this reason, the Board determined to adopt the quantitative limit on investment in equity securities of any one issuer as described above, to ensure that an institution's regulatory net worth will also be considered in determining the appropriate levels of such investments; the final rule also reflects the Board's intention to apply the 25-percent limit to any one class of outstanding equity securities. The Board also deleted all references to direct or indirect beneficial ownership. Finally, the Board has provided that the modified single-issuer limitations shall not apply if the issuer is a partnership or joint venture engaged exclusively in activities that are part of or incidental to the business of the institution.

The new diversification provision applicable to investments in real estate applies the regulatory net-worth limit to investment in any one real-estate project, including acquisition, development, and carrying costs and assumption of any related debt or liability. Unlike the diversification provision in the December proposal, the provision in the final rule does not require the aggregation of investments in issuers, their affiliates, and real-estate projects. However, securities, or loans subject to reclassification under GAAP, or RAP if applicable, which represent an "investment in real estate" as defined in the rule will be subject to the net-worth limit on investment in any one real-estate project.

Thresholds for Aggregate Direct Investment

As indicated above, the December proposal provided for supervisory review and approval of aggregate direct investment above certain threshold amounts. The highest threshold amount of aggregate direct investment permitted by the December proposal without prior PSA approval was the greater of 10 percent of assets or twice regulatory net worth. Only institutions having a special-purpose "snapshot" net worth of approximately three percent of liabilities could make direct investments up to this threshold amount without prior approval. Institutions having a lower net worth but meeting their minimum regulatory requirement could make aggregate direct investment without prior approval in an amount equal to twice regulatory net worth. Institutions not complying with their regulatory net-worth requirement could make direct investments only upon prior supervisory review and approval. The December proposal also provided an institution the option of consolidating the direct investments of any or all of its subsidiaries with its own direct investments and then excluding its investments in such consolidated subsidiaries from the calculation of its aggregate direct investment.

The Board has adopted the threshold provision set forth in the December proposal with a number of changes. First, the provision has been reorganized to present the thresholds in a more comprehensible manner. Second, the Board made conforming and technical changes required by the new provisions, terminology, and section designations of the amended net-worth rule, including the calculation of regulatory net worth as of the preceding calendar quarter instead of the preceding month and the inclusion of reserves for scheduled items and recourse liabilities in the calculation of an institution's minimum net-worth requirement. Third, the Board has clarified that an investment that would cause aggregate direct investment to exceed the threshold is impermissible absent PSA approval. Lastly, the final rule provides that only the direct investments of service corporations and operating subsidiaries may be consolidated with an institution's direct investments when calculating aggregate direct investment. The Board made this change because it would be counterproductive of the purposes of the rule to exclude from the calculation of aggregate direct investment an institution's investments in ordinary business enterprises.

Saving Clause

The December proposal included a saving clause which would have "grandfathered" direct investments made, legally committed to, or begun pursuant to definitive plans on December 10, 1984. Additional direct investments would not have been permitted without prior approval until the institution's aggregate direct investment complied with the applicable threshold. Because of the Board's concern that the December proposal could be interpreted to "grandfather" only those direct investments which were nonconforming as of December 10, 1984, and not nonconforming investments made after that date pursuant to legal commitments or definitive plans existing on that date, the saving clause has been revised to clarify the Board's intent that such investments also are "grandfathered." The Board has also revised the saving clause to clarify that additional direct investment could be made with prior PSA approval even if an institution were not in compliance with its threshold. The language preserving the independent authority of the PSAs to require reduction of aggregate direct investment or the divestiture of specific investments has been clarified to include the prohibition of investments.

Exceptions

For institutions wishing to make specific direct investments not otherwise authorized as to amount or type, the December proposal established an application process administered by the PSAs which would provide state supervisors the opportunity to submit written recommendations regarding the application. The December proposal also set forth requirements regarding the approval of such applications, and provided that a complete application that was not disapproved within 30 days would be deemed to be approved. Further, applications on which PSAs and state supervisors disagreed would be referred to the Corporation for determination, and adverse PSA decisions would be appealable to the Corporation.

After consideration of comments submitted regarding these provisions, the Board has adopted the exceptions procedure set forth in the December proposal, making minor clarifying changes and the following four additions. First, the Board clarified its intention that the exceptions procedure permit institutions to request advance approval of an increased threshold level of aggregate direct investment, even though specific direct investments which would reach such a level were not yet identifiable. Conforming changes have also been made to the requirements regarding the content of applications. Second, as discussed above, the diversification requirement set forth in the December proposal has been simplified and abbreviated in the final rule. For this reason, considerations regarding whether the consolidated direct investments of an institution seeking an exception and its service corporations and operating subsidiaries are appropriately diversified have been incorporated in the procedures set forth in the final rule for applications for, and approval of, additional investment authority. Third, in order to ensure prompt action, the Board has added a requirement that the Corporation shall act within 30 days on applications referred to it as a result of PSA and state supervisor disagreement or appeals from adverse PSA decisions. Otherwise, an application shall be deemed approved or a petition for reconsideration granted.

Finally, the Board has determined to provide that an institution need not observe the exceptions procedure if the necessity for prior review and approval flows from a transaction that otherwise requires PSA or Board approval. For example, institutions increasing their types or amounts of direct investment as a result of mergers, holding-company acquisitions, or changes in control would not be required to utilize the exceptions procedure. The Board believes that the safeguarding purposes of the exceptions procedure will be equally well served by the prior-approval requirements applicable to various corporate reorganizations and that requiring an institution to conform with both approval requirements would be unnecessarily burdensome and time consuming.

Expiration Date

A sunset provision set forth in the December proposal provided for the expiration of the rule on January 1, 1987, unless further action were taken by the Board. The Board continues to believe that, because of the novel problems posed by increased investment authority for insured institutions, it is important to re-examine the issues addressed by this rulemaking in order to determine whether this approach has been effective in controlling risk and whether further regulatory action is required. For this reason, the Board has adopted the January 1, 1987, expiration date.

Studies and data cited in the preamble, as well as comments received, will be available for public inspection at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the Rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in SUPPLEMENTARY INFORMATION regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The requirements of the regulation are based upon the Board's determination, premised in economic theory and borne out by the loss experience of the FSLIC, that investment in real estate and stocks and other equity investments pose a greater risk of loss to the FSLIC fund and the thrift industry than traditional thrift investments. The Board rejected the alternatives discussed above in SUPPLEMENTARY INFORMATION for the reasons given therein.

List of Subjects in 12 CFR Part 563

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends 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 equity securities, real estate, service corporations, and operating subsidiaries.

(a) *Scope.* An insured institution, to the extent it has independent legal authority to do so, may make investments in equity securities, real estate, service corporations, and operating subsidiaries ("direct investment") only in compliance with the provisions of this section.

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

(1) "Aggregate direct investment" means the sum of investments in equity securities, real estate, service corporations, and operating subsidiaries: *Provided,* That: (i) Upon the sale, liquidation, retirement, or other disposition of any such investment, the amount of aggregate direct investment shall be reduced to the extent that the original investment is recovered; (ii) any gain recovered shall not reduce aggregate direct investment; and (iii) any loss realized shall be deemed to be an outstanding direct investment except to the extent that it can be netted against realized gains on other direct investments.

(2) "Equity security" means any stock, certificate of interest of 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 loans having profit-sharing features which would be reclassified as equity investments under generally accepted accounting principles (or the Corporation's accounting regulations if applicable); or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; or any security carrying any warrant or right to subscribe to or purchase such a security; or any warrant or right to subscribe to or purchase such a security; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing; *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) securities issued by any open-end management investment company that is registered under the Investment Company Act of 1940 the portfolio of which is subject to the restrictions set forth at section 5(c)(1)(Q) of the Home Owners' Loan Act; (iii) securities issued by a service corporation, an operating subsidiary, or a finance subsidiary; (iv) securities acquired through foreclosure proceedings or through settlement in lieu of foreclosure; and (v) securities, or loans subject to reclassification under generally accepted accounting principles (or the Corporation's accounting regulations if applicable), which represent an "investment in real estate" as defined in paragraph (b) of this section.

(3) "Finance subsidiary" means a corporation which meets the requirements of § 545.82 of this Subchapter, except that the insured institution owning it may be state or federally chartered.

(4) "Insured institution" means an institution as defined in § 561.1 of this Subchapter, including instititutions subject to § 543.11-1 of this Subchapter, but excluding Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation.

(5) "Investment in equity securities" means an amount equal to the historical book value of equity securities held as of December 10, 1984, or an amount equal to the purchase price of equity securities acquired after such date.

(6) "Investment in real estate" means an amount equal to (i) the purchase price of all equity interests in real property, as determined in accordance with generally accepted accounting principles (or the Corporation's accounting regulations if applicable), exclusive of equity interests in (A) real property to be used primarily by the institution for offices or other related facilities and (B) 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; (ii) loans or advances to and guarantees issued on behalf of partnerships or joint ventures in which an institution holds an interest which would be classified as an equity interest in real property under generally accepted accounting principles (or the Corporation's accounting regulations if applicable); and (iii) interest capitalized in accordance with generally accepted accounting principles.

(7) "Investment in service corporation" and "investment in operating subsidiary" mean the amount of all equity and debt investments made by an insured institution in such corporations (exclusive of any earnings or losses recorded using the equity method of accounting), including, but not limited to, investments in securities issued by such corporations, and the underwriting of extensions of credit to, or the guaranteeing of the debt of, such corporations: *Provided,* That such investment shall be reduced by the repayment of any advance or loan, the expiration or cancellation of any guarantee of indebtedness, or the redemption or sale of any security of such corporations held by an institution.

(8) "Issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the terms "issuer" means the

person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) "Operating subsidiary" means a corporation, the majority of the capital stock of which is owned by an insured institution, which engages exclusively in activities which are part of or incidental to the business of the institution, as authorized by applicable law.

(10) "Service corporation" means a corporation as defined in § 561.26 of this Subchapter or as authorized by state law: *Provided*, That the entire capital stock of such corporation is available for purchase only by "insured institutions," as defined in § 561.1 of this Subchapter.

(c) *Thresholds for aggregate direct investment.* (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 service corporations and operating subsidiaries with its own direct investments and may exclude its investments in such consolidated corporations 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, no institution shall make a direct investment if immediately thereafter its aggregate direct investment would exceed the applicable threshold:

(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 applicable threshold is 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) calculated as of the end of the immediately preceding calendar quarter.

(ii) With respect to an institution that satisfies the minimum net-worth requirement of § 563.13(b) of this Part but fails to satisfy the special-purpose net-worth requirement set forth in this paragraph (c)(2)(ii), the applicable threshold is twice the institution's regulatory net worth calculated as of the end of the immediately preceding calendar quarter. The special-purpose net-worth requirement is an amount at least equal to three percent of "total liabilities," as defined in § 563.13(g)(1).

(iii) An institution that fails to satisfy the minimum net-worth requirement shall not make direct investments except as approved by the Principal Supervisory Agent.

(d) *Equity-security investments.* (1) *Permissible investments.* The equity securities in which an institution may invest shall be limited to: (i) Common or preferred stock listed on the New York Stock Exchange or American Stock Exchange or quoted on the National Association of Securities Dealers Automated Quotation System, or such other national securities exchange or quotation service as the Corporation may determine; or any security immediately convertible at the option of the holder without payment of substantial additional consideration into such stock, or any security carrying any warrant or right to subscribe to or purchase such stock, or any warrant or right to subscribe to or purchase such stock, provided that any such security, warrant, or right is also listed or quoted on such exchange or quotation service; or any certificate of interest or participation in, temporary or interim certificate for, or receipt for such security; (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; (iv) equity securities issued by the Student Loan Marketing Association; and (v) equity securities issued by a partnership or joint venture engaged exclusively in activities which are part of or are incidental to the business of the institution.

(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 quoted on national quotation services other than those set forth in paragraph (d)(1)(i) of this section.

(3) *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, own, control, or hold with power to vote capital stock issued by (i) another insured institution or (ii) any non-diversified 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 instituiton 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) *Equity securities.* No insured institution shall at any time own, control, or hold with power to vote for its own account more than 25 percent of any one class of the outstanding equity securities of any one issuer nor an amount of all classes of the outstanding equity and debt securities of such issuer which, when aggregated with loans to such issuer, are greater than the institution's "regulatory net worth" (as defined in § 561.13 of this Subchapter): *Provided*, That the limitations of this paragraph (e)(1) shall not apply if the issuer is a partnership or joint venture engaged exclusively in activities which are part of or incidental to the business of the institution.

(2) *Real estate.* No insured institution shall at any time invest 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) an aggregate amount greater in value than the institution's "regulatory net worth," as defined in § 561.13.

(f) *Saving clause.* An institution whose aggregate or specific types of actual or prospective direct investments on December 10, 1984, would not conform to 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 its regulatory net worth: *Provided*, That additional direct investments may be made only in compliance with the provisions of this section. Nothing in this paragraph (f), however, shall limit the authority otherwise granted to Principal Supervisory Agents to prohibit direct investments or to require the reduction of aggregate direct investment or the divestiture of specific direct investments.

(g) *Exceptions.* (1) Except as provided in paragraph (g)(6) of this section, an insured institution seeking to make direct investments in an amount, at a threshold level, or of a type other than as generally 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 act on 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 assets and regulatory net worth, of direct investments that the applicant seeks to make;

(ii) An identification of the applicant's investment threshold as determined in accordance with paragraph (c) of this section, including, as of the end of the preceding calendar quarter, the applicant's (A) total assets; (B) regulatory net worth; (C) minimum net-worth requirement under § 563.13(b) of this Part; and (D) special-purpose net-worth requirement set forth in paragraph (c)(2)(ii) 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 direct investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate, and which describes the proposed specific investment or general plan for investment pursuant to an augmented threshold level 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;

(C) The direct investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate are not appropriately diversified. Direct investments shall be deemed to be "appropriately diversified" if the consolidated direct investments of the applicant and its service corporations and operating subsidiaries in equity securities and real estate, when deemed to be those of the applicant, meet the requirements of paragraph (e) of this section; or

(D) The applicant's policies are inconsistent with economical home financing, as evidenced by its failure to comply with the definition 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.

(5) The Corporation shall approve or disapprove an application referred by a Principal Supervisory Agent pursuant to paragraph (g)(3)(i) of this section and grant or deny a petition for reconsideration filed pursuant to paragraph (g)(4) of this section in writing within 30 days of receipt of such application or petition. If the Corporation does not disapprove or deny such application or petition within such time, such application shall be deemed to be approved or such petition granted.

(6) An insured institution seeking to make direct investments otherwise requiring prior review and approval by its Principal Supervisory Agent or the Board under § 563.18-2 or § 563.22 of this Subchapter or Part 584 of this Chapter shall not be required to file an application under this paragraph (g).

(h) *Expiration date.* This section shall expire on January 1, 1987.

(Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); 1947 Reorg. Plan No. 3, 12 FR 4981, 3 CFR Part 1071 (1943-48 Comp.))

By the Federal Home Loan Bank Board

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 85-3866 Filed 2-15-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ASW-36; Amdt. 39-4997]

Airworthiness Directives; Garlick Helicopters, Hawkins and Powers Aviation, Inc., Wilco Aviation, California Department of Forestry, Pilot Personnel International, Inc., International Helicopter, Inc. (Bell) UH-1 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires an inspection, and replacement if necessary, of each main rotor blade pitch change link clevis on military (Bell) UH-1 series helicopters. This amendment is needed to add additional UH-1 series helicopters certificated under three additional restricted category type certificates.

DATE: Effective February 22, 1985. Compliance required within the next 10 hours' time in service after the effective date of this amendment, unless already accomplished.

ADDRESSES: A copy of the service information message is contained in the Rules Docket in the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: J.H. Major, Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone (817) 877-2549.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-4899 (49 FR 35082), AD 84-18-03, which currently requires, within 10 hours' time in service after September 6, 1984, a one-time inspection of each main rotor pitch link clevis on UH-1 series helicopters certificated under restricted category type certificates owned by Garlick Helicopters, Hawkins and Powers Aviation, Inc., and Wilco Aviation. After issuing Amendment 39-4899, the FAA has determined that the clevis inspections also apply to military (Bell) UH-1 series helicopters certificated under restricted category type certificates owned by California Department of Forestry, Pilot Personnel International, Inc., and International Helicopter, Inc. Therefore, the FAA is amending Amendment 39-4899 by adding the three additional type certificate owners thereby including an additional 26 UH-1 series helicopters that must comply with this AD.

The effective date of Amendment 39-4899, September 6, 1984, shall be retained as the compliance time for those UH-1 helicopters certificated under type certificates owned by Garlick, Hawkins and Powers, and Wilco.

The effective date of this amendment shall apply to the UH-1 helicopters certificated under type certificates owned by California Department of Forestry, Pilot Personnel International, and International Helicopter. These helicopters must comply with the AD within 10 hours' time in service after the effective date of this amendment.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation change only involves an estimated 26 UH-1 series helicopters for an estimated cost of $3,900 or $150 per aircraft. Therefore, I certify that this action is not a "major rule" under Executive Order 12291, and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final 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.**"

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-4899 (49 FR 35082), AD 84-18-03, by: (1) Revising the type certificate owner's list, and by (2) removing the present compliance statement and adding new compliance statements as follows:

Garlick Helicopters, Hawkins and Powers Aviation, Inc., Wilco Aviation, California Department of Forestry, Pilot Personnel International, Inc., and International Helicopter, Inc. (Bell Helicopter Textron, Inc.): Applies to Model UH-1 series helicopters certificated in the restricted category.

Compliance in required within 10 hours' time in service, unless already accomplished, after September 6, 1984, for Garlick Helicopters, Hawkins and Powers Aviation, Inc., and Wilco Aviation UH-1 series helicopters.

Compliance is required within 10 hours' time in service, unless already accomplished, after the effective date of this amendment for California Department of Forestry, Pilot Personnel International, Inc., and International Helicopter, Inc., UH-1 series helicopters.

* * * * *

(Secs. 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 11.89)

This amendment becomes effective February 22, 1985.

This amendment amends Amendment 39-4899 (49 FR 35082), AD 84-18-03.

Issued in Fort Worth, Texas, on January 30, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85-3962 Filed 2-15-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 84-AAL-13]

Establishment of Transition Area, Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a transition area at Kipnuk, AK. The action provides controlled airspace from 700 feet above the surface for aircraft executing approach and departure procedures, missed approaches, and the prescribed holding procedure at Kipnuk, AK, thereby enhancing the safety of such operations.

EFFECTIVE DATE: 0901 G.m.t., April 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On November 15, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Kipnuk, AK, to provide controlled airspace from 700 feet above the surface to enhance the safety of aircraft conducting instrument flight rules (IFR) activity (49 FR 45167). Protection of IFR traffic is required for instrument approach, departure, missed approach, and holding procedures established for a new VOR/DME recently installed at Kipnuk, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. The Aircraft Owners and Pilots Association had no objection with the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a transition area at Kipnuk, AK, to provide controlled airspace from 700 feet above the surface for the benefit of aircraft conducting IFR activity. While this airspace designation would exclude aircraft from conducting flight under visual flight rules (VFR) when the visibility is less than 3 miles, it would enhance the safety of aircraft conducting flight under IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

Kipnuk, AK—[New]

That airspace extending upward from 700 feet above the surface within 9.5 miles southwest and 4.5 miles northeast of the 337° radial from the Kipnuk VOR (lat. 59°56'37" N., long. 164°01'55" W.), extending from the VOR to 18.5 miles northwest of the VOR; and within 9.5 miles northeast and 4.5 miles southwest of the 154° radial and 337° radial from the Kipnuk VOR, extending from 1 mile north of the VOR to 18.5 miles southeast of the VOR.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on February 8, 1985.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–3959 Filed 2–15–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 84–ANM–11]

Alteration of VOR Federal Airways and Restricted Areas; Nevada

Correction

In FR Doc. 85–2855 beginning on page 4966 in the issue of Tuesday, February 5, 1985, make the following corrections on page 4968:

§ 73.64 [Corrected]

1. Under "R–6404B Hill AFB, UT", in the middle column, in the fifth line, "FAB" should read "AFB".

2. Under "R–6404C Hill AFB, UT", in the middle column, in the seventh line, "100 feet to AGL" should read "100 feet AGL".

3. Under "R–6406B Wendover, UT", in the middle column, in the sixth line, "100 feet to AGL" should read "100 feet AGL".

4. Under "R–6407 Dugway Proving Ground, Dugway, UT", in the third column, in the first line, "lat. 2 40°20'0" N.," should read "lat. 40°20'20" N.,".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9134]

Southwest Sunsites, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This order requires four companies and three individuals engaged in the advertising and sale of undeveloped land, among other things, to cease representing misleadingly or without proper substantiation, that the purchase of any land is a sound financial investment; involves little or no monetary risk; and will benefit the purchaser economically as a result of profitable résale, mineral rights, exploration or extraction. The firms are prohibited from representing that any land is currently usable as a homesite, farm or ranch, unless that land can be used immediately for the represented purpose without any substantial improvement or development by the purchaser; and barred from misrepresenting the availability or cost of obtaining electric power, potable water, telephone service or sewage disposal. The order further requires that the firms prepare and furnish consumers with a fact sheet containing detailed information regarding the availability and cost of water, electric power, sewer disposal and telephone service, unless a federal property report accompanying sale transactions includes such information. The companies must also insert in advertisements, promotional material and sales presentations specified statements warning that investment in land is risky and prospective purchasers should consult a qualified professional before buying. Such warnings must also be included in contracts, as well as a clause giving purchasers seven days in which to cancel their transactions. Additionally, the firms are required to provide consumers with cancellation forms; honor all valid cancellation requests; and send prescribed notices to past buyers advising them of the Commission's order; explaining the land's actual value and suitability for use, and outlining the alternative options available to these consumers.

The Order further requires that the companies provide their sales representatives with a copy of the order; institute a surveillance program designed to reveal those that fail to comply with the terms of the order; and maintain specified records for a certain period of time.

DATES: Complaint issued on April 29, 1980; Final order issued January 15, 1985.[1]

FOR FURTHER INFORMATION CONTACT: FTC/H–274, Richard F. Kelly, Washington, D.C. 20580, (202) 523–1753.

SUPPLEMENTARY INFORMATION: In the Matter of Southwest Sunsites, Inc., Green Valley Acres, Inc., and Green Valley Acres, Inc. II, corporations, Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations, Porter Realty, Inc., a corporation, and Irvin Porter, individually and as an officer or former officer of said corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: § 13.10 Advertising or misleadingly; § 13.35 Condition of goods; § 13.55 Demand, business or other opportunity; § 13.60 Earnings and profits; § 13.90 History of product or offering; § 13.143 Opportunities; § 13.160 Promotional Sales plans; § 13.155 Prices—additional costs unmentioned; § 13.195 Safety; § 13.195–30 Investment; § 13.205 Scientific or other relevant facts; § 13.285 Value. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–45 Maintain records; § 13.533–55 Refunds, rebates, and/or credit; § 13.533–65 Renegotiation and/or amendment of contracts. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1595 Condition of goods; § 13.1610 Demand for or business opportunities; § 13.1615 Earnings and profits; § 13.1650 History of product; § 13.1697 Opportunities in product or service; § 13.1715 Quality; § 13.1725 Refunds; § 13.1740 Scientific or other relevant facts; § 13.1775 Value:—prices: § 13.1778 Additional costs unmentioned. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure; § 13.1854 History of product; § 13.1863 Limitations of product; § 13.1882 Prices; § 13.1882–10 Additional prices unmentioned; § 13.1886 Quality, grade or type; § 13.1889 Risk of loss; § 13.1892 Sales contract, right-to-cancel provisions; § 13.1895 Scientific or other relevant facts. Subpart—Offering Unfair,

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[1] Copies of the Complaint, Initial Decision and Opinion of the Commission filed with the original documents.

Improper and Deceptive Inducements To Purchase or Deal: § 13.1935 Earnings and profits; § 13.2015 Opportunities in product or service; § 13.2063 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Land sales, Trade practices.

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

Before Federal Trade Commission

[Docket No. 9134]

Commissioners: James C. Miller, III, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

In the matter of Southwest Sunsites, Inc., Green Valley Acres, Inc., Green Valley Acres, Inc. II, corporations, and Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations, Porter Realty, Inc., a corporation, and Irvin Porter, individually and as an officer or former officer of said corporation.

Final Order

This matter has been heard by the Commission upon the appeal of complaint counsel and upon briefs and oral argument in support of and in opposition to the appeal. The Commission, for reasons stated in the accompanying opinion, has granted a portion of complaint counsel's appeal. Therefore,

It is ordered that the initial decision of the administrative law judge be adopted as the findings of fact and conclusions of law of the Commission except as modified by the accompanying opinion. Other findings of fact and conclusions of law of the Commission are contained in the accompanying opinion.

It is further ordered that the following Order to Cease and Desist be entered:

Order

As used in this Order, the following definitions shall apply:

(A) "Respondents" means any of the corporate respondents, Southwest Sunsites, Inc., Green Valley Acres, Inc., and Green Valley Acres, Inc. II, their successors and assigns, and their officers, directors, representatives, and employees; any of the individual respondents, Sydney Gross and Edwin Kritzler; and any corporation, subsidiary, division, agent, or other device through which any corporate or individual respondent acts.

(B) "Land," "property," or "lot" means any real property unimproved by a commercial or residential building sold or offered for sale by respondents.

(C) "Purchaser" or "buyer" means any individual who is a potential or actual vendee of the land offered for sale or sold by respondents.

(D) "Commission" means the Federal Trade Commission and/or its duly authorized representatives and employees.

(E) "Homesite" means any lot in which (1) potable water is available at a reasonable cost, (2) the lot is suitable for a septic tank or there is reasonable assurance that the lot can be served by a central sewage system, (3) the lot is legally accessible, and (4) the lot is free from periodic flooding.

I

It is ordered that respondents Southwest Sunsites, Inc., Green Valley Acres, Inc., and Green Valley Acres, Inc. II, corporations, their successors and assigns, and their officers, representatives, and employees, and Sydney Gross and Edwin Kritzler, individually and as officers or former officers of said corporations, directly or through any corporation, subsidiary, division, agent or other device, in connection with the advertising, marketing, offering for sale, sale, or inducement of payments for land, in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

A. Representing, directly or by implication, through the use of any means, that:

1. The purchase of any land has been, is, or will be a good, profitable, short-term, safe, or sound financial investment;

2. There has been, is, or will be little or no financial risk involved in the purchase of any land;

3. The resale of any land is not or will not be difficult, or such land can be or has been resold within a certain time;

4. The purchase of any land is a way to achieve financial security or self-sufficiency, to deal with inflation, or to make money;

5. The value of, or demand for, any land has increased, is increasing, or will increase;

6. Purchasing any interest in land will result in any economic benefit to the purchaser, including but not limited to a benefit resulting from an increase in the value of the land from its use or development for any purpose, or as a result of mineral rights, exploration, or extraction; the land's profitable resale; the provision of a hedge against inflation; or the receipt of income or reduction of expenses from growing any crop, raising any animal, or any other source;

7. Any land is suitable for use as a homesite, farm, or ranch, for personal or commercial purposes; unless such representation is not misleading and unless, at the time such representation is made, respondents possess and rely upon competent and reliable evidence which substantiates the representation, including, at a minimum, (a) data sufficient to demonstate that the typical owner of such land is likely to achieve the results represented, and (b) where the representation predicts or projects future occurrences, evidence that would generally be accepted by the community of experts qualified to make such representations as providing a reasonable basis for the projection.

B. Failing to maintain evidence in support of and upon which respondents rely in making any representation about the value, suitability, or use of land, including evidence substantiating the representations described in Paragraph I.A., such evidence to be retained for three years from the date of respondents' last use of such representation and to be furnished to the Commission upon request.

C. Representing, directly or by implication, through the use of any means, that any land is currently usable as a homesite, farm, or ranch, unless such land is immediately usable for such purpose without any substantial improvement or development by the purchaser.

D. Misrepresenting in any manner:

1. The cost of obtaining or availability of electric power, telephone service, potable water, sewage disposal, or any utility;

2. The past, present, planned, proposed or potential purchase, use, or development of any interest in land by respondents or any other party;

3. The extent, location, value, nature, or significance of any actual or potential mineral right or resource or any activity related thereto.

II

It is further ordered that respondents, in connection with the advertising, marketing, offering for sale, or sale of land in or affecting commerce, as commerce is defined in the Federal Trade Commission Act, as amended, shall:

A. Prepare a "Fact Sheet for Buyers" containing only such information as is set forth or referred to in Attachment A to this Order (incorporated herein by reference), and distribute to all purchasers a copy of the Fact Sheet in the following manner:

1. If respondents invite the purchaser by mail to attend a meeting sponsored

by respondents, respondents shall include the Fact Sheet with the invitation;

2. If respondents arrange to meet with the purchaser in his or her home or other location, respondents shall mail the Fact Sheet to the purchaser, allowing sufficient time for the Fact Sheet to arrive at least two days prior to the meeting;

3. If the initial contact with the purchaser is in person (for example, at a booth located in a public place), respondents shall, after identifying briefly the purpose of the contact, give the Fact Sheet to the purchaser, request that he or she read it, and provide amply uninterrupted time for it to be read completely before continuing with any sales presentation;

4. If the initial contact is by telephone or the sale is to be completed entirely through the mail, the Fact Sheet shall accompany the initial mailing to the purchaser.

B. Honor any purchaser's request to rescind the contact and recover all payments thereunder at the purchaser's option, if respondents fail to distribute a copy of the Fact Sheet to such purchaser as required by Paragraph II.A., provided that the purchaser makes such request within thirty days after receiving a copy of the Fact Sheet.

C. Refrain from misrepresenting any information in the Fact Sheet.

D. Refrain from making any representation, directly or by implication, through the use of any means, about:

1. The present, planned, proposed, or potential development, improvement, or facilities of the land or of the subdivision or project in which the land is located where such representation differs in any material respect from the information contained in the Fact Sheet or the Property Report required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982); 24 CFR 1700.1 et seq. (1983);

2. The respondents' or purchasers' rights or obligations where such representation differs in any material respect from the parties' rights or obligations as stated in the contract, the Fact Sheet, or the Property Report required by the Interstate Land Sales Full Disclosure Act and related regulations.

III

It is further ordered that respondents, in connection with the advertising, marketing, offering for sale, or sale of land in or affecting commerce as commerce is defined in the Federal Trade Commission Act, as amended, shall:

A. Disclose clearly and prominently in every written promotional material, magazine or newspaper advertisement greater than one-quarter page, and oral sales presentation the following statements:

1. The future value of land is uncertain. These lots are not being sold as a financial investment. You should not count on your lot rising in value or your being able to resell it. Discuss any possible purchase with a qualified professional.

2. These lots may be suitable for use only with substantial expenditures for the extension of utilities, water, and other necessities. These expenditures vary depending on the location of the lot and could be so great as to make use of the land impractical.

B. Disclose clearly and prominently in every radio advertisement, television advertisement, and magazine or newspaper advertisement of one-quarter page or less the following statement:

Remember—buying land may be risky. Consult a qualified professional before buying

c. Include clearly and prominently, immediately preceding the space provided for the purchaser's signature in each contract for the sale of land, the following statement in 12-point boldface type:

Seven Day Right To Cancel

You have the right to cancel your contract, without any penalty or obligation, at any time until midnight of the seventh day after you sign this contract. See the attached "right of cancellation" for an explanation of this right.

If you choose to cancel within this time, any payment you made under this contract will be refunded and any document you signed will be cancelled and returned within thirty days after the seller receives your cancellation notice.

Attention: Although you have seven days in which to reconsider your decision and cancel this contract with full refund, we recommend that, *before signing*, you consider your needs carefully and have this contract and the attached notice to buyers reviewed by a qualified professional.

D. Furnish each purchaser, at or before the time the purchaser signs a contract for the sale of land, with two copies of a form, containing only such information as is set forth or referred to in Attachment B to this Order (incorporated herein by reference), captioned in 12-point boldface type, "RIGHT OF CANCELLATION," and with all other writing in 10-point boldface type.

Provided, however, that if respondents fail to distribute the "RIGHT OF CANCELLATION" forms as required by this paragraph, the period during which the purchaser may cancel the contract shall be extended until seven days after the purchaser receives said "RIGHT OF CANCELLATION".

Provided further that during the seven-day cancellation period after a purchaser's signing of a land purchase contract, respondents shall not initiate any contact or communication, personal, telephonic, or otherwise, with such purchaser, but if respondents initiate any such contact, the period during which the purchaser may cancel the contract shall be extended until thirty days after the date of purchase.

E. Honor any signed and timely exercise of a "RIGHT OF CANCELLATION" (or its functional equivalent) by the purchaser, and within thirty days after the receipt of such notice of cancellation, (a) refund all payments made under the contract, and (b) cancel and return any contract or other legal document executed by the purchaser.

F. Refrain from misrepresenting, soliciting, or obtaining any purchaser's assent to or otherwise imposing any condition, waiver, or limitation upon the right of a purchaser to cancel a transaction or receive a refund under any provision of this Order or by any applicable statute or regulation.

IV

It is further ordered that respondents shall:

A. Within sixty days of the effective date of this Order, prepare a "Notice to Customers" containing only such information as is set forth or referred to in Attachment C to this Order (incorporated herein by reference), and cause a copy of such Notice to be sent by first class mail, postage prepaid and address correction requested, to each purchaser of respondents' land in the subdivisions known as Southwest Sunsites, Green Valley Acres, and Green Valley Acres II, at the last known address contained in respondents' files or requested and received from Porter Realty Inc. or Irvin Porter, for each such purchaser.

Provided, however, that if changes are necessary to render the Notice accurate as of the date of mailing, respondents shall submit such changes to the Commission not less than thirty days prior to the date of mailing. The Commission, within ten days after its receipt of such changes, shall have the right to reject them in whole or in part, and respondents will then mail copies of such Notice with any changes that the Commission did not reject.

Provided further that whenever a copy of such Notice is returned undelivered, respondents shall, within ten days of the return, make all reasonable efforts, including contacting credit bureaus, telephone and utility companies, county land records, and purchasers' relatives or representatives whose addresses are in respondents' files, to obtain the correct present address of the purchaser whose Notice was not delivered, and respondents shall, within twenty days of obtaining a new address, send a copy of such Notice to the purchaser for whom respondents obtain a new address by these means or otherwise.

B. Maintain, for three years after the effective date of this Order or three years after the last Notice is mailed, whichever occurs last, records adequate to disclose respondents' compliance with Paragraph IV.A., and furnish such records to the Commission upon request.

C. Refrain from seeking to recover, or recovering by any means, from purchasers who were under contract before the date this Order becomes final for the purchase of land at Southwest Sunsites, Green Valley Acres, and Green Valley Acres II, and who have defaulted or who become in default, any sums remaining due on their contracts.

V

It is further ordered that respondents shall:

A. Forthwith deliver by certified mail or in person, a copy of this Order to all present and future sales representatives and other employees, independent brokers, advertising agencies and others who sell or promote the sale of respondents' land or who otherwise have contact with the public on behalf of respondents in connection with the sale of land.

B. Provide each person described in Paragraph V.A. with a form, to be returned to respondents, clearly stating that person's intention to conform his or her sales practices to the requirements of this Order.

C. Inform each person described in Paragraph V.A. that respondents shall not use the services of any such person, unless such person agrees to and does file notice with respondents that he or she will conform his or her practices to the requirements of this Order.

D. In the event such person will not agree to so file notice with respondents and to conform his or her practice to the requirements of this Order, respondents shall not use the services of such person.

E. Inform the persons described in Paragraph V.A. that respondents are obligated by this Order to discontinue dealing with those persons who engage on their own in the acts or practices prohibited by this Order, or who fail to adhere to the affirmative requirements of this Order.

F. Institute a reasonable program of continuing surveillance adequate to reveal whether the practices of each person described in Paragraph V.A. conform to the requirements of this Order, and promptly investigate and make good faith efforts to resolve any complaints about any such person received by respondents, and maintain records of any such complaint, investigation, and disposition of the complaint for ten years from the date of the complaint, such records to be furnished to the Commission upon request.

G. Discontinue dealing with any person described in Paragraph V.A. who more than once engages on his or her own in the acts or practices prohibited by this Order.

H. Forthwith deliver a copy of this Order to each of respondents' subsidiaries.

I. Notify the Commission at least thirty days prior to any proposed change in the corporate respondents, such as dissolution, assignment, reorganization, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

J. Within sixty days after service upon it of this Order and annually for three years thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

By the Commission. Commissioners Calvani and Azcuenaga did not participate.

Issued: January 15, 1985.

Attachment A—Fact Sheet for Buyers

Fact Sheet Concerning: (Insert name of subdivision)
Names of Seller/Agent: (Insert name of seller and agent)
Effective Date of Notice: (Insert date of notice)

Important

You are advised that the future value of land is uncertain. These lots are not being sold as a financial investment. You should not count on your lot rising in value or your being able to resell it. If you offer your lot for sale, you may face the competition of the seller's own sales program, which may involve an extensive sales campaign. Real estate brokers also may not be interested in selling your lot or listing it for sale.

You are also advised that these lots may be suitable for use only with substantial expenditures for the extension of utilities, water, and other necessities. These expenditures vary depending on the location of the lot and could be so great as to make use of the land impractical.

As of the date of this fact sheet, the seller has sold ——— (insert number) lots in ——— (insert name of subdivision). ——— (insert number) lots remain unsold and available for sale.

(In connection with any land for which federal property reports are *not* provided as required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982), 24 CFR 1700.1 et seq. (1983), provide the following information:)

This fact sheet provides important information about the value of these lots and the availability and estimated costs to you of utilities, water, and other necessities.

Water

(Provide the following information regarding water service:

(a) The method of water service to be used;

(b) If individual wells are to be used: whether the seller is responsible for installing such wells; whether evidence exists that water can be found under every lot offered for sale; the estimated depth at which water can be found in the applicable area; the estimated cost of drilling a well for household purposes and for agricultural purposes if agricultural use is feasible; and whether and under what conditions a refund or exchange will be offered in the event a productive well cannot be installed;

(c) If water is to be provided by a central system: who is responsible for constructing such a system; the estimated amount of any construction costs or any connection or use fees to be paid by the purchaser, including the estimated cost of installing water mains to either the most remote lot in the subdivision or the lot the prospective purchaser is considering purchasing; the estimated service availability date of the water system; and, if the seller is responsible for constructing the system, whether a separate account or fund has been established to finance such construction and the extent of construction completed as of the date of the Fact Sheet.)

Sewer Service

(Provide the following information about sewer service:

(a) The method of sewage disposal to be used;

(b) If sewage disposal is to be by septic tank or other individual system: whether the seller is responsible for installing the system; the estimated cost of the system; whether a permit is required for such a system; and whether and under what conditions a refund or exchange will be offered if the purchaser is unable to install a septic tank or other in-site sewage system;

(c) If sewage disposal is to be by a central treatment and collection system: who is responsible for constructing such a system; the estimated amount of any construction costs or any connection or use fees to be paid by the purchaser; the estimated service availability date of the system; and, if the seller is responsible for constructing the system, whether a separate account or fund has been established to finance such construction and the extent of construction completed as of the date of the Fact Sheet.)

Electric Service

(Provide the following information about electric service:

(a) Whether primary service lines have been extended in front of, or adjacent to, each lot;

(b) If not, the utility company's policy and charges for extension of primary lines, and the estimated cost for extending primary service to either the most remote lot in the subdivision or the specific lot the prospective purchaser is considering purchasing.)

Telephone Service

(Provide the following information about telephone service:

(a) Whether primary service lines have been extended in front of, or adjacent to, each lot;

(b) If not, the utility company's policy and charges for extension of primary lines, and the estimated cost for extending primary service to either the most remote lot in the subdivision or the specific lot the prospective purchaser is considering purchasing.)

IMPORTANT: Before signing any document, obtain and read thoroughly the contract and this fact sheet. It is desirable to have a qualified professional evaluate the terms or merits of this purchase *before* you sign anything.

(In connection with any land for which federal property reports *are* provided as required by the Interstate Land Sales Full Disclosure Act and related regulations, 15 U.S.C. 1701 to 1720 (1982), 24 CFR 1700.1 et seq. (1983), provide the following information:)

IMPORTANT: Before signing any document, obtain and read thoroughly each property report and contract. The property report contains additional information that you should know and understand before you sign a contract to buy this land. It is desirable to have a qualified professional evaluate the terms or merits of this purchase *before* you sign anything.

Attachment B—Right of Cancellation

Date of Transaction: (insert date purchaser signed the contract)
Lot Identification: (insert lot identification information)

You have the right to cancel your contract, without any penalty or obligation, at any time until midnight of the seventh day after you sign the contract. You should use this time to examine with care this contract and the fact sheet or property report. We also recommend that you have this contract and other information about the property reviewed by a qualified professional.

No representative of the seller should contact you in any way during this seven-day period. If, however, the seller or its representative contacts you during this seven-day period, you may cancel the purchase by notifying the seller by midnight of the thirtieth day after the date of purchase.

If you cancel within this time, any payments you made under the contract will be refunded and any document you signed will be cancelled and returned within thirty days after the seller receives your cancellation notice.

To cancel the transaction, mail or deliver a signed copy of this cancellation notice, or any other written notice or telegram stating you are exercising your right to cancel, to (insert name of seller), at (insert address of seller's place of business) postmarked (if mailed) or filed for transmission (if telegraphed) not later than midnight of (insert date not earlier than the seventh day following the date the purchaser signed the contract).

I (we) hereby cancel this transaction. (Each buyer must sign this notice.)

(Date) ———
(Buyer's signature) ———
(Buyer's signature) ———

Attachment C—Important Notice to Customers of Southwest Sunsites, Green Valley Acres, and Green Valley Acres II

This letter is being sent to all customers of Southwest Sunsites, Green Valley Acres, and Green Valley Acres II who purchased land in these subdivisions. It contains information you should know about your lot.

In 1980, the Federal Trade Commission began a lawsuit against Southwest Sunsites, Green Valley Acres, and Green Valley Acres II (respondents). The Commission recently decided that case. In its decision, the Commission concluded that respondents made unfair and deceptive claims about the benefits of purchasing their land as an investment or for use as a homesite, ranch, or farm. This letter is being sent as a part of the Order issued when the lawsuit was decided.

Please read this letter, consult with an attorney or other qualified professional, and think about your alternatives carefully. We cannot advise you as to what decision is best for you.

I. Lot Value and Resale

The future value of land is uncertain. You should not assume that your lot will rise in value or that you will be able to resell it. In fact, the approximate fair market value of your land was only $70 to $110 per acre in 1980. Most land in the Van Horn area, where your land is located, is normally sold in considerably larger tracts than the lot you bought. You may find it very difficult and prohibitively expensive to farm or ranch on your land because of its relatively small size.

Furthermore, there is no certainty that there is or will be in the near future any significant commercial or industrial activity or developments in the Van Horn area that will cause your land to be more valuable. The presence of large ranches and farms near your property has not affected the value of your lot. Development of the surrounding area you may have heard about (for example, construction of a power plant) has not occurred. There has not been and there presently is no significant oil activity on the land in these subdivisions or in surrounding areas.

You may have difficulty selling your lot or listing it for sale. In fact, real estate agents in the Van Horn area will not list properties in Southwest Sunsites, Green Valley Acres, and Green Valley Acres II. Local banks and savings institutions will not use these properties as collateral on loans.

II. Use of Lots

You should also know that these lots may be suitable for use only with substantial expenditures of money for the extension of utilities, water, and other necessities. These expenditures vary depending on the location of the lot and could be so great as to make use of the land impractical.

A. *Water:* The source of domestic water for the property is from individual wells drilled by the owner at his or her expense. While the cost of drilling a well varies depending on the driller and depth of the watertable, the cost for a well for household purposes is likely to be between $5,000 and $10,000, and the cost of a well for irrigation can be $10,000 to $20,000. It may be necessary to drill 400 feet or more in order to have sufficient reserves from which to pump.

B. *Sewage Disposal:* Sewage disposal is by use of individual septic tanks which cost approximately $1,000.

C. *Electricity:* Electric power is available from local electric companies, but lines have not been extended to individual lots. According to representatives of the electric company in the area, the current cost for extension lines is 75 cents per foot after the first ¼ mile, which is free. Some lots are as much as two miles from existing lines. Thus, it may cost you many thousands of dollars to obtain electric service.

D. *Telephone:* Telephone service is available, but lines have not been extended to individual lots. According to representatives of the telephone company in the area, the current line extension charge is 50 cents per foot after the first ½ mile, which is free if it is public land or public easement. Some lots are as much as two miles from existing lines. Thus, it may cost you many thousands of dollars to install a telephone.

E. *Golf Course:* The golf course owned by Southwest Sunsites Property Owners Association was never completely built and is not currently being maintained.

F. *Use of Lots:* Very few purchasers live in Southwest Sunsites, Green Valley Acres, and Green Valley Acres II. Most of these live in mobile homes. A few purchasers have gardens. There are no commercial farms or ranches and no commercial development on the lots, except on company-owned sites.

III. Options Available to Purchasers

The Federal Trade Commission may decide to bring another lawsuit against respondents to seek refunds or other relief for buyers. It is uncertain whether such an action will begin, when it will end, whether it will be successful, or the effect it will have on any buyer. It may be several years before we know the answers to these questions.

Several options are available to you. You may continue to make payments. You may refuse to make any further payments. The Commission's order prohibits respondents from making you pay any more money but if you stop your payments you may lose your land and all of the money you have paid. You may stop making payments and seek satisfaction against respondents in a private lawsuit. The Commission's Order may be relevant in such a suit. You should consult an attorney or other qualified professional before making your decision.

Emily H. Rock,

Secretary.

[FR Doc. 85-4126 Filed 2-15-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 44, 205, 207, 213, 220, 221, 232, 238, 250 and 965

[Docket No. N-85-1501]

Announcement of Effective Dates for Recently Published Final Rules

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

ACTION: Announcement of effective dates for recently published final rules.

SUMMARY: This notice announces the effective dates for three final rules published by the Department after the 98th Congress adjourned *sine die.* The Department of Housing and Urban Development Act requires HUD to wait thirty calendar days of continuous session of Congress before it makes a published rule effective. Since the 99th Congress is now in session, the purpose of this document is to announce the effective dates for the three rules listed below.

DATES: See the individual dates listed below.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone: (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires HUD to delay effectiveness of a published rule until thirty days of continuous session of Congress have elapsed.

The effective dates listed below will account for thirty calendar days of continuous session of the present Congress.

Accordingly, the Department amends 24 CFR as follows:

1. In FR Doc. 84-30464, 24 CFR Part 44: Non-Federal Governmental Audit Requirements, Final Rule (Docket No. R-84-1131; FR-1813), beginning on page 46140, in the issue of Friday, November 23, 1984, the **EFFECTIVE DATE** section on page 46140 is revised to read as follows:

EFFECTIVE DATE: March 4, 1985.

2. In FR Doc. 84-29975, 24 CFR Parts 205, 207, 213, 220, 221, 238 and 250: Revising References to Superseded Department of Labor Regulations, Final Rule (Docket No. R-84-1213; FR-1888), beginning on page 45125, in the issue of Thursday, November 15, 1984, the **EFFECTIVE DATE** section on page 45125 is revised to read as follows:

EFFECTIVE DATE: March 4, 1985.

3. In FR Doc. 84-29618, 24 CFR Part 965: PHA-Owned or Leased Projects, Maintenance and Operations; Transfer of Contracting Authority, Final Rule (Docket No. R-84-1210; FR-2011), beginning on page 44982, in the issue of Tuesday, November 13, 1984, the **EFFECTIVE DATE** section in the third column on page 44982 is revised to read as follows:

EFFECTIVE DATE: March 4, 1985.

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

Dated: February 13, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-4047 Filed 2-15-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8010]

Income Tax; Taxable Years Beginning After December 31, 1953; Alternate Method for Determining the Applicable Federal Rate of Interest

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations relating to an alternate method for

determining the Federal short-term, mid-term, and long-term rates of interest under sections 467, 483, 1274, and 7872 of the Internal Revenue Code. These regulations affect certain taxpayers engaging in transactions that require application of the applicable Federal rate of interest.

EFFECTIVE DATE: These regulations are effective, as provided, for taxable years beginning after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ewan D. Purkiss of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 1274 (d) of the Internal Revenue Code as added by section 41 (a) of the Tax Reform Act of 1984 (Pub. L. No. 98-369; 98 Stat. 922). Further, new § 1.483-2T, § 1.1274-3T, and § 1.1274-6T are added by this document to Part 1 of Title 26 of the Code of Federal Regulations.

Explanation of Provision

As a result of the recent decline in interest rates, certain sections of the Internal Revenue Code that depend on the "applicable Federal rate" can generate results which are not entirely consistent with the purposes of those sections. The problem stems from the fact that the applicable Federal rates for a given semiannual period are based on interest rates that were in effect at least 3 months and as much as 15 months prior to the affected transaction.

Accordingly, the Service is exercising its regulatory authority under sections 467(h), 483(g), 1275(d), and 7872(g) of the Code by providing an alternate method for determining the Federal short-term, mid-term, and long-term rates. A rate computed under this alternate method will supersede a higher rate (of the same term and compounding period) computed under the statutory method and will be operative only under such circumstances.

Determinations under the alternate method will be made monthly. Federal short-term, mid-term, and long-term rates determined under the alternate method for each month will be based on the average market yields on outstanding marketable obligations of the United States during the one-month period ending on the 14th day of the preceding month. The Service intends that, beginning with March 1985, these rates will be announced on or about the 20th day of the preceding month. The rates for the month of February 1985 are being announced concurrently with the issuance of this temporary regulation and also are made effective retroactively for January 1985.

The Service recognizes that monthly changes in the applicable Federal rate will influence the ability of taxpayers to plan and negotiate sales of property affected by these rates. Accordingly, solely for purposes of determining whether a debt instrument issued in exchange for property has adequate stated interest under section 1274, and whether a contract has unstated interest under section 483, a special rule is provided under which the applicable Federal rates computed under the alternate method for a given month remain available for the two succeeding months. This rule is effective for instruments issued and contracts entered into after February 28, 1985, since March 1985 is the first month for which more than one alternate Federal rate will be available.

H.R. 5361 (Pub. L. 98-612, 98 Stat. 3182, October 31, 1984) provides for special rates of interest for purposes of applying Code sections 483 and 1274 to certain sales or exchanges occurring before July 1, 1985. Under H.R. 5361, a 9 percent rate of interest (compounded semiannually) applies for purposes of determining whether a contract has unstated interest under section 483, and whether a debt instrument has adequate stated interest under section 1274, if the sale or exchange involves a borrowed amount not exceeding $2,000,000. If the borrowed amount exceeds $2,000,000, for purposes of making the determinations described in the preceding sentence, the rate of interest is a blend of the 9 percent rate and 110% of the applicable Federal rate (compounded semiannually). This blended testing rate is determined by taking into account the special rules provided by these regulations.

Under this alternate system several rates potentially apply in a given month. This complexity appears necessary in any system that permits taxpayers to avoid required use of outdated interest rates when rates are falling while allowing them to plan transactions in reliance on known rates for a reasonable period. Comments from concerned taxpayers on this issue are specifically requested.

A monthly determination of the applicable Federal rates may not eliminate entirely the time lag problem in times of rapidly falling interest rates. The possibility of a weekly determination of rates to reduce the time lag even further was rejected, primarily on the ground that weekly changes in rates would be too difficult for taxpayers to follow and to apply to transactions. Comments also are invited on this decision.

Non-Applicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that these temporary regulations are not subject to review under Executive Order 12291, or the Treasury and OMB implementation of the Order dated April 29, 1983.

Regulatory Flexibility Act

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these temporary regulations is Ewan D. Purkiss of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.441-1—1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.1274-3T

Adequate stated interest.

26 CFR 1.1274-6T

Applicable Federal rate.

Amendments to the Regulations

For the reasons set out in the preamble, Part 1 of Title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. New § 1.483-2T is added in the appropriate place to read as follows:

§ 1.483-2T Adequate stated interest for certain contracts entered into after February 28, 1985 (temporary).

A contract entered into after February 28, 1985, to which section 483 applies shall not be treated as having unstated interest provided that the contract would not have unstated interest if, in lieu of the applicable Federal rate computed under the statutory method of section 1274(d), there were substituted the lowest of—

(a) The applicable Federal rate computed under the alternate method set forth in § 1.1274-6T for the month for which the determination is being made;

(b) The applicable Federal rate computed under the alternate method for the month preceding the month for which the determination is being made; or

(c) The applicable Federal rate computed under the alternate method for the second month preceding the month for which the determination is being made.

The rates described in paragraphs (b) and (c) of this section do not apply in determining total unstated interest under section 483(b). For illustrations of the application of this section, see § 1.1274-3T(b).

Par. 2. New § 1.1274-3T is added in the appropriate place to read as follows:

§ 1.1274-3T Adequate stated interest for certain debt instruments issued after February 28, 1985 (temporary).

(a) *In general.* A debt instrument issued after February 28, 1985, to which section 1274 applies shall be treated as having adequate stated interest provided that the instrument would have adequate stated interest if, in lieu of the applicable Federal rate computed under the statutory method of section 1274(d), there were substituted the lowest of—

(1) The applicable Federal rate computed under the alternate method set forth in § 1.1274-6T for the month for which the determination is being made;

(2) The applicable Federal rate computed under the alternate method for the month preceding the month for which the determination is being made; or

(3) The applicable Federal rate computed under the alternate method for the second month preceding the month for which the determination is being made.

The rates described in paragraphs (a)(2) and (a)(3) of this section do not apply in determining the imputed principal amount of the debt instrument under section 1274(b).

(b) *Examples.* The following examples illustrate the provisions of this section:

Example (1). In April 1986 A enters into a binding written contract to sell non-publicly traded personal property to B. The contract calls for B to issue in partical consideration for the property a 15-year obligation bearing interest at a rate of 11 percent, payable semiannually. Assume that 110% of the Federal long-term rate computed under the statutory method for the first half of 1986 is 11.5 percent, compounded semiannually. Assume further that 110% of the Federal long-term rates computed under the alternate method for February, March, and April of 1986 are 10.9 percent, 11.1 percent, and 11.2 percent, respectively (each compounded semiannually). B's obligation to A has no unstated interest under section 483, and has adequate stated interest under section 1274, because it calls for interest at a rate no lower than 110% of the Federal long-term rate computed under the alternate method for February 1986 (the second month preceding the month for which the determination of adequate stated interest is being made).

Example (2). The facts are the same as in example (1) except that 110% of the Federal long-term rate computed under the statutory method for the first half of 1986 is 10.8 percent compounded semiannually, and 110% of the Federal long-term rates computed under the alternate method for February, March, and April of 1986 are 11.1 percent, 11.2 percent, and 11.3 percent, respectively (each compounded semiannually). B's obligation has no unstated interest under section 483, and has adequate stated interest under section 1274, because it calls for interest at a rate no lower than 110% of the Federal long-term rate computed under the statutory method for the first half of 1986 (10.8 percent).

Example (3). The facts are the same as in example (1) except that 110% of the Federal long-term rates computed under the alternate method for February, March, and April of 1986 are 11.1 percent, 11.2 percent and 11.3 percent, respectively (each compounded semiannually). B's obligation to A has unstated interest under section 483, and does not have adequate stated interest under section 1274, because it does not call for interest computed at a rate no lower than 110% of the Federal long-term rate computed under the statutory method for the first half of 1986 (11.5 percent) or 110% of the Federal long-term rates computed under the alternate method for February 1986 (11.1 percent), March 1986 (11.2 percent), or April 1986 (11.3 percent). For purposes of determining the total unstated interest under section 483(b), or the imputed principal amount of the debt instrument under section 1274(b), the discount rate of interest is the lower of 120% of the Federal long-term rate computed under the statutory method or 120% of the Federal long-term rate for the month of the determination (April) computed under the alternate method.

Par. 3. New § 1.1274-6T is added in the appropriate place to read as follows:

§ 1.1274-6T Alternate method for determining applicable Federal rate (temporary).

(a) *In general.* This section sets forth an alternate method for determining the Federal short-term, mid-term, and long-term rates for purposes of applying section 467 (relating to certain payments for the use of property or services), section 483 (relating to interest on certain deferred payments), section 1274 (relating to the determination of issue price in the case of certain debt instruments issued for property), and section 7872 (relating to the treatment of loans with below-market interest rates) of the Internal Revenue Code.

(b) *Effective date.* This section is effective for taxable years ending after December 31, 1984.

(c) *Determination under the alternate method*—(1) *In general.* The Federal short-term, mid-term, and long-term rates shall be determined for each month, commencing with February 1985. These rates shall be based on the average market yields on outstanding marketable obligations of the United States during the one-month period ending on the 14th day of the preceding month.

(2) *Special rule for January 1985.* The rates determined for February 1985 shall also apply for January 1985.

(d) *Effect on statutory Federal rates computed under section 1274(d).* The alternate Federal rate computed under paragraph (c) of this section shall be effective for purposes of applying the Code sections set forth in paragraph (a) of this section if and only if it is lower than the statutory Federal rate of the same term and compounding period. For illustrations of the application of this paragraph (d), see § 1.1274-3T(b).

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 467(h), 483(g), 1275(d), 7805, and 7872(g) of the Internal Revenue Code of 1954 (98 Stat. 922, 26 U.S.C. 467(h), 483(g), 1275(d), 7872(g); 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger,
Commissioner of Internal Revenue.

Approved: February 11, 1985.

Ronald A. Pearlman,
Acting Assistant Secretary of the Treasury.

[FR Doc. 85-4007 Filed 2-13-85; 2:24 pm]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122, 123, 124, and 125

[OW-FRL-2780-1]

National Pollutant Discharge Elimination System Permit Regulations; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical errors, incorrect cross-references, and inadvertent omissions or additions of language in the final regulations which implement the National Pollutant Discharge Elimination System (NPDES) permit program under section 402 of the Clean Water Act (CWA). These regulations were published at 49 FR 37998 (September 26, 1984), 49 FR 31840 (August 8, 1984), 48 FR 39611 (September 1, 1983), and 48 FR 14146 (April 1, 1983).

FOR FURTHER INFORMATION CONTACT: Debora Clovis, Permits Division (EN–336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone: (202) 426–4793.

SUPPLEMENTARY INFORMATION: On April 1, 1983, EPA issued final regulations which "deconsolidated" the NPDES permit program regulations from its Consolidated Permits Program. The rulemaking made no substantive changes, but merely effected a transfer of regulations and redesignation of sections within Part 40 of the CFR. In large part, today's notice corrects inadvertent omissions or additions of language and erroneous cross-references which occurred during the deconsolidation process. The Agency subsequently promulgated substantive revisions to the NPDES rules on September 1, 1983, August 8, 1984, and September 26, 1984. These regulations also contained various errors and omissions. EPA is correcting errors from all four rulemakings in today's revision.

While the majority of today's revisions are self-explanatory, several deletions merit specific discussion. EPA is deleting notes to four sections concerning suspended portions of the regulations (see paragraphs 38, 40, 41, and 48). In all four instances, EPA has promulgated regulations subsequent to the suspension of previous rules, which were intended to replace the suspended rules and thus end the suspensions. For example, on October 15, 1980 (45 FR 68391), EPA suspended until further notice the definition of "new discharger" as it applied to offshore mobile drilling rigs in certain areas. On September 1, 1983, EPA published a revised definition of "new discharger" which amended the suspended portion of the definition. Consequently, the suspension no longer had any effect and was implicitly revoked. However, no explicit revocation was noted. Today's corrections remedy this and similar omissions affecting the criteria for determining a new source and application requirements.

This rulemaking also corrects the application deadline for storm water dischargers established in the September 26, 1984, regulations (40 CFR 122.21(c)). The preamble states that the deadline will be six months from the effective date of the rule, which would be April 26, 1985. However, the final rule erroneously sets a March 26, 1985, deadline, six months from promulgation. Today's rule corrects the deadline in §122.21(c) to April 26, 1985.

Dated: February 8, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

Accordingly, 48 FR 14146 (April 1, 1983) is corrected as follows:

§ 122.2 [Corrected]

1. On page 14156, column 3, in the definition of "point source" in § 122.2, insert a comma (",") between "to" and "and" in the third line of the definition.

2. On page 14157, column 3, note 1 to § 122.2 is corrected by inserting between "§ 122.2," and "in the definition. * * *" the following: "the last sentence, beginning "This exclusion applies * * *".

§ 122.4 [Corrected]

3. On page 14158, column 2, in § 122.4(h)(2)(i), the "of" between "cause" and "contribute" is corrected to read "or", and "puublic" is corrected to read "public".

4. On page 14158, column 2, in § 122.4(h)(2)(i)(1) "descharge" is corrected to read "discharge".

§ 122.6 [Corrected]

5. On page 14158, column 3, in § 122.6(b), "effectively" is corrected to read "effective".

§ 122.21 [Corrected]

6. On page 14159, columns 2 and 3, in the table which follows the text of § 122.21(d)(2), footnote 1 is corrected by replacing "paragraphs (d)(7), (9) and (10)" with "paragraphs (g)(7), (9), and (10)".

7. On page 14160, column 1, in § 122.21(g)(3), the second sentence is corrected by placing a comma (",") between "operations" and "or" and by reversing the period (".") and parenthesis (")") at the end of the sentence.

8. On page 14160, column 3, in § 122.21(g)(7)(ii)(A), the reference to "(d)(8)" in the first sentence is corrected to read "(g)(8)".

9. On page 14160, column 3, in § 122.21(g)(7)(iv), "is" corrected to read "are" in the first sentence.

§ 122.28 [Corrected]

10. On page 14165, column 1, § 122.28(a)(2)(ii) is corrected by deleting "minor".

§ 122.41 [Corrected]

11. On page 14167, column 1, in § 122.41(a)(2), "$100,000" is corrected to read "$10,000".

12. On page 14167, column 1, the title to § 122.41(c) is corrected to read "*Need to halt or reduce activity not a defense.*"

13. On page 14168, column 1, § 122.41(l) is corrected by adding paragraph (8) as follows:

(8) *Other information:* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

§ 122.44 [Corrected]

14. On page 14169, column 3, in § 122.44(c)(1)(ii), the sentence in parentheses is corrected by deleting the line "proves existing effluent limitations or".

15. On page 14170, column 1, in the last sentence of § 122.44(e) (introductory text), "§ 124.56(e)(2)" is corrected to read "§ 124.56(b)(1)(i)".

16. On page 14170, column 3, in the fifth line of § 122.44(1)(l), "which are" is corrected to read "must be".

§ 122.46 [Corrected]

17. On page 14172, column 1, in § 122.46(b), "§ 122.5" is corrected to read "§ 122.6".

§ 122.47 [Corrected]

18. On page 14172, column 3, in § 122.47(a)(4), the reference to "(a)(1)(ii)" is corrected to read "(a)(3)(ii)."

§ 122.48 [Corrected]

19. On page 14173, column 1, in § 122.48(c), "regulations" is corrected to read "regulation."

§ 122.64 [Corrected]

20. On page 14175, column 2, § 122.64(a) is corrected by removing the "or" after the semi-colon in (a)(2), by substituting a semi-colon for the period following (a)(3), and by inserting "or" after that semi-colon.

Appendix D [Corrected]

21. On page 14176, column 3, in Appendix D to Part 122, Table II, under "Volatiles," "1,2-dichloropropylene" (pollutant 18V) is corrected to read "1,3-dichloropropylene".

22. On page 14177, columns 2 and 3, the list of hazardous substances in Table V of Appendix D is corrected by deleting "Ethanolamine" substituting "Isopropanolamine Dodecylbenzenesulfonate" for "Isopropanolamine," and inserting "Triethanolamine dodecylbenzenesulfonate" in the list between "Trichlorofan" and "Triethylamine".

§ 123.21 [Corrected]

23. On page 14179, column 2, in § 123.21(a), the second sentence is corrected by deleting "at least three copies of".

§123.22 [Corrected]

24. On page 14179, column 3, in § 123.22(e), "programs" is corrected to read "program".

§123.24 [Corrected]

25. On page 14180, column 3, in § 123.24(d)(4) "gallson" is corrected to read "gallons".

§123.25 [Corrected]

26. On page 14181, column 1, in § 123.25(a)(1) "(Prohibitions)" is corrected to read "(Prohibitons)".

27. On page 14181, column 1, in § 123.25(a)(3), "§ 122.7(b)-(d)" is corrected to read "§ 122.7 (b) and (c)".

§123.27 [Corrected]

28. On page 14182, column 3, the note that follows § 123.27(c) is corrected by inserting the following paragraph after the first paragraph of the note:

Procedures for assessment by the State of the cost of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

§123.61 [Corrected]

29. On page 14186, column 2, in § 123.61(a)(5) "when" is corrected to read "whom".

§123.62 [Corrected]

30. On page 14186, column 3, in the first sentence of § 123.62(b)(2), "modification" is corrected to read "revision".

§123.63 [Corrected]

31. On page 14187, column 1, § 123.63(a)(2)(ii) is corrected by inserting "Repeated" at the beginning of the sentence.

32. On page 14187, column 1, in § 123.64(a) "state" is corrected to read "State".

§124.12 [Corrected]

33. On page 14271, column 1, in § 124.12(b) "authoriy" is corrected to read "authority".

§124.57 [Corrected]

34. On page 14275, column 2, in § 124.57(a), the "to" between "notice" and "an" is corrected to read "of". This section is also corrected by deleting "and" after the semi-colon at the end of (a)(1), replacing the period (".") at the end of (a)(2) with a semi-colon (";") and inserting "and" after that semi-colon.

§124.62 [Corrected]

35. On page 14277, column 2, in the last sentence of § 124.62(d) "124.54" is corrected to read "124.64".

§125.3 [Corrected]

36. On page 14293, column 1, in paragraph (3) under § 125.3 [amended] "§ 125.3(b)" is corrected to read "§ 125.3(b) (1) and (2)". 48 FR 39611 (September 1, 1983) is corrected as follows:

37. On page 39619, column 1, paragraph 1, which describes amendments to § 122.2, is corrected by deleting the colon at the end of the sentence and inserting "and by deleting Editorial Note 2 at the end of this section.".

38. On page 39619, column 3, in the third line of the certification next under § 122.22(d), the "the" between "under" and "direction" is corrected to read "my".

39. On page 39620, column 1, add a new paragraph 4 as follows, and renumber the remaining paragraphs 5, 6, and 7, respectively:

§ 122.29 [Corrected]

4. Section 122.29 is amended by deleting Editorial Note 2 at the end of that section.

49 FR 31840 (August 8, 1984) is corrected as follows:

40. On page 31842, column 1, paragraph 1 is corrected to read as follows:

1. 40 CFR 122.21(d)(2) is revised, § 122.21(d)(3) is added to read as follows, and Editorial Note 4 at the end of this section is deleted:

49 FR 37998 (September 26, 1984) is corrected as follows:

41. In the preamble at page 37998, column 2, first sentence of the second full paragraph, the number "122.21" should be inserted between "§§" and "122.29(c)(5)".

42. In the preamble at page 38032, column 3, the references to "40 CFR 122.7(g)" and "§ 122.7(g)" are corrected to read "40 CFR 122.49(g)" and "122.49(g)", respectively.

43. In the preamble at page 38032, column 3, the reference to "Section 122.47(g)" in the middle of the column is corrected to read "Section 122.49(g)".

44. In the preamble at page 38034, column 1, the reference to "122.47(g)" is corrected to read "122.49(g)".

§122.21 [Corrected]

45. On page 38046, column 2, in § 122.21(c)(2), "March 26, 1985" is corrected to read "April 26, 1985".

§122.26 [Corrected]

46. On page 38047, column 3, § 122.26(b)(1)(i) is corrected by inserting "or" after the semi-colon.

47. On page 38048, column 2, paragraph 5 is corrected to read as follows:

§ 122.29 [Corrected]

5. Section 122.29 is amended by revising paragraphs (b), (c)(3), and (d)(4), redesignating paragraph (c)(5) as (c)(5)(ii), adding a new paragraph (c)(5)(i) as follows, and deleting Editorial Note 1 at the end of the section:

48. In the Form 2c Instructions on page 38054, column 2, first line, "4-1-2" is corrected to read "4-a-2."

49. In the Form 2c Instructions on page 38054, column 2, insert after the first two sentences in Item III-B the sentence, "However, you do not have to indicate how the reported information was calculated."

50. In the Form 2c Instructions on page 38054, column 2, in the third sentence under "General Directions," "text" is corrected to read "test".

51. In the Form 2c Instructions on page 30856, column 1, insert after the paragraph beginning with "Part V-A . . ." a new paragraph as follows:

Use the composite samples for all pollutants in this Part, except use grab samples for pH and temperature. See discussion in General Instructions to Item V for definitions of the columns in Part A. The "Long Term Average Values" column (column 2-C) and "Maximum 30 Day Values" column (column 2-b) are not compulsory but should be filled out if data is available.

52. In the Form 2c Instructions on page 38056, column 1, the paragraph designated as "Part V-B" is corrected by inserting after the third sentence a new sentence which reads: "Use composite samples for all pollutants you analyze for in this Part, except use grab samples for residual chlorine, oil and grease, and fecal coliform." The fourth sentence, which begins "Upon request the Director * * *", is corrected to read "EPA will consider requests to the Director of the Office of Water Enforcement and Permits to eliminate the requirement to test for pollutants for an industrial category or subcategory."

53. In the form 2c Instructions on page 38056, column 2, in subparagraph (e) appearing in the middle of the column, "2,4,5,-trichlorophnol, (TCP)" is corrected to read "2,4,5-trichlorophnol, (TCP)".

54. In the Form 2c Instructions on page 38057, column 1, in the citation at the end of the paragraph designated as "Part V-D," "40 CFR 117.12(a)(2ind(c)" is corrected to read "40 CFR 117.12(a)(2) and (c)".

55. In the Form 2c Instructions on page 38057, column 1, the paragraph designated as "Item VI" is corrected by deleting the last sentence, which begins "Under NPDES regulations * * *".

56. In the Form 2c Instructions on page 38057, column 2, the second sentence in Item IX is corrected to read as follows: "Section 309(c)(2) of the Clean Water Act provides that "Any person who knowingly makes any false statement, representation, or certification in any application, * * * shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment of not more than six months, or by both." "

57. In the form 2c Instructions on page 38057, column 2, the reproduction of 40 CFR 122.22 is corrected by designating the paragraph as "(a)(1)" rather than "(A)" and by inserting a space between "policy" and "or" in the first full sentence.

58. In Table 2c-4 on page 38060, in the list of hazardous substances, "Isopropanolamine" is corrected to read "Isopropanolamine Dodecylbenzenesulfonate", "Napthenic acid" is corrected to read "Naphthenic acid", and "Triethanolamine" is corrected to read "Triethanolamine Dodecylbenzenesulfonate".

59. In Table 2c-4 on page 38060, column 2, "Hydrogen sulfite" (no. 155 is corrected to read "Hydrogen Sulfide", "Napthalene" (no. 191) is corrected to read "Naphthalene", and "Napthenic acid" (no. 192) is corrected to read "Naphthenic acid".

60. In Table 2c-4 on page 38062, column 3, "zinc hydrosulfonate" (no. 288) is corrected to read "zinc hydrosulfite".

[FR Doc. 85-3990 Filed 2-15-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 228

[OW-FRL-2780-2]

Ocean Dumping; Extension of Interim Site Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA today extends the interim designation of several existing dredged material disposal sites to allow completion of final rulemaking with full public participation. The interim designations of the following sites are extended until December 31, 1988, or until final rulemaking is completed, whichever is sooner: Morehead City, NC; Georgetown, SC; Pascagoula, MS; Humboldt Bay, CA; Long Beach, CA; San Diego, CA; New Jersey/Long Island Sites; Gulfport/Mobile/Pensacola; Coos Bay, OR; San Francisco Channel Bar, CA. This action is necessary to provide acceptable ocean dumping sites for the disposal of dredged material essential to maintain navigation until formal rulemaking is completed.

DATE: This action will become effective on February 19, 1985. Comments must be received on or before March 21, 1985.

ADDRESSES: Send comments to: Paul Pan, Chief, Environmental Analysis Branch (WH-556), EPA, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Paul Pan, 202/755-9231.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping site will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.), was extended on January 16, 1980 (45 FR 3053 et seq.) and December 9, 1980 (48 FR 81042 et seq.), and was subsequently extended on February 7, 1983 (48 FR 5557 et seq.). That list established the Morehead City, NC; Georgetown, SC; Pascagoula, MS; Humboldt Bay, CA; Long Beach, CA; San Diego, CA; New Jersey/Long Island Sites; Gulfport/Mobile/Pensacola; Coos Bay, OR; San Francisco Channel Bar, CA, sites as interim sites. The latest notice extended their period of use until January 31, 1985. On March 9, 1984 (49 FR 8923 et seq.), the San Francisco Channel Bar site designation was also extended until that date. Today's extension will continue the interim designation for these sites until December 31, 1988, or until final rulemaking is completed whichever is sooner.

Preparation of Environmental Impact Statements (EIS's) or rulemaking has begun on all of these sites. EPA has completed a final EIS and proposed to designate the San Francisco Channel Bar site. EPA has completed draft EIS's for the New Jersey/Long Island sites, the Gulfport/Mobile/Pensacola sites, and the Coos Bay sites. EPA is in the process of drafting an EIS for the Georgetown, SC, site and the Humboldt Bay, CA, site; and EPA has begun preparation of an EIS for the Morehead City, Pascagoula, Long Beach, and San Diego sites. EPA plans to complete EIS's for all consent decree sites ["National Wildflie Federation v. Costle," 629 F.2d 118 (D.C. Cir. 1980)] by the end of 1985, and designation of the consent decree sites will proceed as expeditiously as possible. EPA cannot promulgate final designations for these sites and allow opportunity for full public participation within the existing deadline of January 31, 1985. The extensive opportunities for public participation are described in greater detail in the February 7, 1983, extension notice. Thirty-six months is a more realistic estimate of the amount of time EPA will need to complete the designation process for all of these sites. EPA, of course, expects to finish the designation process earlier for those sites where work is more advanced.

The Corps of Engineers has stated that they know of no significant adverse environmental impacts or public opposition which would result from continued use of any of these historically-used sites.

Continued designation of these interim dredged material disposal sites is necessary to assure the uninterrupted availability of the adjacent harbors to interstate and foreign commerce. These site designations expired January 31, 1985. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), the Agency has determined that notice and public procedure on the interim designations, prior to their extension, is impracticable and contrary to the public interest. However, the Agency solicits public comment on the extension of the interim designations and will address any comments received in the final rulemakings designating these sites. For the same reasons, EPA has determined, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), that there is good cause to make this extension effective immediately.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. Sections 1412 and 1418.

Dated: February 7, 1985.

Henry Longest II,

Acting Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by revising paragraph (a)(1)(i) of § 228.12 to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

* * * * *

(a) * * *

(1) * * *

(i) Until such time as formal rulemaking is completed ir until December 31, 1988, whichever is sooner:

(A) Morehead City, NC.

(B) Georgetown, SC.

(C) Pascagoula, MS.

(D) Humboldt Bay, CA.

(E) Long Beach, CA.

(F) San Diego, CA (2 sites).

(G) New Jersey/Long Island Sites (8 sites): Absecon Inlet, NJ; Cold Spring Inlet, NJ; Manasquan Inlet, NJ; East Rockaway, NY; Jones Inlet, NY; Fire Island, NY; Shark River, NJ; and Rockaway Inlet, NY.

(H) Gulfport/Mobile/Pensacola (4 sites): Mobile, AL; Gulfport, MS (2 sites); and Pensacola, FL.

(I) Coos Bay, OR.

(J) San Francisco Channel Bar, CA.

[FR Doc. 85-3989 Filed 2-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 84-26]

Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984; Non-Substantive Agreements; Exemption

AGENCY: Federal Maritime Commission.

ACTION: Correction of final rule.

SUMMARY: This amends the Commission's rule regarding the exemption of non-substantive agreements to clearly and consistently provide that exemption applies both to new agreements and modifications to existing agreements. The amendment corrects an inadvertent incongruity in the earlier rule and conforms the rule in all respects to the earlier expressed intention of the Commission

DATE: February 19, 1985.

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's final rule in this proceeding (49 FR 45320; November 15, 1984), in § 572.302, *Non-substantive agreements and non-substantive modifications to existing agreements-exemption*, defines non-substantive agreements and modifications and provides an exemption for them. The supplementary information to that rule indicates that in response to comments on the Interim Rule, the Commission had determined to clarify and enlarge the reach of the exemption so that it would coincide with the exemption previously in effect at 46 CFR 524.3 and 524.4. To accomplish this, it was necessary, *inter alia*, to provide for application of the exemption to *new* non-substantive agreements as well as *modifications* to non-substantive agreements. The Interim Rule's application had been limited to modifications. This intention to clarify and enlarge the reach of the exemption was carried out only partially. In the Final Rule, appropriate references were added in the section heading and in paragraph (a) of § 572.302 which defines a nonsubstantive agreement or modification. However, a similar reference was inadvertently omitted from paragraph (b) of the section which states the parameters of the exemption. The Commission hereby is correcting the incongruity in the rule created by this inadvertence.

Additionally, paragraph (b) also inadvertently failed to include a reference to "the Act" when describing the parameters of the exemption. This omission also is corrected by this document. This conforms the language of this exemption to the language of §§ 572.304, 572.305, and 572.306 of this part regarding other exemptions.

The Federal Maritime Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it 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 effect 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 of the Federal Maritime Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions.

The Commission finds that good cause exists for dispensing with the prior notice, opportunity for comment, and deferred effective date requirements of 5 U.S.C. 553 in that this amendment imposes no new substantive requirements, but merely corrects an incongruity in the Final Rule and conforms the rule in full to the intent expressed by the Commission in its Final Rule.

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 and 1716), paragraph (b) of § 572.302 of Title 46 CFR is revised to read as follows:

§ 572.302 Non-substantive agreements and non-substantive modifications to existing agreements—exemption.

* * * * *

(b) A copy of the non-substantive agreement or modification shall be submitted for information purposes in the proper format but is otherwise exempt from the Information Form, notice and waiting period requirements of the Act and of this part.

* * * * *

By the Commission

Francis C. Hurney,

Secretary.

[FR Doc. 85-4052 Filed 2-15-85; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Part 572

[Docket No. 84-37]

Application of the Shipping Act of 1984 to Certain Transshipment Agreements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule sets forth the approach the Commission will 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 will be considered to be in the foreign commerce of the United States and therefore, subject only to the Shipping Act of 1984.

EFFECTIVE DATE: March 21, 1985.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5787

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, Washington, D.C. 20573, (202) 523-5866.

SUPPLEMENTARY INFORMATION: The proposed rule in this proceeding was published in the **Federal Register** on December 14, 1984 (49 FR 48764) with comments due on January 28, 1985. The availability of the finding of no significant impact on the quality of the human environment was published in the **Federal Register** on January 24, 1985 (50 FR 3369).

In order to clarify the question of jurisdiction, the proposed rule indicated that the Commission would interpret the Shipping Act of 1984 (46 U.S.C. app. 1701-1720) to apply to all agreements involving domestic offshore movements when such movements is part of a continuous through movement of cargo via transshipment involving the foreign commerce of the United States.

The Atlantic and Gulf/West Coast of South America Conference; the West Coast of South America Northbound Conference; and the United States Atlantic and Gulf/Colombia Conference (collectively) filed the only comment which indicated that the conferences fully support the rule and urge the Commission to adopt the rule as proposed.

Acordingly, the proposed rule is adopted as final without change.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it 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 of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) that this rule 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 and 1716), the Commission hereby amends Part 572 of Title 46 of the Code of Federal Regulations as follows:

1. The Authority Citation for Part 572 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 1701-1707; 1709-1710; 1712; and 1714-1717.

2. Section 572.104 is amended 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. 85-4053 Filed 2-15-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 81-897; FCC 84-528]

Applications for Voluntary Assignments or Transfer of Control

AGENCY: Federal Communications Commission.

ACTION: Reconsideration of final rule.

SUMMARY: This *Memorandum Opinion and Order* denies in part and grants in part a request for reconsideration of the *Report and Order* in BC Docket No. 81-897, eliminating § 73.3597 (a) through (d) of the Commission's Rules ("three year rule") and adopting a one year holding period for licenses initially obtained through the comparative process. The request for readoption of the three year rule was denied because the issues raised had been fully considered in the *Report and Order*. The Commission has determined that petitioner's request for extension of the one year holding period for stations received under the Minority Ownership Policy should be granted. In addition, the Commission modified the

one year holding period to allow for an exception when the proposed transactions further the Minority Ownership Policy. However, because no evidence exists as to abuse in the case of incumbent winners in comparative renewal proceedings, the Commission denied the petitioner's request for extension of the one year holding period to such incumbents.

EFFECTIVE DATE: March 20, 1985.

FOR FURTHER INFORMATION CONTACT: Robert E Branson, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Memorandum Opinion and Order

In the matter of Amendment of § 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfer of Control) (BC Docket No. 81-897).

Adopted: November 8, 1985.

Released: February 11, 1985.

By the Commission: Commissioner Dawson dissenting; Commissioner Patrick dissenting and issuing a statement.

I. Background

1. The Commission has before it a petition for reconsideration of our *Report and Order* in this proceeding,[1] filed on behalf of the Citizens Communications Center, Chinese for Affirmative Action, Citizens Committee on the Media, the National Association for Better Broadcasting, and the National Citizens Committee for Broadcasting (hereinafter collectively referred to as "Citizens"). The National Association of Broadcasters ("NAB") filed an opposition to this petition, and Citizens has responded to these comments.

2. In the *Report and Order*, the Commission deleted § 73.3597 (a) through (d) of the Commission's Rules. These rules required that an application for assignment or transfer of a broadcast license be designated for hearing if the current licensee had held the station for less than three years unless specified extenuating circumstances were present or a waiver was granted. The Commission concluded that in the present competitive marketplace environment the public interest could best be served through elimination of the three year rule and its underlying "trafficking" policy. However, to assure that the Commission's licensing process was not undermined and service to the public delayed, the Commission adopted a one year holding period, after commencement of operation, where the licensee obtained the permit as a result of a grant through the comparative hearing process.

II. Citizens' Petition

3. Citizens argues that the *Report and Order* failed to respond to the intent of Congress with respect to holding requirements, as expressed in the Conference Report to the 1982 amendment to Section 309(i) of the Communications Act ("Conference Report").[2] According to Citizens, Congress therein demonstrated an unambigious view that the public interest requires retention of the three year rule or "similar protections" for licenses awarded by lottery. Citizens asserts that the Commission acknowledged this Congressional mandate in the *Notice of Proposed Rule Making* in the lottery proceeding,[3] but ignored it in the instant proceeding. In addition, Citizens reargues that the courts and the Commission have long recognized the close relationship between the goal of the trafficking rules and the Commission's public interest obligations under Section 310(d) of the Act. According to Citizens, the *Report and Order* simply rejected this contention without any rationale. Therefore, Citizens requests that the Commission reexamine its conclusions in the *Report and Order*.

4. Alternatively, Citizens contends that the rationale utilized by the Commission for the establishment of a one year holding period for licensees who obtained their licenses through the comparative process requires that the one year holding period also be applied to licenses received under the Minority Ownership Policy [4] and to an incumbent licensee who prevails in a comparative proceeding. Under the Minority Ownership Policy, a transferee can obtain a broadcast station at a reduced price by virtue of a "distress sale" or through the seller's receipt of a tax certificate. Citizens argues that such financial incentives can create a potential for abuse of the Commission's policy through the rapid resale of the station to a nonminority. This would thwart the Commission's purposes in adopting the Minority Ownership Policy. However, Citizens argues that the process could be protected by imposition of a one year holding period.

5. Citizens also argues that the Commission has an interest in ensuring that its comparative renewal processes are not undermined through an immediate sale of the station by a successful incumbent. Citizens suggests that the imposition of a one year holding period would ensure that the incumbent minimally fulfills the expectations upon which the Commission based it renewal grant.[5] Thus, Citizens asserts that the incumbent who has been benefited from the Commission's processes should fulfill its obligation to provide "best practicable service" for a minimum of one year.

III. Discussion and Conclusions

6. After careful consideration, we conclude that Citizens' request for retention of the three year rule must be denied. However, we have determined that a modified one year holding period should be extended in certain situations, as discussed below.

7. In the *Report and Order*, we made a determination that the public interest would be best served through elimination of the three year rule and its underlying trafficking policy. In making this determination, we examined the entire record, including the Conference Report. We determined that Congress therein had expressed its concern that the Commission's lottery preference scheme not be undermined through rapid resale, but it did not mandate that the Commission retain the three year rule or the trafficking policy. Thus, in the lottery proceeding, the Commission "devise[d] similar protections (to the trafficking rules) to help ensure that the very purposes sought to be achieved by the preference scheme be fulfilled,"[6] but did not impose a three year restraint on resale. For similar reasons, a three year holding period is not required here. Citizens' next argument concerning the nexus between Section 310(d) of the Act and the trafficking rules is simply a restatement of an argument that was fully considered by the Commission before adoption of the *Report and Order*. Therefore, reconsideration on this grounds will be denied.

8. We are convinced, however, that the existing one year holding period

[1] FCC 82-519, 47 FR 55924 (December 14, 1982), 52 RR 2d 1081 (1982).

[2] H.R. Rep. No. 765, 97th Cong., 2d Sess. 9, 45 (1982).

[3] *Second Notice of Proposed Rule Making* in Gen. Docket No. 81-768, FCC 82-420, 47 FR 45046 (October 13, 1982).

[4] *Statement of Policy on Minority Ownership of Broadcast Facilities*, 68 FCC 2d 979 (1978). *See also Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 48 FR 5943 (February 9, 1983).

[5] *See Cowles Broadcasting, Inc.*, 86 FCC 2d 993, 1012 (1981), *aff'd sub nom. Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503, 506-08 (D.C. Cir. 1982).

[6] Conference Report, *supra* n.2. *See also Report and Order* in Gen. Docket No. 81-768, 93 FCC 2d 952, 972 (1983).

should be extended to licenses obtained through the Minority Ownership Policy. The *Report and Order* adopted a one year holding period for licensees who received their initial grant through the comparative process so that the permittee who benefited from the Commission's processes would at least minimally fulfill the expectations upon which grant had been made and not delay the introduction of services to the community. Similarly, the Commission seeks to foster and facilitate minority ownership of broadcast stations by providing broadcast licensees with an incentive to transfer to minority-owned or controlled entities. Specifically, the Commission provides for the use of a tax certificate which enables the seller of a broadcast station to defer the tax on the gain realized upon a sale. In addition, the distress sale policy allows licensees that have been designated for revocation hearing or whose renewal applications have been designated for hearing on basic qualification issues to sell their stations to a minority-owned or controlled entity, at a price "substantially" below its fair market value.[7] As Citizens points out, the rapid resale of such a station to a non-minority at a profit would subvert our goal of increasing minority ownership of broadcast stations. Moreover, a one year holding period would be consistent with our action in the lottery proceeding and in the *Report and Order* in this proceeding. We conclude that transferees who obtain a station under the Minority Ownership Policy should be subject to the one year holding period in order to protect the integrity of the Policy.

9. We recognize, however, that strict application of the holding period could work against our policy objective of increasing minority participation in broadcasting by precluding certain sales of broadcast facilities to qualifying minority entities. To avoid this unintended result and further encourage minority broadcasting, we will no longer apply the one year holding period to any applicant whose proposed transaction involves an assignment or transfer to a minority-owned or controlled entity in furtherance of our Minority Ownership Policy. Of course, transferees obtaining a license by this exception would themselves be subject to the holding requirement for purposes of any subsequent transfer, unless such subsequent transfer were also exempt.

10. Finally, we are not persuaded that the one year holding requirement should be extended, as Citizens requests, to incumbent licenses whose licensee are renewed as a result of comparative proceedings. Unlike an applicant receiving its initial license, a renewal applicant generally presents a record of past broadcast performance which has been documented and which is typically the primary basis upon which renewal is granted. Such performance reflects a level of stability and commitment to providing broadcast service which significantly attentuates our concern with rapid license reassignment by renewal applicants. We note that, for similar reasons, even the broader and more restrictive three year trafficking rule was never applied to successful renewal applicants.[8] Moreover, there is nothing in the present record to suggest that successful renewal applicants have precipitously sold broadcast stations. We conclude, therefore, that insufficient justification exists for the Commission to impose a one year holding period upon incumbent licensees who succeed in the comparative renewal process.

11. Accordingly, it is orderd that, the Petition for Reconsideration filed on behalf of Citizens Communications Center, Chinese for Affirmative Action, Citizens Committee on the Media, the National Association for Better Broadcasting and the National Citizens Committee for Broadcasting, is granted to the extent described herein and in all other respects is denied.

12. It is further ordered that, § 73.3597 of the Commission's Rules is amended, effective March 20, 1985, as described above and set forth in the attached "Appendix A."

13. It is further ordered that, FCC Form 314 and 315 will be amended by separate Commission action, in accordance with the provisions of this *Memorandum Opinion and Order*.

14. It is further ordered that, the Secretary shall cause a copy of this *Memorandum Opinion and Order* to be published in the FCC Reports.

15. Authority for this action is contained in Sections 4(i) and (j), 303 and 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's Rules.

16. For further information concerning this proceeding, contact Robert E. Branson, Mass Media Bureau, (202) 632-7792.

[7] Ordinarily, a licensee whose licensee has been designated for hearing would be prohibited from selling, assigning or otherwise disposing of its interest until the issues have been resolved in the licensee's favor. *Bartell Broadcasting of Florida*, 45 RR 2d 1329, 1331 (1979).

[8] *See Report and Order* in Docket No. 13864, 32 FCC 689, 692 (1962).

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Rule Changes

47 CFR 73.3597 is amended by revising paragraphs (a) and (a)(1) and by adding paragraph (a)(5) to read as follows:

§ 73.3597 Procedures on transfer and assignment applications.

(a) If, upon the examination of an application for FCC consent to an assignment of a broadcast construction permit or license or for a transfer of control of a corporate permittee or licensee, it appears that the station involved has been operated on-air by the current licensee or permittee for less than one year, the application will be designated for hearing on appropriate issues unless the FCC is able to find that:

(1) the permit or license was not authorized either through the Minority Ownership Policy or after a comparative hearing or, in the case of low power TV and TV translator stations, the permit or license was not authorized after a lottery in which the permittee or licensee benefited from minority or diversity preferences;

* * * * *

(5) the assignee or transferee has made an affirmative factual showing, supported by affidavits of a person or persons with personal knowledge thereof, which established that the proposed transaction would involve an assignment or transfer to a minority-owned or minority controlled entity in furtherance of our Minority Ownership Policy.

* * * * *

Dissenting Statement of Commissioner Dennis R. Patrick

In Re: Reconsideration of Amendment of § 73.3597 of the Commission's Rule (Anti-trafficking rule) (BC Docket 81-897).

I dissent to the Commission's reaffirmance of its 1982 decision to replace the three-year "anti-trafficking" rule with a one-year rule.[1] I find the reasons for elimination of the three-year rule compelling, but equally applicable to the one-year rule.

[1] The one-year rule at issue in this docket effectively prohibits a broadcast licensee from transferring or assigning its license for one year after operation commences (by designating the license for hearing), when the license was obtained after a comparative hearing. 47 CFR 73.3597(a). The Commission's rulemaking in this docket does not address or affect licenses obtained through a lottery.

In 1962, the Commission adopted the three-year rule out of belief that a licensee needed three years to implement proposals in its application, gain an understanding of the needs and desires of the community being served, and adjust its programming to meet such needs and desires.[2] The Commission was concerned that disruption of ownership (*i.e.*, holding a license for less than three years) would frustrate these efforts, perhaps leading to a deterioration in programming and service to the public.[3] The Commission appropriately concluded in 1982 that continuation of the three-year anti-trafficking rule did not necessarily lead to deterioration of service to the public. Quite the contrary, it was concluded that the rule artificially restricted transfer which would likely promote the public interest. The Commission concluded that a willing buyer is more likely to provide service most desired by the community than an unwilling owner restricted from selling his station.[4]

I wholeheartedly agree. But I also think that the same buyer is likely to provide service that is more in the public interest than the unwilling owner restricted from selling his station, again by Commission fiat, for one year.

The Commission's decision in 1982 to restrict its modified one-year rule to licenses acquired after a comparative hearing does not persuade me that the rule is justified. Nor does the Commission's explanation that a one-year rule is desirable in order to require licensees to meet "the expectations upon which the grant has been made . . . to prevent abuse of the Commission's licensing processes."[5] I find that reasoning faulty in several respects.

First, the disincentive of expending the time and money to go through the Commission's hearing process is probably the *best* assurance that an applicant in fact intends to operate the station. The likelihood that any comparative applicant intends to operate the station is strengthened by Commission rule § 73.3597(c), which restricts payments upon transfer of a construction permit to out-of-pocket expenses. An applicant must not only go through the hearing process with no assurance of winning, he must also then construct the station and become operational before selling for a profit. A subsequent one-year holding period is not needed as additional disincentive.

Second, to the extent an applicant was not the real party in interest or misrepresented material facts, including its original intent to operate the station, its character would be called into question. Under Commission procedure, a licensee of unfit character may be prohibited from transferring its license. Because the Commission must approve every request for transfer or assignment, we will have the opportunity to thwart sham transactions if necessary.

Third, to the extent the Commission feels that a holding period is required to ensure that promises made in the comparative hearing are met (a reason hauntingly similar to the Commission's reason for adopting the three-year rule in 1962), the full license term would make as much, or more sense than one year. And no one (thankfully) is suggesting the former. The fact is that we use our comparative process to make the best determination we can of who will serve the public interest. After that, subject to our approval at the time of transfer and upon renewal, we allow the market to determine who will next hold the license. The licensing process is no more abused if the transfer occurs 364 days after a station's operation begins than 366 days after operation commences.

Fourth, the historical record suggests that this Commission has liberally granted waivers of the waiting period restricting transfers. As such, elimination of the one-year rule would amount to little more than reversing the presumption so as to allow transfers, unless the record suggests that the transfer would *disserve* the public interest.

Last, and most fundamentally, absent evidence to the contrary (which could be reviewed in processing the application for transfer), we should assume that transfers serve the public interest. A willing seller has determined that the value of the station to it is less than the value of the station to a willing buyer. In a workably competitive marketplace, the value of that station is largely a function of how successful its owners are in programming to meet the needs, interests and desires of its broadcast community. Presumptively, therefore, transfers promote our public interest policy goals by ensuring that licenses will gravitate to operators most responsive to community demand. This Commission has found television and radio markets to be workably competitive in other dockets.[6] Inexplicably, a majority of the same Commission now find that transfers within these markets constitute "trafficking," *viz.*, a dangerous thing to be prohibited by regulatory intervention. Use of the perjorative term "trafficking" only masks the inconsistency. The transfer of a station, subject to review and prohibition in extraordinary circumstance, is an essential part of the competitive broadcast marketplace which this Commission has extolled in other contexts.

Accordingly, I dissent.

[2] Applications for Voluntary Assignments or Transfer of Control, 32 F.C.C. 689 (1962).

[3] *Id.*

[4] Applications for Voluntary Assignments or Transfer of Control, 52 RR 2d 1081 (1982).

[5] *Id.* at (1087).

[6] *See* In the Matter of the Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations, 56 RR 2d 1005 (1984); In the Matter of Deregulation of Radio, 55 RR 2d 1401, *recon. denied*, 57 RR 2d 93 (1984).

[FR Doc. 85-4026 Filed 02-15-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 82-813; FCC 84-590]

Obligations of Cable Television Systems To Maintain Public Inspection Files and Retain Subscriber Records; Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has eliminated most of the obligations of cable television systems to maintain public inspection files. It has also deleted the rule requiring retention of subscriber records. These requirements are no longer necessary because of cable television deregulation or because they are otherwise unwarranted. This action will ensure that records of little use to the public, but whose retention is costly, no longer burden the cable industry.

DATE: Effective March 18, 1985.

FOR FURTHER INFORMATION CONTACT: Belford V. Lawson, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Report and Order (Proceeding Terminated)

In the Matter of Amendment of Part 76 of the Commission's Rules and Regulations Relative to the Obligations of Cable Television Systems to Maintain Public Inspection Files and Retain Subscriber Records; MM Docket No. 82-813.

Adopted: November 30, 1984.
Released: February 8, 1985.

By the Commission.

Introduction

1. On December 8, 1982, the Commission adopted a *Notice of Proposed Rule Making* ("*Notice*") in this proceeding.[1] The *Notice* proposed to eliminate or simplify the provisions of § 76.305 of the Commission's Rules, which require that various records be maintained locally by cable television system operators for public inspection.[2] Also proposed for revision or deletion was § 76.306, which requires cable operators to retain certain subscriber records.

2. Specifically, § 76.305 of the rules obliges each system operator to retain, and make locally available, copies of: its local franchise application; its application for a Certificate of Compliance; petitions to and rulings from the Commission concerning the system; its completed FCC Form 325; any application for transfer of control of a Cable Television Relay Station; records relating to network program nonduplication agreements, subscription cablecasting, political cablecasts, sponsorship identification, and equal employment opportunities; and, the system's registration statements. As stated in the *Notice*, these requirements, as well as those of § 76.306, are being reassessed. In so doing, we seek to meet our obligation to review those rules which may no longer serve their intended purposes and which therefore are no longer necessary.

Background

3. In our 1972 *Cable Television Report and Order*,[3] we established a comprehensive regulatory program for cable television. A basic feature of that program was the certification process, which resulted in the award by the Commission of a Certificate of Compliance ("CAC"). The process was intended to assure that the Commission received detailed information from systems concerning their proposed operations; it also enabled the Commission to verify that systems were in compliance with its rules.

4. Section 76.305 of the Commission's Rules was promulgated in 1974.[4] The Commission, in requiring that cable systems make the designated disclosures to the public, observed that the public needed to have at least basic information about a system's operations and proposals in order for it to play any role in the regulation of cable television. The Commission expected that local citizens would take advantage of opportunities to participate directly in the certification process and in other cable television proceedings. Accordingly, the promulgation of § 76.305 guaranteed the public local access to information that complemented that which was available to the Commission through the certification process itself.[5]

5. Since the above actions were taken, cable television has been significantly deregulated by the Commission. For instance, the requirement that local and state authorities be governed by and defer to Commission standards in the franchising process has been deleted, and cable systems no longer have to provide the Commission with a statement "explaining how a system's franchise is consistent with federal standards."[6] Similarly, the certification requirement was discarded and replaced with a simpler, more straightforward registration process which reduces an operator's burdens and facilitates speedier delivery of service to subscribers.[7] Rules obliging cable systems to provide the public with access to cable channels have been discontinued,[8] and rules requiring cable systems to engage in mandatory program origination have been deleted.[9] Finally, rules restricting a cable system's carriage of distant broadcast television signals and proscribing retransmission of certain distant signal programming in accordance with syndicated exclusivity regulations have also been eliminated.[10] Thus, as a result of both Commission and court action, the original 1972 cable television regulatory program is no longer in effect.

6. The role of the Commission in cable matters has been further clarified by the enactment on October 31, 1984, of the Cable Communications Policy Act of 1984 ("Cable Act"). In establishing a national policy governing various aspects of cable communications, the Cable Act makes the local franchising authority the focal point of regulation directed to such local incidents of cable service as the selection of a cable franchisee and franchise modification and renewal.[11] Thus, the Cable Act essentially codifies existing Commission practice in this area.[12]

Comments

7. In response to the *Notice*, comments have been received from cable systems, cablecasting networks, cable trade associations, a state franchising authority, and one public interest organization. With the exception of the United Church of Christ ("UCC"), all commenters supported the Commission's proposals.[13]

8. The cable parties filing in this proceeding represented approximately 410 systems, serving at least 523 communities in all regions of the United States. These commenters generally indicated that the public inspection file was infrequently utilized. To support this conclusion, some of the parties conducted surveys of public demand for information in the local files. One such commenter, the North Carolina CATV Association, representing 70 systems in that state, reviewed the 12-month period from February 1982 through February 1983. During that time period, only one system received a request from the

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[1] 48 FR 844 (January 7, 1983).

[2] Section 76.305 lists the records to be placed in a system's public inspection file in paragraphs (a)(1)–(a)(4) and (a)(6)–(a)(9). Section 76.305(a)(5) was deleted by Commission action in 1980. *Report and Order* in Docket Nos. 20988 and 21284, 79 F.C.C. 2d 663, 890 (1980), *aff'd Malrite TV of New York, Inc. v. FCC*, 652 F.2d 1140 (2d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982). Only those parts of Section 76.305(a)(7), however, addressed to subscription cablecasting records and network program nonduplication agreements are before us and are considered herein. No action proposed in the *Notice*, and none is taken herein, affecting those parts of paragraph (a)(7) relating to equal employment opportunities, political cablecasts, or sponsorship identification records. Thus, our action today does not alter cable operators' continuing obligation to maintain copies in their public inspection files of records required to be kept by § 76.205 (origination cablecasts by candidates for public office); 76.221 (sponsorship identifications); and 76.311 (equal employment opportunity). *See* Appendix B *infra*.

[3] *Cable Television Report and Order*, 36 F.C.C. 2d 143 (1972).

[4] *Report and Order* in Docket No. 19948, 48 F.C.C. 2d 72 (1974).

[5] Section 76.306 of the Commission's Rules was also adopted in 1974. *Memorandum Opinion and Order*, 39 FR 9442 (March 11, 1974). The requirement that cable television systems maintain specified subscriber records was imposed to assure the availability of data needed to assist the Commission in verifying proper calculation of the annual cable fee.

[6] *Report and Order* in Docket No. 21002, 66 F.C.C. 2d 380, 383 (1977).

[7] *Report and Order* in CT Docket No. 78–206, 69 F.C.C. 2d 697 (1978).

[8] *Midwest Video Corp. v. FCC*, 571 F.2d 1025 (8th Cir. 1978), *aff'd* 440 U.S. 689 (1979).

[9] *Report and Order* in Docket No. 19988, 49 F.C.C. 2d 1090 (1974).

[10] *Report and Order* in Docket Nos. 20988 and 21284, 79 F.C.C. 2d 652 (1980), *aff'd Malrite TV of New York, Inc. v. FCC*, 652 F.2d 1140 (2d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982).

[11] *See* Sections 621, 625, and 626 of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. (1984).

[12] The Cable Act makes no provision concerning public inspection files, although it does require the retention and public availability of EEO records.

[13] A list of the parties filing comments is contained in Appendix C.

public for access to its file. Also, as reported by Americable Associates, only four requests to inspect the public file were made of 25 systems during a combined total of 67 system years. In addition, Storer Broadcasting noted that in the experience of eight of its senior system managers, the public files had only been used by FCC inspectors or Storer personnel, never by the public.

9. The commenting parties also addressed the issue of the financial burden imposed by the public file requirement. With the exception of UCC, commenters were unanimous in citing the high costs of complying with § 76.305(a). These parties noted that funds have to be expended to train personnel, for use of employees' time to gather and compile inspection file data, for photostating and mailing copies to affiliated systems, and for file space. Commenters found this paperwork particularly burdensome for small, one or two-system companies and for cable companies maintaining many franchises within one geographical area. They concluded that, given the negligible usage of the local file by the public, these substantial burdens are not warranted.

10. In supporting the retention of § 76.305, UCC argued that a federally mandated recordkeeping system is necessary to compensate for non-existent, inefficient, excessively diversified, or inconsistent public information requirements imposed by state and local authorities. Otherwise, argued UCC, the public will be seriously burdened in any search for cable records. As the level of cable penetration rises, submitted UCC, the public will have a greater demand for data such as that in the local inspection file, making retention of this requirement even more necessary now than previously.[14]

11. Commenters generally believed that local authorities should promulgate rules which address local information filing and recordkeeping needs.[15] Only one such authority, the New Jersey Office of Cable Television ("OCT"), filed comments in this proceeding. OCT is the local governmental agency responsible for cable television franchising and regulation within the State of New Jersey.[16] Its regulatory program imposes various filing and record-keeping requirements upon cable systems in order to provide for citizen participation in cable television operations and proposals.[17] With minor exceptions, OCT's recordkeeping requirements oblige New Jersey cable systems to disclose the same information presently required by § 76.305. OCT has indicated that if § 76.305 is deleted, it will mandate that New Jersey cable systems include in their public inspection files any information formerly required by the Commission which has not yet been required by the State of New Jersey.[18]

12. All commenters who discussed the advisability of retaining § 76.306 supported the Commission's proposal to delete this rule. They agreed with the Commission's position, as stated in the *Notice*, that because cable systems no longer pay an FCC fee based on the number of subscribers,[19] retention of the rule requiring the maintenance of subscribers records in unjustifiable.[20]

Discussion

13. After carefully reviewing the record in this proceeding, we are persuaded that most of the public file requirements of § 76.305, as well as the recordkeeping obligations of § 76.306, are unwarranted. To a large extent, the information in the public inspection file either has no utility due to a number of deregulatory actions already taken by the Commission, or is not being utilized by the public to a sufficient degree to warrant retention.

Provisions No Longer Necessary Due to the Deregulation of Cable Television

14. Section 76.305(a)(1) of the Commission's Rules requires maintenance in a system's public inspection file of the system's franchise application and all related exhibits, amendments and other documents. However, we have eliminated the mandatory aspect of the Commission's franchise standards.[21] For that reason, we no longer require that cable operators file copies of their franchises or other appropriate authorizations from state or local authorities with the Commission.[22] Similarly, the retention of franchise material should not be the subject of a Commission requirement. In short, the public no longer participates, at the Commission level, in matters affecting the franchising process. Nor did the Cable Act assign to the Commission any responsibility to regulate or otherwise supervise the franchise procedure either initially or at renewal.[23] Consequently, § 76.305(a)(1) does not serve any federal purpose sought to be achieved either by the Commission or the Congress. Therefore, we are eliminating it.

15. Section 76.305(a)(2) requires that a system maintain its Certificate of Compliance application, all exhibits, documents and correspondence with the FCC relating to such application, and any notifications to add television signals filed pursuant to former § 76.11(a), in its public file. The Commission, however, no longer maintains a Certificate of Compliance process.[24] Moreover, in 1978, § 76.11(a) was deleted and its substantive provisions were incorporated in a new § 76.12.[25] Consequently, § 76.305(a)(2) serves no purpose as the documents required for filing are no longer in existence, and we are therefore eliminating it.

16. One of the provisions of § 76.305(a)(7) directs cable systems to keep in their public file the information concerning subscription cablecasting required to be kept by § 76.225(a). However, the Commission's subscription cablecasting rules were invalidated by the Court of Appeals in 1977,[26] and § 76.225 was subsequently deleted by Commission action.[27] Thus,

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[14] UCC, alleging examples of non-compliance or of incomplete compliance by cable systems with the requirements of § 76.305, asserted that there is a need for increased enforcement of this rule to assure that the public has access to the requisite information.

[15] Commenters also argued that it was more useful to maintain a central public inspection file at the office of the local authority than in the business office of the system itself.

[16] *N.J.S.A.* 48:5A–1 *et seq.*

[17] *N.J.A.C.* 14:17–1 *et seq.*, and 14:18–1 *et seq.*

[18] Finally, OCT suggested that the Commission clearly state in its rule making that changes in federal rules do not excuse cable systems from compliance in full with state and local public information file regulations.

[19] *See* n.32 *infra.*

[20] Only one commenter, Buckeye Cablevision, expressed concern that in the absence of §§ 76.305 and 76.306, as well as other cable regulations, local regulation would become more extensive and burdensome than Commission regulation had been.

[21] Although the Commission had retained a franchise fee limitation, Section 622 of the Cable Act now governs the matter.

[22] *Report and Order* in Docket No. 21002, n.6 *supra.*

[23] Indeed, as we noted earlier, the Cable Act comports completely with the Commission's reliance on local authorities in franchise matters and other local incidents of cable service. *See* para. 6, *supra.*

[24] *See* n.7 *supra.*

[25] *See* n.7 *supra.* Recordkeeping requirements for signal carriage notifications (registration statements) that were now to be filed pursuant to the new § 76.12 were specified in a new § 76.305(a)(9) adopted at the same time as § 76.12. The reference to former § 76.11(a), however, was never deleted from § 76.305(a)(2). The signal carriage notification aspects of § 76.12 and § 76.305(a)(9) are discussed at paragraph 17, below.

[26] *See Home Box Office, Inc.* v. *FCC*, 567 F.2d 9 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 829 (1977).

[27] *Order*, 67 FCC 2d 252 (1978).

the information provided by these records is of no current utility.[28]

17. Section 76.305(a)(9) requires that each cable system keep registration statements filed pursuant to § 76.12 in its public inspection file. These statements, containing such information as the system operator's name, address, community served and system signal carriage data, were filed on two distinct occasions: (1) Whenever a system commenced operation and (2) whenever the system added a broadcast television station to its signal carriage complement. The obligation to file a registration statement for signal carriage changes, however, was recently eliminated,[29] both because the Commission no longer restricts cable systems' importation of distant television signals,[30] and because signal carriage data are otherwise available through the cable system annual report (FCC Form 325). Since future signal carriage registration statements will not be filed and the information in past statements is already, or soon will be, reflected in systems' annual filings, no purpose is served by a recordkeeping requirement concerning such registration statements. The relevant portion of § 76.305(a)(9) will, therefore, be eliminated.[31]

18. The *Notice* also proposed deletion of § 76.306, although it is not one of the public inspection file requirements. This regulation requires cable television operators to retain records of subscribers served and to make them available to the Commission upon request. This provision was adopted in order to assure that information would be available to assist the Commission in verifying that the annual fees owed by cable television systems to the Commission were properly calculated. These fees had been calculated on a per subscriber basis. Since such fees are no longer collected,[32] retention of this recordkeeping requirement serves no purpose. Therefore, it will be eliminated.

Other Provisions of § 76.305

19. The remaining provisions of § 76.305 raised for consideration by the *Notice* are not related to or dependent on substantive rule sections that have been eliminated by prior Commission action.[33] We are nonetheless persuaded that these provisions should also be deleted. Our conclusion in this regard is prompted by the strong and essentially uncontroverted evidence in this proceeding that the costs of maintaining these records are substantial, yet the public benefit, measured by actual use, has been quite small.

20. As to the costs of maintaining the records required by the above provisions of § 76.305, commenters have asserted that the financial burden is high. The costs entail money expended for such items as gathering and compiling the data, photostating and mailing it to affiliated systems, and providing office space for retention. We have no reason to question this assertion, and it appears reasonable. Moreover, every indication has been given that the public does not avail itself of the information thus provided. Not only are these records rarely put to any practical use, they are rarely even inspected. Further, the costs of maintaining them are likely to be eventually passed on to subscribers and they thus impose an unwarranted burden on the public as well as cable operators.[34]

21. Moreover, much of the information which, by our action here, will no longer be placed in the public file, will continue to be accessible in the Commission's records.[35] Thus, the data will be available, but the cost to the cable operator and subscriber of such availability will be greatly reduced. Further, the most significant information in the public inspection file relates to matter primarily of local regulatory concern. Such information either already is locally available, or easily can be made available for public use by local authorities, and nothing herein or in the Cable Act precludes such local rules where they are deemed necessary to meet local requirements.[36]

22. Our decision in this matter is also in keeping with a clear congressional mandate in the area of federal recordkeeping. Recent Congressional legislation unequivocally requires us to closely scrutinize rules that impose costly recordkeeping requirements and, where the public interest benefits of such rules are not commensurate with their costs, to eliminate them.[37]

Conclusion

23. In sum, we believe that deleting the subject provisions of §§ 76.305 and 76.306 of the Commission's Rules is fully warranted. Given our broad deregulation of cable television, the minimal level of utilization of the subject files by the public, and the substantial costs associated with their maintenance, we can no longer justify

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[28] The provision of § 76.305(a)(7) concerning network program nonduplication agreements is addressed in paras. 19–21 *infra*.

[29] *Order* in MM Docket No. 83–1292, 49 FR 27152 (July 2, 1984).

[30] *See* n.10 *supra*.

[31] Registration statements are still required to be filed by a system upon first providing service to subscribers. As to the need to retain § 76.305(a)(9) to ensure the availability of these statements, see paras. 19–21, *infra*.

[32] The Commission suspended collection of annual fees in all services effective January 1, 1977. *Order*, 41 FR 56646 (December 29, 1976). This action was a direct result of the U.S. Supreme Court's decision in *National Cable Television Association, Inc. v. United States*, 415 U.S. 316 (1974), which held that the Commission's rationale for setting the annual CATV fee was not adequately clear. The Court remanded the matter to the Commission for further proceedings. A related series of decisions handed down by the Court of Appeals for the District of Columbia Circuit in 1976 invalidated the Commission's grounds for establishing a fee schedule. For a summary of these cases, *see Notice of Inquiry* in Docket No. 78–316 (Fee Refunds and Future FCC Fees), 69 F.C.C. 2d 741 (1978). *See also Second Notice of Inquiry* in that proceeding, 44 FR 48287 (August 10, 1979). These *Notices* commenced a proceeding to determine appropriate fee refund and future fee schedules, but no subsequent action on this matter has been taken by the Commission.

[33] The specific paragraphs of § 76.305 at issue are:

(a)(3) Petitions and requests filed by the system with the Commission.

(a)(4) FCC Forms 325.

(a)(6) Applications for transfer of control of CARS stations.

(a)(8) Orders, decisions and rulings by the Commission concerning the system.

Also considered here are that part of paragraph (a)(7) concerning network program nonduplication agreements and paragraph (a)(9) insofar as it requires retention of registration statements filed by cable systems upon commencing operation. The provision of § 76.305(a)(7) requiring that cable systems keep in their public file information concerning subscription cablecasting was discussed in para. 16 *supra*. Section 76.305(a)(9) as it pertains to signal carriage registration statements was discussed in para. 17 *supra*.

[34] *See Report and Order*, 48 FR 39222 (August 30, 1983), in which the Commission eliminated the Cable Television Annual Financial Report. In that decision, we noted that the costs incurred by collecting the financial data were too extensive in relation to the negligible benefits conferred. We also found that the public would not be benefitted since operators' costs of compliance would be passed on to subscribers.

[35] The information required to be placed in the cable operator's local file by § 76.305(a)(3), (4), (6) and (8) is also filed with the Commission and is accessible to the public under §§ 0.451 through 0.461 of the Commission's Rules. Members of the public may obtain documents by mail directly from the International Transcription Service ("ITS"), 4006 University Drive, Fairfax, Virginia 22030. Pursuant to a contract negotiated between ITS and the Commission, ITS is authorized to duplicate and sell to the public all documents maintained by the Commission and available for inspection under the Freedom of Information Act (5 U.S.C. 552) and the Rules and Regulations of the Federal Communications Commission.

[36] In the *Notice*, the Commission sought comment on whether a cable operator should be required to provide the franchising authority with a copy of any filing or communication to or from the Commission. All parties addressing this suggestion opposed it unequivocally. Since we agree with their argument that such a rule would constitute an inappropriate intrusion into the domain of an independent authority which is best able to make a determination of its own regulatory needs, we are rejecting this alternative.

[37] *See* Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (Supp. 1984), and Federal Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (Supp. 1984).

the industry-wide imposition of these recordkeeping requirements. This action is fully consistent with the provisions of the recently enacted Cable Communications Policy Act of 1984.

24. Pursuant to the requirements of Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604 *et seq.*, a Final Regulatory Flexibility Analysis has been prepared and is set forth in the attached Appendix A.

25. Authority for the action taken herein is contained in sections 4 (i) and (j) and 303(r) of the Communications Act of 1934, as amended.

26. Accordingly, it is ordered, That the Commission's rules are amended, effective March 18, 1985, as described above and set forth in the attached Appendix B.[26]

27. It is further ordered, That the Secretary of the Commission SHALL CAUSE this *Report and Order* to be printed in the FCC Reports.

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

29. For further information concerning this proceeding, contact Belford V. Lawson, Mass Media Bureau, Washington, D.C. 20554, (202) 632-7792.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A—Regulatory Flexibility Analysis

I. Need for and Purpose of Rule

1. The Commission has concluded that most of the cable television public inspection file requirements are unnecessary either because of the deregulation of cable television or because they are otherwise unwarranted.

2. The Commission also concluded that cable subscriber records no longer need to be retained. Since the Commission no longer charges cable systems a fee based on the number of subscribers, this information is unnecessary.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

3. Except for one commenter, all the parties supported eliminating the relevant regulations. Data and other evidence submitted by these commenters indicated the high cost of compliance with the public inspection file requirements, as well as the negligible use of the files by the public. Commenters also argued that the deregulation of cable television eliminated the need for the imposition at the federal level of many of these requirements.

4. Only one commenter, the United Church of Christ, objected to the deletions, arguing that state/local authorities were disinterested in requiring maintenance of public inspection files, lacked capacity to regulate comprehensively and reasonably in this area, and lacked the means to enforce such filing requirements effectively. A comment by the New Jersey Office of Cable Television disputes this view.

B. Assessment

5. The Commission concludes that the arguments favoring deletion of the pertinent rules have merit. Given the general deregulation by the Commission of cable television, no current or anticipated federal regulatory goals exist to which the use of many of the records in the manner originally intended might contribute. Also, the general level of utilization of the files by the public appears to be at best minimal, thus not counterbalancing the high costs of maintaining those records. The deletion is consistent with the provisions of the Cable Communications Policy Act of 1984.

C. Changes Made as a Result of Such Comments

6. Responding to the comments, we have eliminated the pertinent requirements.

III. Significant Alternatives Considered and Rejected

7. The *Notice* sought comment on whether cable systems should be required to send to their state or local franchising authority copies of all correspondence between the systems and the Commission. We rejected this alternative as impinging on the jurisdiction of state/local authorities. These governmental bodies are best able to make a determination of their own regulatory needs.

Appendix B

PART 76—[AMENDED]

1. 47 CFR 76.305 is amended by removing paragraphs (a)(1), (2), (3), (4), (5), (6), (8) and (9); and by redesignating paragraph (a)(7) as paragraph (a) and revising it (paragraph (a)) and paragraph (c) to read as follows:

§ 76.305 Records to be maintained locally by cable system operators for public inspection.

(a) *Records to be maintained.* The operator of every cable television system having 1000 or more subscribers shall maintain for public inspection a file containing a copy of all records which are required to be kept by § 76.205(d) (origination cablecasts by candidates for public office); § 76.221(f) (sponsorship identification); and § 76.311(j) (equal employment opportunities).

* * * * *

(c) The records specified in paragraph (a) of this section shall be retained for the periods specified in §§ 76.205(d), 76.221(f) and 76.311(j).

* * * * *

§ 76.306 [Removed]

2. 47 CFR 76.306 is removed in its entirety.

Appendix C—Parties Filing Comments

Action CATV, Inc.
Allen's TV Cable Service, Inc., et al.
American Associates et al.
Buckeye Cablevision et al.
National Cable Television Association.
New Jersey Office of Cable Television, Board of Public Utilities, Department of Energy, State of New Jersey.
North Carolina CATV Association, Inc.
Service Electric Cable TV, Inc.
Storer Communications, Inc.
Viacom International, Inc.
Office of Communication, United Church of Christ.

[FR Doc. 85-4027 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

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[26] It appears that the reference in § 76.305(a)(7) to § 76.205(c) as the rule provision requiring retention of records relating to origination cablecasts by candidates for public office contains an inadvertent error. Section 76.205(c) formerly referred to such records but was redesignated as § 76.205(d) in the *Report and Order* in BC Docket No. 78-103, 68 FCC 2d 1049 (1978). Section 76.305(a)(7), however, was never amended to reflect this redesignation. Accordingly, in amending §76.305 pursuant to our decision herein, we are also amending that provision to incorporate the correct reference to § 76.205(d) of the Rules.

47 CFR Part 87

[PR Docket No. 84-760; FCC 85-42]

Requirements for Restricted Radiotelephone Operator Permits; Amendment

Correction

In FR Doc. 85-3378 beginning on page 5590 in the issue of Monday, February 11, 1985, make the following correction:

On page 5592, in the third column, in the paragraph immediately under the heading PART 87—AVIATION SERVICES, "Section 83.139" should read "Section 87.139".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. LI-7, Notice No. 2]

Railroad Locomotive Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending the Railroad Locomotive Safety Standards (49 CFR Part 229) to eliminate or reduce certain reporting and recordkeeping requirements that are no longer necessary for safety. This action is taken by FRA to reduce the Federal paperwork burden in accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-611).

EFFECTIVE DATE: This final rule becomes effective March 21, 1985.

FOR FURTHER INFORMATION CONTACT:
Principal Program Person: Philip Olekszyk, Office of Safety, FRA, Washington, D.C. 20590; Telephone (202) 426-0897.
Principal Attorney: Michael E. Chase, Office of Chief Counsel, FRA, Washington, D.C. 20590; Telephone (202) 426-8285.

SUPPLEMENTARY INFORMATION: On March 31, 1980, FRA published in the **Federal Register** a comprehensive revision of its rules pertaining to railroad locomotive inspection (45 FR 21093). The revision established a new Part 229 in Title 49 of the Code of Federal Regulations (CFR), applicable to all locomotives except those propelled by steam power. The revision resulted in the consolidation or elimination of several reporting forms and a substantial reduction in the paperwork burden.

Since the revision in 1980, FRA has continued to review its reporting and recordkeeping requirements with an eye to reducing or eliminating requirements not necessary to the locomotive safety program. This continuing review is to further the purposes of the Paperwork Reduction Act of 1980, and is being carried out in consultation with the Office of Management and Budget (OMB).

On May 11, 1984, FRA issued a Notice of Proposed Rulemaking (NPRM) to eliminate or reduce certain reporting and recordkeeping requirements no longer necessary to the locomotive safety program (49 FR 20029). FRA received only two brief comments on the NPRM, both supportive of the proposed changes. Hence, FRA is adopting the precise language in the NPRM for the final rule.

In addition, the final rule includes a new section, § 229.4, that sets forth the OMB control number for the information collection requirements contained in Part 229. This addition does not impose any burden on any person. It merely provides notice of the OMB approval number.

Paperwork Reduction Act: Information collection requirements contained in this regulation (§§ 229.21 and 229.23) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2130-0004.

Section-By-Section Analysis

Section 229.4 Information Collection

Section 229.4 is a new section that, in paragraph (a), displays the current control number assigned by OMB, 2130-0004, for the information collection requirements in Part 229, and in paragraph (b), lists the sections in Part 229 that contain information collection requirements.

Section 229.15 Final Report

Prior section 229.15(a) required a railroad to file Form FRA F 6180-49A with FRA for a locomotive at the time of its retirement from service. While this information could have been used to keep a count of the number and types of locomotives in service, FRA has not been so using the information. Moreover, this type of information is available from other sources. Hence, the final rule deletes paragraph (a) of § 229.15.

Prior § 229.15(b) required that a notation be made on Form FRA F 6180-49A when a locomotive steam generator is permanently retired. FRA estimates that fewer than fifty steam generators are in use; procedures in section 229.23(b) ensure that a retired steam generator poses no safety risk. Hence, the final rule deletes paragraph (b) of § 229.15.

Section 229.21 Daily Inspection

Prior § 229.21 required a one-year retention period for locomotive daily inspection reports. Proper records of the daily inspection are necessary for compliance purposes, safety assessments, and post-accident investigation. However, FRA does not believe a one-year retention period is necessary for safety. A 92-day interval, which corresponds to the maximum time period between periodic inspections under § 229.23, will result normally in retention of the daily inspection reports at least as far back as the last periodic inspection. Although the reports might not be available if a locomotive is out of service for an extended period (as was the case under the prior rule), FRA believes the need for a uniform retention period outweighs any potential problems. Hence, the final rule reduces the retention period to 92 days.

Section 229.23 Periodic Inspection: General

Prior § 229.23 contained several unnecessary recordkeeping requirements. Paragraph (e) of the prior rule required that Form FRA F 6180-49A from each locomotive be certified by the railroad official responsible for the locomotive and be filed with FRA. As proposed, the final rule deletes the requirement to file with FRA and requires only that the railroad retain the form for one year. The final rule also revises the certification provision to require only that the railroad official responsible for the locomotive sign the form. The certification and filing requirements were retained in the 1980 revision of the Locomotive Safety Standards only because they were express requirements in the Locomotive Inspection Act (45 U.S.C. 29). They were eliminated as statutory requirements by the Federal Railroad Safety Authorization Act of 1980 (Pub. L. 96-423).

Paragraph (f) of the prior rule required that each railroad maintain a secondary record of the information on Form FRA F 6180-49A and retain the secondary records for at least two years. As proposed, the final rule eliminates the requirement to retain the secondary record once the Form FRA F 6180-49A for that locomotive is removed and filed in the office of the mechanical officer responsible for the locomotive, provided the information on the form is legible. Thus, the two-year retention period for the secondary record will be cut in half. Generally, retention of the secondary record is required only during the year when the Form FRA F 6180-49A is on the locomotive.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. It will not have an adverse or significant economic impact on any entity, including small entities, because it does not place any new requirements or burdens on the public and because the changes will have little economic consequence for any small entity. Accordingly, the agency certified that the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 95-354, 94 Stat. 1164, September 13, 1980). It does not constitute a major Federal action significantly affecting the quality of the environment and, therefore, an environmental impact statement is not required. The final rule is considered to be a non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). In its analysis of the paperwork burden, FRA estimates that approximately 725 person hours and $27,000 will be saved annually as a result of the rule. In addition, FRA estimates a one-time saving of $145,000.

List of Subjects in 49 CFR Part 229

Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, Part 229 of Title 49, Code of Federal Regulations, is amended as follows:

1. A new § 229.4, is added to read as follows:

§ 229.4 Information Collection.

(a) The information collection requirements in this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511, and have been assigned OMB control number 2130-0004.

(b) The information collection requirements are found in the following sections:

(1) Section 229.9
(2) Section 229.17
(3) Section 229.21
(4) Section 229.23
(5) Section 229.27
(6) Section 229.29
(7) Section 229.31
(8) Section 229.33
(9) Section 229.55
(10) Section 229.103
(11) Section 229.105
(12) Section 229.113

§ 229.15 [Removed]

2. 49 CFR 229.15 is removed in its entirety.

3. Section 229.21 is amended by revising the seventh sentence in paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 229.21 Daily inspection.

(a) * * * The report shall be filed and retained for at least 92 days in the office of the carrier at the terminal at which the locomotive is cared for. * * *

(b) * * * The report shall be filed in the office of the carrier at the place where the inspection is made or at one central location and retained for at least 92 days.

* * * * *

4. Paragraphs (e) and (f) of § 229.23 are revised to read as follows:

§ 229.23 Periodic inspection: General.

* * * * *

(e) At the first periodic inspection in each calendar year the carrier shall remove from each locomotive Form FRA F 6180-49A covering the previous calendar year. If a locomotive does not receive its first periodic inspection in a calendar year before April 2 because it is out of use, the form shall be promptly replaced. The Form FRA F 6180-49A covering the preceding year for each locomotive, in or out of use, shall be signed by the railroad official responsible for the locomotive and filed as required in § 229.23(f). The date and place of the last periodic inspection and the date and place of the last test performed under §§ 229.27, 229.29, and 229.31 shall be transferred to the replacement Form FRA F 6180-49A.

(f) The mechanical officer of each railroad who is in charge of a locomotive shall maintain in his office a secondary record of the information reported on Form FRA F 6180-49A under this part. The secondary record shall be retained until Form FRA F 6180-49A has been removed from the locomotive and filed in the railroad office of the mechanical officer in charge of the locomotive. If the Form FRA F 6180-49A removed from the locomotive is not clearly legible, the secondary record shall be retained until the Form FRA F 6180-49A for the succeeding year is filed. The Form F 6180-49A removed from a locomotive shall be retained until the Form FRA F 6180-49A for the succeeding year is filed.

(Secs. 1, 2, 5, 9, 36 Stat. 913, 914 (45 U.S.C. 22, 23, 28, 34); sec. 6(e) and (f), 80 Stat. 939, 940 (49 U.S.C. 1655 (e) and (f)))

Issued in Washington, D.C. on February 11, 1985

John H. Riley,
Administrator.

[FR Doc. 85-3994 Filed 2-15-85; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 655

[Document No. 31220-244]

Atlantic Mackerel, Squid, and Butterfish Fisheries

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

ACTION: Notice of postponement.

SUMMARY: Section 655.22(b) of the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) requires the Secretary of Commerce to publish annual specifications by February 1 of each year. This notice informs the public that preliminary initial annual specifications of the respective optimum yields, domestic annual harvest, domestic annual processing, joint venture processing, total allowable levels of foreign fishing and Reserves (if any) for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish will be postponed from date of publication of this notice until March 14, 1985. The postponement will allow the Mid-Atlantic and New England Fishery Management Councils and NMFS adequate time to review new information on the domestic harvesting and processing capability and formulate specifications that accurately reflect current and projected harvesting and processing capacity during the upcoming fishing year.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde (Plan Coordinator), 617-281-3600, extension 273.

Dated: February 13, 1985.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-4059 Filed 2-13-85; 4:41 pm]

BILLING CODE 3510-22-M

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab Off Alaska; Notice of Season Closures

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

ACTION: Notice of season closures.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the optimum harvest level of Tanner crab in two sections of the Kodiak District and a portion of the South Peninsula District of Registration Area J, have been achieved. Fishery closures are necessary to protect Tanner crab stocks in these districts. The Secretary of Commerce therefore issues this notice of closure to fishing for Tanner crab by vessels of the United States effective February 10, 1985, for the Southeast Section of Kodiak District, effective February 13, 1985, for the South Peninsula District west of 161°15'W. longitude and north of 54°40'N latitude, and effective February 14, 1985, for the North Mainland Section of Kodiak District. This action is intended as a management measure to conserve Tanner crab stocks.

DATE: This notice is effective February 13, 1985. Public comments on this notice of closure are invited until February 28, 1985.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at (1) the NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

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

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustment, by field order, of season and area openings and closures. Implementing rules at 50 CFR 671.27(b) specify that these orders will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(f) establishes six districts within Registration Area J in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached. One of the districts is the Kodiak District, which is further subdivided into eight sections also to prevent overfishing of individual Tanner crab stocks. Another is the South Peninsula District. Desired harvest levels are established on the basis of pot and trawl index surveys conducted by the Alaska Department of Fish and Game (ADF&G). The desired harvest levels for 1985 were based on a pot index survey in the Southeast Section and a trawl survey in the North Mainland Section in the Kodiak District; and on pot and trawl index surveys in Pavlof Bay and pot index surveys in the remainder of the South Peninsula District.

Reasons for the closures follow:

Southeast Section. The 1985 fishing season for the entire Kodiak Peninsula began on January 15. Approximately 25 vessels delivered an estimated 1 million pounds of crab through February 5. The catch of crabs per pot (CPUE) has declined from about 55 to less than 10 crabs per pot. The effort throughout this section was uniform. Most of the catch, however, has been concentrated in the Horse's Head, South Sitkalidak and Towers areas of this section. The declining CPUE indicates that the stock is at a low level and substantiates the results of the preseason survey. The desired harvest level of 1.3 million pounds of Tanner crab from the Southeast Section was achieved on February 10, 1985.

North Mainland Section. Approximately 32 vessels delivered an estimated 1.5 million pounds of crab through February 5. The CPUE has declined from about 50 to 10 crabs per pot. Wind and tide conditions have kept buoys under the surface, preventing gear retrieval. Tide conditions will be favorable for gear retrieval beginning approximately February 10. It is estimated that the desired harvest level of 1.9 million pounds of Tanner crab from the North Mainland Section will be achieved on February 14, 1985.

South Peninsula District. The 1985 fishing season for the entire South Peninsula began on January 15. In the portion of the South Peninsula District west of 161°15' W. longitude and north of 54°40' N. latitude, 34 vessels delivered approximately 1.61 million pounds of crab through February 3. This area encompasses the major Tanner crab grounds of the South Peninsula District. Preseason harvest forecasts for Pavlof, Ikatan, Morzhovoi, Belkofski, and Cold Bay within this area indicated 1.38 million pounds or 25 percent would be available. Fishery performance has justified a higher catch of 2.10 million pounds that will be reached by February 13, 1985. However, the catch of crabs per pot (CPUE) has declined from an average of about 50 to 10 crabs per pot. This rapid decline indicates that stocks are insufficient to support this fishery through the scheduled April 30 closure date.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. Actual conditions of Tanner crab stocks in the above locations are substantially different from conditions anticipated at the beginning of the fishing year; and

2. These differences reasonably support the need to protect those Tanner crab stocks by closing the Southeast and North Mainland Sections of the Kodiak District as defined in § 671.26(f)(1)(i) and the area west of 161°15' W. longitude and north of 54°40' N. latitude in the South Peninsula District. The Southeast Section is therefore closed to all fishing for Tanner crab from 12:00 noon, AST, February 10, 1985; the designated area of the South Peninsula District is closed effective 12:00 noon AST, February 13, 1985; and the North Mainland Section is closed effective 12:00 noon, AST, February 14 1985; all of which will remain closed until 12:00 noon, ADT, April 30, 1985, in the Kodiak District and May 15, 1985, in the South Peninsula District at which time the closures of these areas prescribed in § 671.26(f)(2)(i) and (ii) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through Alaska Department of Fish and Game procedures, under 50 CFR 671.27(a)(2). Public comments on this notice of closure may be submitted to the Regional Director at the address stated above for 15 days immediately following the effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this field order's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the above sections will be subject to damage by overfishing unless this order takes effect promptly. The Agency therefore finds for good cause that advance notice and public comment of this order are contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of regulations specified at 50 CFR 671.27, and complies with Executive Order 12291. It is not subject to the requirements of the Regulatory Flexibility Act. In addition, it does not contain any collection of information request, as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 50 CFR Part 671

Fisheries.

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

Dated: February 13, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-4058 Filed 2-13-85; 4:54 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 33
Tuesday, February 19, 1985

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 LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Eligibility for Final Approval of State Plans and Proposed Revisions to State Staffing Benchmarks in Arizona, Iowa, Kentucky, Maryland, Minnesota, Tennessee, Utah, and Wyoming; Proposed Revisions to State Staffing Benchmarks in Indiana, North Carolina, South Carolina, and Virginia

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Extension of the period for written comments.

SUMMARY: The Period for submission of written comments on proposed revisions to compliance staffing benchmarks for 12 State plans is extended to March 22, 1985. The period for submission of written comments and requests for hearings on whether final approval should be granted to 8 of these States, is also extended to March 22, 1985.

DATE: Written comments and requests for hearings, where applicable, must be received by March 22, 1985. For those issues for which requests for a hearing were solicited by February 20, 1985, the period for such requests is extended to March 22, 1985.

ADDRESS: Written comments and requests for hearings, where applicable, should be submitted in quadruplicate to the Docket Officer, Room N-3670, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-7894.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, D.C. 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: On January 16, 1985, (50 FR 2440) notice of proposed revisions to compliance staffing benchmarks for 12 States which operate approved State plans was published in the **Federal Register.** Written comments were requested by February 20, 1985, on revised benchmarks for the following States: Wyoming (Docket No. T-006); Arizona (T-007); Iowa (T-008); Kentucky (T-009); Maryland (T-010); Minnesota (T-011); Tennessee (T-012); Utah (T-013); Indiana (T-014); North Carolina (T-015); South Carolina (T-016); and Virginia (T-017). The January 16 **Federal Register** document also gave notice of the eligibility for final approval of eight of these State plans (Wyoming, Arizona, Iowa, Kentucky, Maryland, Minnesota, Tennessee, and Utah) and requested written comments and requests for hearings to be submitted by February 20, 1985.

The period for written comments, and for hearing requests on those issues as to which such requests are solicited in the January 16 **Federal Register** notice, is hereby extended to March 22, 1985.

(Sec. 18, 84 Stat. 1608 (20 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9-83 (43 FR 35736))

Signed at Washington, D.C., this 13th day of February 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-4067 Filed 2-15-85; 8:45 am]

BILLING CODE 4510-26-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would establish rules for valuing plan assets and plan benefits under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under section 4219(c)(1)(D) of ERISA, a plan from which all or substantially all contributing employers have withdrawn is required to allocate unfunded vested benefits among the withdrawing employers, for which purpose the amount of unfunded vested benefits must be determined. Under section 4281 (b) of ERISA, a multiemployer plan which terminates because of the withdrawal of all employers or the cessation of the obligation to contribute by all employers must value its assets and nonforfeitable benefits each year to determine whether and to what extent benefits must be reduced. The effect of this regulation if adopted would be prescribe methods for valuing plan assets (including claims for withdrawal liability) and benefits in plans which are subject to section 4219(c)(1)(D) or section 4218 (b) of ERISA.

DATES: Comments must be received on or before April 16, 1985.

ADDRESSES: Comments should be addressed to Director, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006. Written comments will be available for public inspection at the PBGC, Suit 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), 2020 K Street, NW., Washington, D.C. 20006; (202) 254-4862. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: .

Background

Sections 4219(c)(1)(D) and 4281 of ERISA deal with certain circumstances in which all employers have withdrawn from a multiemployer plan, or in which substantially all employers have withdrawn pursuant to an agreement or arrangement to withdraw. Each constitutes a "mass withdrawal." If all employers have withdrawn, then, under section 4041A(a)(2) of ERISA, the multiemployer plan is terminated. Section 4281 deals only with mass withdrawals resulting in plan termination. Section 4219(c)(1)(D) deals with both mass withdrawl terminations and other mass withdrawals.

When a plan incurs a mass withdrawal, section 4219(c)(1)(D) mandates the allocation of the plan's total unfunded vested benefits among the employers involved in the mass withdrawal in a manner not inconsistent with PBGC regulations. Under section 4213(c) of ERISA, "unfunded vested benefits" is defined as the excess of nonforfeitable benefits over plan assets. Thus section 4219(c)(1)(D) requires a valuation of the plan's assets and nonforfeitable benefits. In this context, plan assets include outstanding claims for withdrawal liability.

Similarly, when a mass withdrawal termination brings a multiemployer plan within the ambit of section 4281 of ERISA, section 4281(b) requires an annual valuation of plan assets and nonforfeitable benefits in accordance with PBGC regulations. Here, too, outstanding claims for withdrawal liability are included as plan assets.

This proposed regulation provides rules for valuing plan assets and benefits for purposes of the valuations required under both sections 4219(c)(1)(D) and 4281(b).

A mass withdrawal significantly changes a multiemployer plan's financial circumstances. A plan that experiences a mass withdrawal loses most or all of its contribution base. If the plan is substantially underfunded, its claims for withdrawal liability will probably constitute a very significant—sometimes its most significant—class of assets. At the same time, some plan participants may well be able, and motivated, to elect benefit starting dates which increase the value of their benefits, and thus the plan's cost of providing those benefits.

The valuation rules applied in such situations will be a factor in determining whether employers' liabilities are higher or lower, whether participants' benefits are maintained or reduced, and ultimately, whether the plan presents a claim against the multiemployer insurance system.

The proposed regulation reflects a recognition that a multiemployer plan's usual valuation methods cannot be uncritically applied in such significantly changed circumstances, and a further recognition that fairness to all parties—the plan's contributors (whether withdrawn or still contributing), its participants and beneficiaries, and other premium payers under the insurance system—demands consistency in valuing plan assets and liabilities. Accordingly, just as uniform valuation methods are prescribed for terminated single-employer plans under Parts 2619 and 2620 of PBGC's regulations, this proposed regulation prescribes uniform valuation methods for multiemployer plans which undergo mass withdrawal and therefore fall within the purview of sections 4219(c)(1)(D) and 4281 of ERISA.

A basic principle underlying the valuation rules for terminated single-employer plans is that the values placed on plan assets and benefits should reflect current market values. That same principle is fundamental to the valuation rules proposed for multiemployer plans in this regulation. To a great extent, the particular valuation methods used for terminated single-employer plans are appropriate for multiemployer plans under sections 4219(c)(1)(D) and 4281(b), and to that extent those rules have been incorporated in the proposed regulation. In several respects, however, specific single-employer rules are not appropriate in the multiemployer plan context.

For example, assumptions regarding incidence of early retirement are based on predictions of human behavior in a given situation. The situation facing participants in a multiemployer plan which has undergone mass withdrawal will generally be significantly different from that which faces participants in a terminated single-employer plan. In particular, termination of employment with a particular employer is generally not a prerequisite to the commencement of multiemployer plan benefits. Furthermore, enforcement of multiemployer plan rules requiring the suspension of benefits to retirees who return to work may entail considerable administrative difficulties. As a practical matter, therefore, multiemployer plan participants have greater latitude in selecting their retirement dates than single-employer plan participants. Accordingly, the early retirement assumption in the proposed regulation, which is discussed in detail later in this preamble, differs from the corresponding assumption for terminated single-employer plans.

The structure of the interest assumption in the proposed regualtion is another example of departure from the specific details of the single-employer plan rules. Under Subpart C of Part 2619 of PBGC's regulations, benefits in pay status are valued at a single rate of interest which is assumed not to change; deferred benefits are valued at the same rate as of the benefit starting date, and then discounted back to the present at rates that vary with the length of the deferral period. This type of interest assumption facilitates the valuation of benefits "by hand" (*i.e.*, using nothing more sophisticated than a desk calculator) from tables of relatively small bulk, and is suitable for one-time calculations for plans which are generally small. It represents an appropriate compromise between actuarial theory (which, in today's economy, calls for an interest assumption which decreases over time) and administrative convenience.

Multiemployer plans, on the other hand, are relatively larger. Because of economies of scale, valuations by computer are not merely cost-justified but, in general, a financial, as well as logistical, necessity. Thus, administrative convenience does not demand the same kind of simiplification as in the single-employer case. Furthermore, the interest rate prescribed for multiemployer plans will be used to value outstanding claims for withdrawal liability, as well as benefits. It is therefore important to adopt an interest assumption which promotes consistency in the valuation of benefits and assets, something which would not be achieved using the single-employer interest rule. (This issue is discussed in greater detail later in this preamble.) Therefore, while the interest assumption in the proposed regulation, discussed in detail below, is designed to achieve the same overall values as those obtained under the single-employer rules, it differs structurally from the assumption used for single-employer plans.

The Regulation—General

Section 2676.2 states the general rule that when plan valuations are required under section 4219(c)(1)(D) or section 4281(b), they must conform to the requirements of this regulation.

The valuation date to be used for purposes of section 4219(c)(1)(D), which is prescribed by § 2676.2(a), is the end of the plan year in which the mass withdrawal occurs. A mass withdrawal termination occurs when the last employer withdraws, or on the first day of the first plan year in which no employer is obligated to contribute. A mass withdrawal of substantially all employers occurs during the year as of which the plan sponsor determines that substantially all employers have withdrawn.

Section 2676.2(b) prescribes annual valuation dates for purposes of section 4281(b). The first such valuation date is the end of the plan year in which the plan termination occurs (the same date as prescribed for a section 4219(c)(1)(D) valuation). Subsequent valuation dates fall on the anniversaries of the first valuation date.

Valuation of Benefits

Subpart B of the regulation deals with the valuation of benefits. The rules in this subpart cover the determination of the benefit payment option and retirement date to be valued (§2676.12), actuarial valuation methods (§2676.13), mortality and interest assumptions (§§ 2676.14 and 2676.15), and an alternative valuation rule for plans closing out with sufficient assets to provide for all nonforfeitable benefits (§ 2676.16).

Section 2676.12(a) restates the rule provide in Subpart C of Part 2619 regarding the form of benefit to be valued. This rule, which has significance only if different benefit forms are not actuarially equivalent, assumes that each participant knows what forms of benefit he can receive and either wants the form payable in the absence of an election or has elected the form he does want. Where annual valuations are made under section 4281(b) of ERISA, participants may change their benefit elections between successive valuations, and § 2676.12(a) makes clear that the plan sponsor must take any such changes into account in determining the forms of benefits to be valued.

Section 2676.12(b) provides two alternatives rules regarding the incidence of early retirement. The presumptive rule of paragraph (b)(1) reflects the view that participants in plans which have undergone mass withdrawal will take advantage of subsidized early retirement benefit levels in timing their benefit starting dates. In other words, participants will choose the benefit starting date that maximizes the value of their benefit. In many plans, however, such subsidies are merely nominal; for the sake of simplicity, early retirement reduction factors frequently do not accurately reproduce true actuarial reduction factors, and thus produce small "subsidies" which vary from age to age. Therefore, paragraph (b)(2) provides an alternative rule which may be used at the plan sponsor's option, instead of the presumptive rule, where the level of subsidy is not large enough to have an effect on most participants' decisions. Under this optional rule, it is assumed that participants will retire at the earliest possible date.

If a valuation of plan benefits based on the presumptive rule would yield aggregate values no more than 10 percent higher than a valuation based on the alternative rule, it is assumed that the level of subsidy involved is too small to influence participants' decisions. In this event, the plan sponsor may use the optional rule. PBGC proposes this optional rule primarily to benefit plan sponsors who can easily demonstrate (without having to perform two full valuations of benefits) that their plans' early retirement reductions are close enough to a true actuarial reduction to made it impossible for variations in expected retirement age to cause a variation in the value of benefits greater than 10 percent. Public comments on the presumptive and optional rules and on the test for using the optional rule are specifically invited.

Section 2676.13(a) sets forth the basic rules for valuing benefits, including the use of prescribed mortality and interest assumptions and interpolation methods. Section 2676.13(a) prescribes two alternative valuation approaches: one described in § 2676.13(a)(1) for the more common benefit forms and the other in § 2676.13(a)(2) for all other forms of benefits.

Under § 2676.13(a)(1), the primary valuation approach is to apply the specific valuation formulas prescribed in § 2676.13(b)–(h). The formulas in § 2676.13(b)–(h) are analogous to the formulas in the single-employer valuation regulation (Subpart C of Part 2619). In fact, the formulas in § 2676.13(b)–(g) reduce to the corresponding formulas in subpart C of Part 2619 if a flat interest rate is substituted for the select and ultimate series of interest rates used under the proposed regulation. Under § 2676.13(a)(1), the plan sponsor must use the prescribed formulas for all benefit forms which they cover. Formulas are provided for the forms of benefits most often encountered in multiemployer pension plans.

Mandating the use of specified valuation formulas represents a stricter rule than that prescribed for single-employer plans in Part 2619. The formulas in Part 2619 for valuing trusteed terminated plans constitute a minimum standard rather than an absolute requirement. But since such plans have been or will be placed into trusteeship by PBGC, PBGC has ready oversight of those valuations. That oversight will typically not be present in the multiemployer situation, and therefore, mandatory use of specified valuation formulas is necessary to ensure consistency among plans.

Section 2676.13(a)(2) provides an alternative valuation approach, more like the single-employer approach, for valuing benefit forms for which no formula is provided in § 2676.13(b)–(h). Under this alternative, plan sponsor are to apply valuation formulas derived from generally accepted actuarial principles in a manner consistent with the specific formulas prescribed in § 2676.13(b)–(h). For example, any formula derived for use under § 2676.13(a)(2) should approximate the effect of monthly benefit payments in the same manner as that reflected in the formulas found in paragraphs (c)(2), (c)(3), (d)(3) and (d)(5) of § 2676.13. Moreover, PBGC presently plans to provide valuation formulas to plan sponsors, upon request, for forms of benefits not covered by § 2676.13(b)–(h).

Section 2676.13(b) prescribes valuation formulas for single-sum payments other than death benefits. Paragraph (b)(1) sets forth the formula for valuing a payment which is not contingent on the survival of any person. This formula defines the symbol $v^{0:n}$, which is used to represent the discount applicable to future payments in other formulas prescribed in § 2676.13. (This symbol has been chosen to represent the discount factor under a select and ultimate interest assumption. The format of the symbol is designed to permit the expression of a discount factor betwen any two points in the $v^{m:n}$, where m represents the beginning of the period and n the end of the period), but in the interest of simplicity the regulation uses only factors of the form ($v^{0:n}$, where the beginning of the period is the valuation date.)

Similarly, paragraph (b)(2) of § 2676.13 sets forth the formula for valuing a payment which is contingent on the survival of one person, and defines the symbol $_nP_x$, which is used to represent the probability of survival in other formulas prescribed in § 2676.13. Paragraph (b)(3) provides a similar formula where two life contingencies are involved.

Paragraphs (c) and (d) of § 2676.13 provide formulas for valuing certain basic pay status and deferred annuities, respectively. These paragraphs also define the symbols used to represent the values of such annuities. The symbols so defined are used in the formulas for more complex annuities. Paragraphs (e) and (f) cover joint and survivor annuities, and paragraph (g) covers annuities involving single life and period certain alternatives.

Paragraph (h) of § 2676.13 prescribes formulas for valuing single-sum death benefits. Paragraphs (h)(1) and (h)(2) define symbols for the values of benefits analogous to ordinary and term insurance, respectively, and these symbols are used in the formulas provided in paragraphs (h)(3) and (h)(4) for deferred coverages.

Mortality and Interest Assumptions

Section 2676.14 of the proposed regulation adopts the mortality assumptions used for trusteed terminated single-employer plans under Subpart C of Part 2619. Those assumptions include different mortality tables for healthy and disabled annuitants and further distinguish between disabilities which do and do not meet the Social Security disability test. The table for healthy lives is applied to all deferred annuities.

Section 2676.14(b) makes clear that where the value of a death benefit depends on mortality figures for two lives, two different tables may have to be used. The beneficiary's mortality rate will come from the healthy lives table because the beneficiary's benefit is not in pay status. If the person whose death will trigger payment of the death benefit is disabled and is in pay status, the disability table used to value that pay status annuity will also supply the pay status annuitant's mortality rate for valuing the death benefit.

Section 2676.15 sets forth the interest assumption to be used in all mass withdrawal valuations under the proposed regulation. This interest assumption will be applied to the valuation of series of payments already in process or to begin as much as forty years or more in the future, with durations ranging from less than a year to over twenty years. It will be applied to the valuation of future streams of income as well as future streams of benefit payments. If consistency between the values of incoming and outgoing payment streams is to be achieved, the interest assumption must have a structure different from that of the single-employer interest assumption, which is not designed to perform this dual function.

To illustrate the problem, assume that a multiemployer plan is being valued under the single-employer interest assumption where the immediate annuity rate is .1050, the k_1 and k_2 quantities are 1.0975 and 1.0850 respectively, and the n_1 and n_2 quantities are 7 and 8 respectively. Assume that the plan sponsor expects, on the fifteenth anniversary of the valuation date, to receive a $200 withdrawal liability payment and to make two $100 benefit payments under two fifteen-year certain annuities, one of which begins on the valuation date and the other of which is to begin fifteen years later.

Turning first to the benefit payments, the one which is part of the pay status annuity is valued at the immediate annuity rate and has a present value of $22.36; the other, which is part of a deferred annuity, is valued using the k_1 and k_2 quantities and has a present value of $27.15. (Of course, the single employer interest assumption is not designed to value installments of annuities as single payments, but these values represent the portion of the value of each annuity which is attributable to the individual payments.) The total value is $49.51.

Turning next to the withdrawal liability payment, and treating it like a pay status annuity (since payments are already being made), it has a present value of $44.73. This is $4.78 less than the value of the two benefit payments, although the money to be received clearly offsets the money to be paid out. In the context of a valuation under section 4219(c)(1)(D) of ERISA, this $4.78 would presumably represent an unfunded benefit amount to be reallocated to withdrawn employers.

This is a very simplified analysis. Actual valuations frequently involve inaccuracies which offset each other. Nevertheless, the analysis makes clear that the single-employer interest assumption as applied to a multiemployer valuation has the potential for creating problems in the comparability of asset and benefit values that can be avoided by using a differently structured interest assumption.

This example does not imply that the single-employer interest assumption produces inaccurate values for benefits. The single-employer assumption has been carefully designed to reflect prices in the commercial annuity market, and it is monitored at frequent intervals to assure that it continues to do so. In fact, PBGC's first objective in designing a new interest assumption for this proposed regulation was that it must produce values for the benefits under typical multiemployer plans which would closely approximate the values that the single-employer assumption would have produced. In effect, therefore, the proposed multiemployer assumption represents merely a reformatting of the single-employer assumptions to accommodate the difference between the multiemployer and single-employer situations.

The interest assumption proposed in this regulation is of the kind called "select and ultimate." A select and ultimate interest assumption encompasses an initial interest rate, which is assumed to prevail at the valuation date; and ultimate interest rate, which is assumed to prevail beginning at some specified time after the valuation date and indefinitely thereafter; and a select series of interest rates, intermediate between the initial and ultimate rates, which are assumed to prevail for specified portions of the interval between the valuation date and the time when the ultimate rate takes effect.

The select and ultimate approach to interest mirrors the widely held belief that current interest rates are at anomalously high levels and that there will, over some period of time, be a return to lower, historically more "normal," rates. Such expectations underlie the setting of "flat" interest rates for various purposes, and accordingly flat rates in current use which are to function over long periods are generally lower than those which are to function over short periods. The single-employer interest assumptions reflect the same expectations by discounting deferred annuities at a lower rate than that used to value pay status annuities.

The precise structure of a select and ultimate series of interest rates—the level and duration of each rate in the series—is subject to infinite variation. The series set forth in this proposed regulation has been designed to produce benefit valuations comparable with those produced by the single-employer interest assumption and to meet certain other criteria which are hereafter discussed. However, PBGC is still studying these criteria and the mechanical methods for constructing select and ultimate interest series, and public comment on this process is particularly desired and specifically requested.

The following criteria, which follow from the principle that the interest assumption should mirror real-world conditions, have guided the development of the select and ultimate series presented in the proposed regulation:

(1) The initial rate should reflect investment yields currently available.

(2) The ultimate rate should reflect long term investment expectations.

(3) The length of the select period, between the valuation date and the date when the ultimate rate begins, should approximate the time in which rates of return on investment may reasonably be expected to reach the level of the ultimate rate.

(4) The select series of rates should provide a smooth transition from the intial to the ultimate rate.

Because the single-employer immediate annuity rate is not highly sensitive to currently available investment yields, PBGC proposes an initial rate which is a function of both the single-employer immediate annuity rate and the yields for quality long-term publicly traded bonds. For example, with a single-employer immediate annuity rate of 10½%, under recent bond market conditions, a multiemployer initial rate of 13¼% would be used.

PBGC has chosen an ultimate rate of 6% on the premise that inflation will probably subside but is unlikely to disappear completely. This rate is consistent with the Alternative II (intermediate) interest rate forecasts in the 1983 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds (5.6% and 6.1%) and with the trend in rates projected by major econometric organizations. Although the ultimate rate would be expected to be relatively insensitive to changes in the financial markets, PBGC would expect it to change if prevailing expectations regarding future rates changed. PBGC specifically requests public comment on whether the ultimate rate should be explicitly related to corresponding predictions by Social Security.

PBGC compared the select and ultimate assumption presented in the proposed regulation with the corresponding single-employer assumption by comparing the values produced by the two assumptions for representative plan liability distributions. The value of benefits under the select and ultimate assumption was within one percent of the value under the single-employer assumption.

Plans Closing Out

Subpart B of the proposed regulation also includes a special rule for plans in the process of closing out. The annual valuation under section 4281(b) of ERISA is no longer required when a terminated plan satisfies all liabilities for nonforfeitable benefits and ceases operations. In general, this will involve a combination of single-sum cash payments and the purchase of annuities from an insurance company. Typically, a plan sponsor will know some time in advance that the plan will soon be closing out, and will have obtained a commitment from an insurer to provide an annuity contract or contracts. If a plan has closed out since the previous valuation, or if the plan sponsor reasonably believes when the current valuation is being performed that the plan is about to close out, PBGC believes that the plan should not be required to go through the time-consuming and relatively costly process of performing the annual valuation of benefits in accordance with the rules previously described.

Accordingly, when a plan has closed out prior to an annual valuation, or when the plan sponsor reasonably believes it will close out prior to the next annual valuation date, § 2676.16 allows the plan sponsor to value the benefits at the amount required to pay or provide for them, *i.e.*, the amount of single-sum cash payments plus the cost of an annuity contract or contracts. If the valuation is performed before the close-out actually occurs, the plan sponsor must have a currently exercisable insurance company bid or bids when the valuation is performed. The specifications of the type of annuity contract and the qualifications of the issuing insurance company are carried over from Subpart B of Part 2619 (which in turn borrows from Part 2617—PBGC's regulation on Determination of Plan Sufficiency). To qualify, an annuity contract must be a single-premium, nonparticipating, non-surrenderable contract, and an issuing company must be authorized to do business as an insurance carrier under the laws of a State or the District of Columbia.

Valuation of Assets

Subpart C of the regulation deals with the valuation of assets. The rules in this subpart encompass basic valuation methods, including the handling of administrative liabilities (§ 2676.22), and special rules for units of participation in certain funds (§ 2676.23), for certain securities (§§ 2676.24–2676.30), and for withdrawal liability claims (§ 2676.31).

Section 2676.22 prescribes the use of specific valuation methods where applicable, with a general rule to be followed where no specific method applies. For units of participation in common and collective funds, § 2676.22(b) and 2676.23 provide for valuation by reference to the funds' own statements if certain basic conditions are met. For securities described in §§ 2676.24–2676.30, 2676.22(c) requires that they be valued under those sections unless the value prescribed by those sections—a published quotation (or average of published quotations)—is unavailable or demonstrably erroneous. This would be the case where, for example, the security was not traded on the valuation date or the quotation in question was inadvertently omitted from the newspaper or misprinted. If quotations are not available for the valuation date but are available for dates within five trading days before and after the valuation date, § 2676.22(c)(1) permits averaging the last quotation before and the first quotation after the valuation date.

When the conditions described under paragraphs (b) or (c) are not satisfied or when different types of assets must be valued, the valuation is done in accordance with paragraph (d). Paragraph (d) prescribes the fair market value rule used in connection with terminated single-employer plans under Part 2620 of PBGC's regulations. The rule is a standard statement of the concept of fair market value, worded slightly differently here than in Part 2620 of purely editorial reasons.

Section 2676.22(f) makes clear that the total value of plan assets is net of all liabilities other than liabilities to pay benefits, and also that an obligation to repay financial assistance received from PBGC under section 4261 of ERISA is considered a liability other than a liability to pay benefits. Under § 2676.22(f), obligations to repay section 4261 assistance are to be valued in the same manner as outstanding claims for withdrawal liability, as discussed below.

Sections 2676.23–2676.30 incorporate the special rules for valuing units of participation in common and collective funds and certain securities from § 2620.5 of the single-employer regulation. These rules provide detailed guidance for the valuation of many or most of the securities in a plan's portfolio in line with commonly accepted practice. For most securities, quotations from nationally circulated daily newspapers provide an acceptable basis for valuation, with rules for interpolation by averaging in some cases. For investments in common and collective funds, reliance on customary periodic fund valuations is allowed if certain basic requirements are met.

For a multiemployer plan that undergoes mass withdrawal, claims for withdrawal liability may constitute the plan's most important asset. Yet, such claims by their nature are likely to be distinctly illiquid. Thus, they present a unique valuation problem. Accordingly, § 2676.31 of the proposed regulation provides a specific rule for valuing outstanding claims for withdrawal liability.

The valuation of a right to receive a series of payments may be though of as involving two steps. The first step would ignore any risk of non-payment and would apply a discount factor to the payments to adjust solely for their deferral. The second step would apply a further discount factor to adjust for the risk of non-payment. (The order of the steps is not important.) Thus, for example, the market value of a coupon bond tends to drop as prevailing interest rates rise, and vice versa, reflecting changes in the first discount factor. The value will also tend to drop if the issuer's financial integrity is significantly eroded, reflecting changes in the second discount factor.

Discounting for deferral is, in general, a relatively straightforward process. The number of payments required to amortize an employer's withdrawal liability is, in fact, determined by applying the same principles. However, except in the case of certain liability assessed pursuant to section 4219(c)(1)(D) in connection with a mass withdrawal, the plan sponsor determines withdrawal liability schedules on the basis of the interest assumption adopted by the plan for its ongoing valuations. That assumption is unlikely to be the same as the interest assumption prescribed by this proposed regulation for valuing the benefits following a mass withdrawal. Thus the single-sum withdrawal liability from which the amortization payment schedule was generated will typically differ from the present value, determined under this regulation, of a benefit providing the same payments. The proposed regulation avoids this inconsistency by requiring that the interest assumption used to discount withdrawal liability claims for deferral be the same as the interest assumption used to value benefits under this regulation.

Section 2676.31(a) sets forth this rule. Most withdrawal liability payment schedules can be expected to provide for periodic payments, all equal in amount, except for the final payment (or payments in the final year, which may themselves constitute a series of equal periodic payments). Accordingly, § 2676.31(a)(1) requires the plan sponsor to value that series of payments as an annuity certain under Subpart B of the proposed regulation. The final payment of a different amount is to be valued under § 2676.31(a)(2) as a single-sum deferred payment, also using the Subpart B valuation methods.

The second step in valuing withdrawal liability claims is to discount them for risk. Ideally, the plan sponsor would assign a risk factor to each claim based on an individual analysis of the creditworthiness of each obligor. Such a procedure, however, seems not only onerous but also unlikely to produce meaningful risk factors, especially in the case of obligors with no publicly traded debt securities.

Accordingly, the proposed regulation takes a different approach, which avoids the need for difficult assessments of individual risk and seeks results which are valid in the aggregate, *i.e.*, for the total of all withdrawal liability claims of a particular plan. The method proposed is a bright-line test which categorizes certain obligations as totally uncollectible and others as totally risk-free.

The test is contained in § 2676.31 (b) and (c). Section 2676.31(b) sets forth the criteria by which withdrawal liability obligations are to be judged risk-free. An employer's obligation is to be placed in the risk-free category if, as of the valuation date, the employer is in existence and has not been liquidated, and the employer is not the subject of any bankruptcy proceedings under Federal law, nor similar proceedings under state insolvency laws. Even if the second criterion is not met, the plan sponsor is to consider the claim to be risk-free if the plan sponsor reasonably believes that the employer will pay its withdrawal liability in full. Risk-free obligations are valued under § 2676.31(a). Under § 2676.31(c), a claim for withdrawal liability which does not satisfy the conditions under § 2676.31(b) is considered worthless, and the plan sponsor is to value it at zero.

The valuation of assets like claims for withdrawal liability is inherently an inexact process. PBGC believes that the method proposed in this regulation, in addition to being simple to use, will produce reasonable aggregate values. To the extent that errors do occur, it appears more likely that they will be on the side of overvaluation rather than undervaluation. This would tend to produce figures for unfunded vested benefits that were to low rather than too high. Such errors would reduce employers' mass withdrawal liabilities and might defer reductions and suspensions of participants' benefits.

E.O 12291 and the Regulatory Flexibility Act

The Pension Benefit Guaranty Corporation has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more, or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. ERISA requires the valuation of a multiemployer plan's assets and nonforfeitable benefits when a plan has incurred a mass withdrawal. This regulation merely implements that requirement.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by PBGC. Defining "small plans" as those with under 100 participants, such plans represent less than 14% of all multiemployer plans covered by PBGC (346 out of 2485). Further, small multiemployer plans represent only .4% of all small plans covered by PBGC (346 out of 84,288). Approximately 500,000 employers contribute to multiemployer plans; most of these employers are small employers (under 100 employees). PBGC estimates that only 5% of such employers will be required to pay withdrawal liability in any year. This regulation will affect only those plans that experience a mass withdrawal. Based on PBGC's experience to date, it is estimated that no more than 10 multiemployer plans will be terminated by mass withdrawal in any given year, and even fewer plans will experience a withdrawal of substantially all the employers pursuant to an agreement or arrangement to withdraw. Thus, PBGC expects there to be few plans that will need to value plan assets and nonforfeitable benefits under these rules and few employers whose liabilities will be affected by the valuations. Therefore, compliance with section 603 and 604 of the Regulatory Flexibility Act is waived.

Public Comments

Interested parties are invited to submit comments on this proposed regulation. Comments should be addressed to: Director, Corporate Policy and Regulations Department, Pension Benefit Guaranty Corporation (611), 2020 K Street, N.W., Washington, D.C. 20006. Written comments will be available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m. Each person submitting comments should include his or her name address, identify this proposed regulation, and give reasons for any recommendation. This proposal may be changed in light of the comments received.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, it is proposed to amend Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, by adding a new Part 2676 as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

Subpart A—General

Sec.
2676.1 Purpose and scope.
2676.2 General rules.

Subpart B—Valuation of Benefits

2676.11 Purpose and scope
2676.12 Benefits to be valued.
2676.13 Valuation methods.
2676.14 Mortality.
2676.15 Interest.
2676.16 Special valuation rule for plans that are closing out.

Subpart C—Valuation of Assets

2676.21 Purpose and scope.
2676.22 Valuation methods.
2676.23 Certain units of participation in common trust funds and collective investment funds.
2676.24 Treasury bills.
2676.25 Treasury notes, bonds, and Federal agency securities.
2676.26 Shares in open-end mutual funds.
2676.27 Common and preferred stocks, warrants, and shares in closed-end mutual funds principally traded on certain major exchanges.
2676.28 Common and preferred stocks, warrants, and shares in closed-end mutual funds principally traded on other exchanges.
2676.29 Common and preferred stocks, warrants, and shares in closed-end mutual funds principally traded over-the-counter.
2676.30 State and municipal obligations.
2676.31 Outstanding claims for withdrawal liability.

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93-406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96-364, 94 Stat. 1302, 1237-1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

Subpart A—General

§ 2676.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish rules for determining the value of multiemployer plan benefits and assets, including outstanding claims for withdrawal liability, under sections 4219(c)(1)(D) and 4281(b) of the Act. When a multiemployer plan incurs a mass withdrawal of contributing employers, section 4219(c)(1)(D) requires that the plan's total unfunded vested benefits (as defined in section 4213(c) of the Act) be fully allocated among the withdrawing employers. The plan sponsor must value the plan's benefits and assets to determine the amount of unfunded vested benefits to be allocated. Further, when a multiemployer plan terminates as a result of a mass withdrawal of contributing employers, section 4281(b) requires an annual valuation of the plan's assets and benefits, in order to determine whether plan benefits must be reduced pursuant to section 4281(c).

(b) *Scope.* This part applies to all multiemployer plans covered by section 4021(a) of the Act, and not excluded by section 4021(b), that are required to allocate unfunded vested benefits under section 4219(c)(1)(D) of the Act or to perform annual valuations under section 4281(b) of the Act on or after the effective date of this part.

§ 2676.2 General rules.

(a) *Valuations related to mass withdrawal reallocation liability.* Whenever the value of unfunded vested benefits must be determined (in order to be allocated) under section 4219(c)(1)(D) of the Act, the plan sponsor shall determine that value in accordance with this part. The valuation date which the plan sponsor shall use for this purpose shall be—

(1) In a case in which the plan terminates because of the complete withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute under the plan, the last day of the plan year in which the plan terminates; or

(2) In a case in which substantially all the employers withdraw from the plan pursuant to an agreement or arrangement to withdraw from the plan, the last day of the plan year as of which substantially all employers have withdrawn from the plan pursuant to the agreement or arrangement.

(b) *Annual valuations for mass-withdrawal-terminated plans.* The plan sponsor shall perform the annual valuation of the plan's nonforfeitable benefits and assets required under section 4281(b) of the Act in accordance with this part. The valuation dates which the plan sponsor shall use for this purpose shall be the last day of the plan year in which the plan terminates and the last day of each plan year thereafter.

Subpart B—Valuation of Benefits

§ 2676.11 Purpose and scope.

This subpart sets forth the rules for calculating the value of a benefit being, or to be, paid to a participant or beneficiary for the purposes of sections 4219(c)(1)(D) and 4281(b) of the Act.

§ 2676.12 Benefits to be valued.

(a) *Form of benefit.* The plan sponsor shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan sponsor shall value the form of benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan sponsor shall value the form of benefit which, under the terms of the plan, if payable in the absence of a valid election.

(b) *Timing of benefit.* The plan sponsor shall value benefits whose starting date is subject to election using the assumption specified in paragraph (b)(1) of this section; except that if the value of benefits under the assumption in paragraph (b)(1) of this section is not more than 110 percent of the value of the same benefits under the assumption in paragraph (b)(2) of this section, then the plan sponsor may elect to value benefits whose starting date is subject to election using the assumption in paragraph (b)(2) of this section. The plan sponsor shall use the same assumption for valuing all benefits in the plan.

(1) *Presumptive rule.* The plan sponsor shall assume that the starting date of each benefit is that date, not preceding the valuation date, the choice of which maximizes the present value (as of the valuation date) of the benefit.

(2) *Optional rule.* The plan sponsor shall assume that the starting date of each benefit is the earliest date, not preceding the valuation date, which could be elected.

§ 2676.13 Valuation methods.

(a) *General rule.* Except as otherwise provided in § 2676.16 (pertaining to plans that are closing out), the plan sponsor shall value benefits as of the valuation date using the mortality and interest assumptions prescribed by §§ 2676.14 and 2676.15 and using interpolation methods, where necessary, at least as accurate as linear interpolation, and—

(1) in the case of any benefit described in paragraphs (b)-(h) of this section, by applying the formula set forth therein for the present value of that benefit; or

(2) in the case of any benefit not described in paragraphs (b)-(h) of this section, by applying formulas derived from generally accepted actuarial principles in a manner consistent with the formulas set forth in paragraphs (b)-(h) of this section.

(b) *Single-sum payments (other than death benefits).* The present value of a single-sum payment of *1* to be made *n* years after the valuation date is as follows:

(1) If the payment is not contingent on the survival of any person:

$$v^{0:n} = \left(\frac{1}{1+i_{k+1}}\right)^{j} \prod_{t=1}^{k}\left(\frac{1}{1+i_t}\right),$$

where $n = k+j$, k is an integer, $0 \leqq j < 1$, $v^{0:0} = 1$, and i_h is the interest rate determined under § 2676.15 applicable to the year ending on the kth anniversary of the valuation date.

(2) If the payment is contingent on the survival of a person aged x on the evaluation date:

$${}_{n}p_x \cdot v^{0:n} = \frac{l_{x+n}}{l_x} \cdot v^{0:n},$$

where l_x and l_{x+n} are the numbers of persons living at ages x and $x+n$ respectively, as determined under § 2676.14.

(3) If the payment is contingent on the surivival of two persons aged x and y respectively on the valuation date:

$${}_{n}p_x \cdot {}_{n}p_y \cdot v^{0:n}.$$

(c) *Basic annuities in pay status.* The present value of an annuity due providing payments of $1/m$, m times per year, starting on the valuation date, is as follows:

(1) If the annuity is for a term certain of r years after the valuation date and is not contingent on the survival of any person:

$$\ddot{a}_{\overline{r}|}^{(m)} = \frac{1}{m}\sum_{t=0}^{r-1} \frac{v^{0:t}(v^{0:t} - v^{0:t+1})}{v^{0:t} - v^{0:t+(1/m)}}.$$

(2) If the annuity is for the life of a person aged x on the valuation dated:

$$\ddot{a}_x^{(m)} = \sum_{t=0}^{\infty}\left(v^{0:t} \cdot {}_{t}p_x\right) - \frac{m-1}{2m}.$$

(3) If the annuity is for the joint lives of two persons aged x and y on the valuation date:

$$\ddot{a}_{x:y}^{(m)} = \sum_{t=0}^{\infty}\left(v^{0:t} \cdot {}_{t}p_x \cdot {}_{t}p_y\right) - \frac{m-1}{2m}.$$

Basic deferred annuities. The present value of an annuity due providing payments of $1/m$, m times per year, starting n years after the valuation date, is as follows:

(1) If the annuity is for a term certain of r years and is not contingent on the survival of any person:

$${}_{n|}\ddot{a}_{\overline{r}|}^{(m)} = \ddot{a}_{\overline{n+r}|}^{(m)} - \ddot{a}_{\overline{n}|}^{(m)}.$$

(2) If the annuity is for a term certain of r years and is contingent on the survival for n years of a person aged x on the valuation date:

$${}_{n}p_x \cdot {}_{n|}\ddot{a}_{\overline{r}|}^{(m)}.$$

(3) If the annuity is for the life of a person aged x on the valuation date:

$${}_{n|}\ddot{a}_x^{(m)} = \sum_{t=n}^{\infty}\left(v^{0:t} \cdot {}_{t}p_x\right) - v^{0:n} \cdot {}_{n}p_x \cdot \frac{m-1}{2m}.$$

(4) If the annuity is for the life of a person aged y on th evaluation date and is contingent on the survival for n years of a person aged x on the valuation dated:

$${}_{n}p_x \cdot {}_{n|}\ddot{a}_y^{(m)}.$$

(5) If the annuity is for the joint lives of two persons aged x and y on the valuation date:

$${}_{n|}\ddot{a}_{x:y}^{(m)} = \sum_{t=n}^{\infty}\left(v^{0:t} \cdot {}_{t}p_x \cdot {}_{t}p_y\right) - v^{0:n} \cdot {}_{n}p_x \cdot {}_{n}p_y \cdot \frac{m-1}{2m}.$$

(e) *Joint and survivor annuities in pay status.* The present value of an annuity due providing payments m times per year, starting on the valuation date, in an initial amount of $1/m$ per payment, and in an ultimate amount of s/m per payment, is as follows:

(1) If the annuity is payable in the initial amount for the life of a person aged x on the valuation date and, after the death of that person, in the ultimate amount for the life of a person aged y on the valuation date:

$$\ddot{a}_x^{(m)} + s(\ddot{a}_y^{(m)} - \ddot{a}_{x:y}^{(m)}).$$

(2) It the annuity is payable in the initial amount for the joint lives of two persons aged x and y on the valuation dated and, after the death of either of those persons, in the ultimate amount for the life of the survivor:

$$\ddot{a}_{x:y}^{(m)} + s(\ddot{a}_x^{(m)} + \ddot{a}_y^{(m)} - 2 \cdot \ddot{a}_{x:y}^{(m)}).$$

(3) If the annuity is payable in the initial amount for a term certain of r years after the valuation date or for the life of a person aged x on the valuation date (whichever of those two periods is longer) and, after the expiration of the term certain and the death of that person, in the ultimate amount for the

life of a person aged y on the valuation date:

$$\ddot{a}^{(m)}_{\overline{r}|} + {}_{r|}\ddot{a}^{(m)}_{x} + s({}_{r|}\ddot{a}^{(m)}_{y} - {}_{r|}\ddot{a}^{(m)}_{x:y}).$$

(4) If the annuity is payable in the initial amount for a term certain of r years after the valuation date or for the joint lives of two persons aged x and y on the valuation date (whichever of those two periods is longer) and, after the expiration of the term certain and the death of either of the persons, in the ultimate amount for the life of the survivor:

$$\ddot{a}^{(m)}_{\overline{r}|} + {}_{r|}\ddot{a}^{(m)}_{x:y} + s({}_{r|}\ddot{a}^{(m)}_{x} + {}_{r|}\ddot{a}^{(m)}_{y} - 2\cdot{}_{r|}\ddot{a}^{(m)}_{x:y}).$$

(f) *Deferred joint and survivor annuities.* The present value of an annuity due providing payments m times per year, starting n years after the valuation date, in an initial amount of $1/m$ per payment, and in an ultimate amount of s/m per payment, contingent on the survival for n years of a person aged x on the valuation date, is as follows:

(1) If the annuity is payable in the initial amount for the life of the person and, after the death of that person, in the ultimate amount for the life of a person aged y on the valuation date:

$${}_{n|}\ddot{a}^{(m)}_{x} + s({}_{n}p_{x}\cdot{}_{n|}\ddot{a}^{(m)}_{y} - {}_{n|}\ddot{a}^{(m)}_{x:y}).$$

(2) If the annuity is payable in the initial amount for the joint lives of the person and a person aged y on the valuation date and, after the death of either of those persons, in the ultimate amount for the life of the survivor:

$${}_{n|}\ddot{a}^{(m)}_{x:y} + s({}_{n|}\ddot{a}^{(m)}_{x} + {}_{n}p_{x}\cdot{}_{n|}\ddot{a}^{(m)}_{y} - 2\cdot{}_{n|}\ddot{a}^{(m)}_{x:y}).$$

(3) If the annuity is payable in the initial amount for a term certain of r years or for the life of the person (whichever of those two periods is longer) and, after the expiration of the term certain and the death of that person, in the ultimate amount for the life of a person aged y on the valuation date:

$${}_{n}p_{x}\cdot{}_{n|}\ddot{a}^{(m)}_{\overline{r}|} + {}_{n+r|}\ddot{a}^{(m)}_{x} + s({}_{n}p_{x}\cdot{}_{n+r|}\ddot{a}^{(m)}_{y} - {}_{n+r|}\ddot{a}^{(m)}_{x:y}).$$

(4) If the annuity is payable in the initial amount for a term certain of r years or for the joint lives of the person and a person aged y on the valuation date (whichever of those two periods is longer) and, after the expiration of the term certain and the death of either of those persons, in the ultimate amount for the life of the survivor:

$${}_{n}p_{x}\cdot{}_{n|}\ddot{a}^{(m)}_{\overline{r}|} + {}_{n+r|}\ddot{a}^{(m)}_{x:y} + s({}_{n+r|}\ddot{a}^{(m)}_{x} + {}_{n}p_{x}\cdot{}_{n+r|}\ddot{a}^{(m)}_{y} - 2\cdot{}_{n+r|}\ddot{a}^{(m)}_{x:y}).$$

(g) *Single life or certain annuities.* The present value of an annuity due providing payments of $1/m$, m times per year, for the life of a person aged x on the valuation date or a term certain of r years, is as follows:

(1) If the annuity starts on the valuation date and is for the shorter of those two periods:

$$\ddot{a}^{(m)}_{x} - {}_{r|}\ddot{a}^{(m)}_{x}.$$

(2) If the annuity starts on the valuation date and is for the longer of those two periods:

$$\ddot{a}^{(m)}_{\overline{r}|} + {}_{r|}\ddot{a}^{(m)}_{x}.$$

(3) If the annuity starts n years after the valuation date and is for the shorter of those two periods:

$${}_{n|}\ddot{a}^{(m)}_{x} - {}_{n+r|}\ddot{a}^{(m)}_{x}.$$

(4) If the annuity starts n years after the valuation date and is for the longer of those two periods:

$${}_{n}p_{x}\cdot{}_{n|}\ddot{a}^{(m)}_{\overline{r}|} + {}_{n+r|}\ddot{a}^{(m)}_{x}.$$

(h) *Single-sum death benefits.* The present value of a single-sum payment of 1 to be made upon the death of a person aged x on the valuation date is as follows:

(1) If the payment is to be made whenever death occurs:

$$\overline{A}_{x} = \sum_{t=0}^{\infty} v^{0:t+\frac{1}{2}}({}_{t}p_{x} - {}_{t+1}p_{x}).$$

(2) If the payment is to be made only if the person dies within r years after the valuation date:

$$\overline{A}^{1}_{x:\overline{r}|} = \sum_{t=0}^{r-1} v^{0:t+\frac{1}{2}}({}_{t}p_{x} - {}_{t+1}p_{x}).$$

(3) If the payment is to be made only if the person dies at least n years after the valuation date:

$$\overline{A}_{x} - \overline{A}^{1}_{x:\overline{n}|}.$$

(4) If the payment is to be made only if the person dies at least n years, but within $n+r$ years, after the valuation date:

$$\overline{A}^{1}_{x:\overline{n+r}|} - \overline{A}^{1}_{x:\overline{n}|}.$$

§ 2676.14 Mortality.

(a) *General rule.* In determining the value of mortality factors of the form ${}_{n}P_{x}$ (as defined in § 2676.13(b)(2)) for purposes of applying the formulas set forth in § 2676.13(b)–(h), and in determining the value of any mortality factor used in valuing other benefits under § 2676.13(a)(2), the plan sponsor shall use the values of l_x prescribed in paragraphs (d), (e) and (f) of this section.

(b) *Certain death benefits.* If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then to determine the mortality factors involved in the valuation of the death benefit—

(1) In the case of factors which represent the mortality of the pay status annuitant, the plan sponsor shall apply the mortality rates which are applicable to the annuity in pay status under paragraph (d), (e) or (f) of this section; and

(2) In the case of factors which represent the mortality of the death beneficiary, the plan sponsor shall apply the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under paragraph (d) of this section.

(c) *Description of mortality tables.* The tables in paragraphs (d), (e) and (f) of this section tabulate, for each age (denoted by x, $x \leqq 15$), the number of persons assumed to be living at the age (denoted by l_x) out of a closed group consisting originally of 10,000 persons aged 15 years.

(d) *Healthy lives.* The values of l_x applicable to annuities in pay status on the valuation date which are not being received as disability benefits, to annuities not in pay status on the valuation date, and to deferred benefits other than annuities, are as follows:

MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

Age x	l_x
15	10,000.0000
16	9,985.6300
17	9,971.5103
18	9,957.6998
19	9,944.2469
20	9,931.2100
21	9,918.6272
22	9,906.5364
23	9,894.9755
24	9,883.6062
25	9,872.4476
26	9,861.5188
27	9,850.8388
28	9,840.4166
29	9,829.7594
30	9,818.8385
31	9,807.6352
32	9,796.1308
33	9,784.2971
34	9,771.6069
35	9,757.9462
36	9,743.1824
37	9,727.1744
38	9,709.7433
39	9,690.8287
40	9,670.2357
41	9,647.7331
42	9,623.0735
43	9,595.9557
44	9,566.2562
45	9,533.6353
46	9,497.7030
47	9,458.0026
48	9,414.1648
49	9,366.1243
50	9,313.5241
51	9,255.8175
52	9,192.3874
53	9,123.0492
54	9,047.5286
55	8,965.8023
56	8,877.2650
57	8,781.2663
58	8,677.0941
59	8,564.7084
60	8,443.4150
61	8,312.4661
62	8,171.0711
63	8,018.3946
64	7,853.8812
65	7,676.6619
66	7,485.9394
67	7,282.0823
68	7,066.2851
69	6,839.6481
70	6,602.0182
71	6,353.3400
72	6,093.6726
73	5,822.4798
74	5,540.0662
75	5,246.9247
76	4,943.7836
77	4,631.6232
78	4,313.7642
79	3,991.7503
80	3,667.3966
81	3,342.7660
82	3,021.1317
83	2,705.9975
84	2,400.7177
85	2,107.6405
86	1,829.0652
87	1,567.1815
88	1,324.0380
89	1,101.3242
90	900.3755
91	722.0741
92	566.8029
93	434.7475
94	324.9542
95	235.9564
96	165.8415
97	112.3488
98	73.0823
99	45.3940
100	26.7427
101	14.8217
102	7.6505
103	3.6393
104	1.5708
105	0.6026
106	0.1996
107	0.0547
108	0.0117
109	0.0017
110	0.0001

MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS

Age x	l_x
15	10,000.000
16	10,000.000
17	10,000.000
18	10,000.000
19	10,000.000
20	10,000.000
21	9,985.6300
22	9,971.5103
23	9,957.6998
24	9,944.2469
25	9,931.2100
26	9,918.6272
27	9,906.5364
28	9,894.9755
29	9,883.6062
30	9,872.4476
31	9,861.5188
32	9,850.8388
33	9,840.4166
34	9,829.7594
35	9,818.8385
36	9,807.6352
37	9,796.1308
38	9,784.2971
39	9,771.6069
40	9,757.9462
41	9,743.1824
42	9,727.1744
43	9,709.7433
44	9,690.8287
45	9,670.2357
46	9,647.7331
47	9,623.0735
48	9,595.9557
49	9,566.2562
50	9,533.6353
51	9,497.7030
52	9,458.0026
53	9,414.1648
54	9,366.1243
55	9,313.5241
56	9,255.8175
57	9,192.3874
58	9,123.0492
59	9,047.5286
60	8,965.8023
61	8,877.2650
62	8,781.2663
63	8,677.0941
64	8,564.7084
65	8,443.4150
66	8,312.4661
67	8,171.0711
68	8,018.3946
69	7,853.8812
70	7,676.6619
71	7,485.9394
72	7,282.0823
73	7,066.2851
74	6,839.6481
75	6,602.0182
76	6,353.3400
77	6,093.6726
78	5,822.4798
79	5,540.0662
80	5,246.9247
81	4,943.7836
82	4,631.6232
83	4,313.7642
84	3,991.7503
85	3,667.3966
86	3,342.7660
87	3,021.1317
88	2,705.9975
89	2,400.7177
90	2,107.6405
91	1,829.0652
92	1,567.1815
93	1,324.0380
94	1,101.3242
95	900.3755
96	722.0741
97	566.8029
98	434.7475
99	324.9542
100	235.9564
101	165.8415
102	112.3488
103	73.0823
104	45.3940

MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS—Continued

Age x	l_x
105	26.7427
106	14.8217
107	7.6505
108	3.6393
109	1.5708
110	0.6026

(e) *Disabled lives (other than Social Security disability).* The values of l_x applicable to annuities in pay status on the valuation date which are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are as follows:

MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	l_x
15	10,000.0000
16	9,986.4900
17	9,973.3977
18	9,960.7614
19	9,948.6192
20	9,937.0092
21	9,925.5916
22	9,914.3656
23	9,903.4104
24	9,892.6650
25	9,882.2185
26	9,871.5161
27	9,860.5468
28	9,849.2979
29	9,837.7447
30	9,825.8607
31	9,813.1166
32	9,799.3979
33	9,784.5714
34	9,768.4953
35	9,750.9902
36	9,731.9953
37	9,711.3148
38	9,688.7166
39	9,663.9522
40	9,636.7192
41	9,606.8936
42	9,574.1341
43	9,538.0492
44	9,498.1802
45	9,454.1561
46	9,405.9115
47	9,353.0679
48	9,295.1362
49	9,231.4366
50	9,161.8039
51	9,085.9625
52	9,003.8890
53	8,914.9756
54	8,818.5691
55	8,713.9544
56	8,601.0913
57	8,479.2826
58	8,347.7774
59	8,205.7817
60	8,052.4567
61	7,887.2444
62	7,709.2924
63	7,517.7396
64	7,313.0165
65	7,096.3026
66	6,868.7029
67	6,630.0636
68	6,380.3290
69	6,119.5566
70	5,847.2138
71	5,563.6005
72	5,269.2137
73	4,964.7649
74	4,651.2965
75	4,332.0692
76	4,008.7074

MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	l_x
77	3,682.9759
78	3,356.9662
79	3,033.9656
80	2,717.4926
81	2,410.9160
82	2,116.5938
83	1,836.8351
84	1,573.6389
85	1,329.6625
86	1,106.0026
87	904.2003
88	725.1415
89	569.2107
90	436.5943
91	326.3346
92	236.9587
93	166.5459
94	112.8260
95	73.3927
96	45.5866
97	26.8563
98	14.8846
99	7.6830
100	3.6548
101	1.5775
102	0.6052
103	0.2005
104	0.0550
105	0.0117
106	0.0017
107	0.0001

MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	l_x
15	10,000.0000
16	10,000.0000
17	10,000.0000
18	10,000.0000
19	10,000.0000
20	10,000.0000
21	9,986.4900
22	9,973.3977
23	9,960.7614
24	9,948.6192
25	9,937.0092
26	9,925.5916
27	9,914.3656
28	9,903.4104
29	9,892.6650
30	9,882.2185
31	9,871.5161
32	9,860.5468
33	9,849.2979
34	9,837.7447
35	9,825.8607
36	9,813.1166
37	9,799.3979
38	9,784.5714
39	9,768.4953
40	9,750.9902
41	9,731.9953
42	9,711.3148
43	9,688.7166
44	9,663.9522
45	9,636.7192
46	9,606.8936
47	9,574.1341
48	9,538.0492
49	9,498.1802
50	9,454.1561
51	9,405.9115
52	9,353.0679
53	9,295.1362
54	9,231.4366
55	9,161.8039
56	9,085.9625
57	9,003.8890
58	8,914.9756
59	8,818.5691
60	8,713.9544
61	8,601.0913
62	8,479.2626

MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	l_x
63	8,347.77
64	8,205.78
65	8,052.45
66	7,887.24
67	7,709.29
68	7,517.73
69	7,313.01
70	7,096.30
71	6,868.70
72	6,630.06
73	6,380.32
74	6,119.55
75	5,847.21
76	5,563.60
77	5,269.21
78	4,964.76
79	4,651.29
80	4,332.06
81	4,008.70
82	3,682.97
83	3,356.96
84	3,033.96
85	2,717.49
86	2,410.91
87	2,116.59
88	1,836.83
89	1,573.63
90	1,329.66
91	1,106.00
92	904.20
93	725.14
94	569.21
95	436.59
96	326.33
97	236.95
98	166.54
99	112.82
100	73.39
101	45.58
102	26.85
103	14.88
104	7.68
105	3.65
106	1.57
107	0.60
108	0.20
109	0.05
110	0.011

(f) *Disabled lives (Social Security disability).* The values of l_x applicable to annuities in pay status on the valuation date which are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are as follows:

MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	l_x
15	10,000.000
16	10,000.000
17	10,000.000
18	10,000.000
19	10,000.000
20	10,000.000
21	9,517.00
22	9,057.32
23	8,619.65
24	8,203.52
25	7,807.29
26	7,430.19
27	7,087.60
28	6,778.64
29	6,500.04
30	6,249.14
31	6,022.81
32	5,815.74
33	5,632.54

MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	l_x
34	5,462.4416
35	5,305.1233
36	5,157.6409
37	5,017.3531
38	4,881.3828
39	4,748.1210
40	4,617.0729
41	4,486.8714
42	4,357.6495
43	4,228.2274
44	4,099.2664
45	3,970.5495
46	3,842.6978
47	3,715.6887
48	3,589.5485
49	3,462.8375
50	3,335.7513
51	3,207.9920
52	3,079.3516
53	2,950.0188
54	2,820.5130
55	2,690.7694
56	2,561.0743
57	2,431.4839
58	2,302.3721
59	2,174.5905
60	2,048.2468
61	1,924.7375
62	1,804.6339
63	1,688.5959
64	1,577.6552
65	1,472.2678
66	1,372.4460
67	1,278.1609
68	1,189.0731
69	1,104.7676
70	1,024.8931
71	949.1535
72	877.3025
73	809.2239
74	744.6096
75	683.8842
76	626.3012
77	571.8756
78	519.9493
79	468.9002
80	420.9165
81	373.4371
82	327.6404
83	284.4999
84	243.7595
85	205.9524
86	171.3112
87	140.0469
88	112.3176
89	88.1693
90	67.6259
91	50.5503
92	36.7046
93	25.7960
94	17.4742
95	11.3670
96	7.0600
97	4.1591
98	2.3050
99	1.1898
100	.5660
101	.2443
102	.0937
103	.0310
104	.0085
105	.0018
106	.0003

MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	l_x
15	10,000.0000
16	10,000.0000
17	10,000.0000
18	10,000.0000
19	10,000.0000
20	10,000.0000
21	9,737.0000
22	9,480.9169
23	9,231.5688
24	8,988.7785
25	8,752.3737
26	8,522.1662
27	8,303.1660
28	8,093.0959
29	7,893.1965
30	7,702.1811
31	7,519.6394
32	7,345.1638
33	7,178.4481
34	7,019.0866
35	6,866.0705
36	6,719.1366
37	6,576.6909
38	6,438.5604
39	6,304.6579
40	6,173.5210
41	6,044.4944
42	5,917.5600
43	5,791.5160
44	5,666.4193
45	5,542.3247
46	5,418.1766
47	5,294.1004
48	5,169.6890
49	5,044.5825
50	4,918.9724
51	4,792.5548
52	4,666.0314
53	4,539.1153
54	4,411.5662
55	4,284.5131
56	4,158.1200
57	4,032.9605
58	3,909.1487
59	3,786.0105
60	3,663.7223
61	3,542.4531
62	3,422.3640
63	3,303.6079
64	3,186.3299
65	3,070.9847
66	2,957.3583
67	2,845.5701
68	2,735.7311
69	2,627.9433
70	2,522.3000
71	2,418.6335
72	2,318.6090
73	2,216.4912
74	2,117.4140
75	2,018.9543
76	1,919.6217
77	1,818.0737
78	1,712.9891
79	1,604.8995
80	1,494.8034
81	1,383.2910
82	1,270.8295
83	1,158.3611
84	1,046.9267
85	937.7323
86	831.9561
87	730.3742
88	633.8188
89	543.0559
90	458.8279
91	381.6531

MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	l_x
92	312.0014
93	250.2251
94	196.4267
95	150.6593
96	112.6178
97	81.7718
98	57.4692
99	38.9297
100	25.3237
101	15.7286
102	9.2657
103	5.1351
104	2.6507
105	1.2609
106	.5442
107	.2098
108	.0692
109	.0190
110	.0041

§ 2676.15 Interest.

(a) *General rule.* In determining the value of interest factors of the form $v^{0\cdot n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b)-(h) and in determining the value of any interest factor used in valuing other benefits under § 2676.13(a)(2), the plan sponsor shall use the values of i_k prescribed in paragraph (c) of this section.

(b) *Description of interest table.* The table in paragraph (c) of this section tabulates, for each calendar month ending after the effective date of this part, the interest rates (denoted by i_1, i_2, . . ., i_{15}, i_u, and referred to generally as i_k) assumed to be in effect during each one-year period ending on an anniversary (the first, second, . . ., fifteeth, and subsequent anniversaries, respectively, and referred to generally as the kth anniversary) of a valuation date which occurs within that calendar month; the rate i_u is assumed to be in effect during the sixteenth and all subsequent years. For example, the interest rate assumed to be in effect during the one-year period ending on the seventh anniversary of the valuation date is tabulated as i_7, and the rate assumed to be in effect during the one-year period ending on the seventeenth anniversary of the valuation date is tabulated as i_u.

(c) *Interest rates.*

For valuation dates occurring in the month	The values of i_k are															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
September 1984	.1325	.1275	.1225	1175	1125	.100	100	100	100	.100	.080	.080	.080	.080	.080	.060

§ 2676.16 Special valuation rule for plans that are closing out.

(a) *Applicability.* For purposes of the annual valuation required by section 4281(b) of the Act, the plan sponsor shall value the plan's benefits in accordance with paragraph (b) of this section whenever the conditions described in either paragraph (a)(1) or (a)(2) of this section are satisfied.

(1) *Plans closed out prior to valuation.* Prior to the time when the valuation is performed, the plan has satisfied in full all liabilities for payment of nonforfeitable benefits, in a manner consistent with the terms of the plan and applicable law, by the purchase of one or more single-premium, nonparticipating, nonsurrenderable annuity contracts from an insurer or insurers described in paragraph (c) of this section, with respect to all benefits payable as annuities, and by the payment of single-sum cash distributions, with respect to benefits not payable as annuities.

(2) *Plans to be closed out after valuation.* As of the time when the valuation is peformed, the plan sponsor reasonably expects that the plan will close out prior to the next annual valuation date and the plan sponsor has a currently exercisable bid or bids to provide the annuity contract or contracts described in paragraph (a)(1) of this section and the total cost of the annuity contract or contracts under the bid, plus the total amount of the single-sum cash distributions described in paragraph (a)(1), does not exceed the value of the plan's assets, exclusive of outstanding claims for withdrawal liability, as determined under this part.

(b) *Valuation rule.* The present value of nonforfeitable benefits under this section is the total amount of single-sum cash distributions made or to be made plus the cost of the annuity contract or contracts purchased or to be purchased in order to satisfy in full all liabilities of the plan for nonforfeitable benefits.

(c) *Qualifications of insurer.* This section applies only if the annuity contract or contracts described in paragraphs (a)(1) and (a)(2) of this section are issued by a company authorized to do business as an insurance carrier under the laws of a State or the District of Columbia, or by two or more such companies.

Subpart C—Valuation of Assets

§ 2676.21 Purpose and scope.

This subpart sets forth the rules for calculating the value of plan assets, including outstanding claims for withdrawal liability, for purposes of sections 4219(c)(1)(D) and 4281(b) of the Act.

§ 2676.22 Valuation methods.

(a) *General rule.* The plan sponsor shall value plan assets as of the valuation date, using the valuation methods prescribed by paragraphs (b), (c), (d) and (e) of this section, and deducting administrative liabilities in accordance with paragraph (f) of this section.

(b) *Valuation of units of participation in certain funds.* The plan sponsor shall value any unit of participation in a common trust fund or collective investment fund in accordance with the rule in § 2676.23 if applicable, and otherwise by the method prescribed in paragraph (d) of this section.

(c) *Valuation of certain securities.* The plan sponsor shall value any Treasury bill or note, Federal agency security, state or municipal obligation, stock, bond, warrant, or share in a mutual fund in accordance with the rules in §§ 2676.24–2676.30, unless the value prescribed therein is unavailable or demonstrably erroneous, in which event—

(1) If the value is available for a date within five trading days before and a date within five trading days after the valuation date, then the plan sponsor shall use the average of the last available value before and the first available value after the valuation date as the value on the valuation date; or

(2) in any other case, the plan sponsor shall use the method prescribed in paragraph (d) of this section.

(d) *Valuation of other assets.* The plan sponsor shall value any plan asset (other than an outstanding claim for withdrawal liability) whose value is not determinable in accordance with §§ 2676.23–2676.30 by such method or methods as the plan sponsor reasonably believes most accurately determine the price at which the asset would change hands between a willing seller and a willing buyer, neither being under any compulsion to engage in the transaction and both having reasonable knowledge of relevant facts.

(e) *Valuation of withdrawal liability.* The plan sponsor shall value outstanding claims for withdrawal liability by the method prescribed in § 2676.31.

(f) *Adjustment for administrative liabilities.* In determining the total value of plan assets, the plan sponsor shall subtract all plan liabilities, other than liabilities to pay benefits. For this purpose, any obligation to repay financial assistance received from PBGC under section 4261 of the Act is a plan liability other than a liability to pay benefits. The obligation to repay financial assistance shall be valued by determining the value of the scheduled payments in the same manner as prescribed in § 2676.31 for valuing claims for withdrawal liability.

§ 2676.23 Certain units of participation in common trust funds and collective investment funds.

(a) *Applicability.* This section applies to units of participation in a common trust fund or collective investment fund if all of the following conditions are satisfied:

(1) The fund is valued as of the plan valuation date or a date within 31 days after the plan valuation date.

(2) The date as of which the fund is valued is a customary date for valuing the fund.

(3) There are no distributions from the fund in relation to units of the fund between the plan valuation date and the date as of which the fund is valued.

(4) The value per unit of the fund as determined by the valuation of the fund is reflected in a statement of account prepared by the manager of the fund.

(5) The plan sponsor reasonably believes that the value per unit of the fund as so reflected has been determined in accordance with the procedures normally employed by the manager of the fund pursuant to the terms of the fund, and Federal and state law and regulations, as applicable.

(b) *Value.* The value of a unit of participation to which this section applies is the value per unit of the fund as reflected in the statement of account referred to in paragraph (a)(4) of this section.

§ 2676.24 Treasury bills.

The value of a Treasury bill is the face amount of the bill reduced by the average discount. The average discount is equal to the face amount multiplied by the average of the bid and asked discount percentage (expressed as a decimal fraction) for the bill on the valuation date, as published nationally in a general circulation daily newspaper, prorated for the number of days remaining to maturity.

§ 2676.25 Treasury notes, bonds, and Federal agency securities.

The value of a Treasury note, bond, or Federal agency security is the average of the bid and asked prices for the note, bond, or security on the valuation date, as published nationally in a general circulation daily newspaper.

§ 2676.26 Shares in open-end mutual funds.

The value of a share in an open-end mutual fund is the per-share new asset value (redemption value) of the fund on the valuation date, as published nationally in a general circulation daily newspaper.

§ 2676.27 Common and preferred stocks, warrants, and shares in closed-end mutual funds principally traded on certain major exchanges.

(a) *Applicability.* This secion applies to common or preferred stock, warrants, or shares in a closed-end mutual fund, if the plan sponsor reasonably believes that the greatest volume of trades of the security normally occurs on the New York Stock Exchange or the American Stock Exchange, and also reasonably believes that the closing sale price of the security as published nationally in a general circulation daily newspaper is the closing sale price of the security on the exchange as reported by the consolidated last sale reporting system established pursuant to Rule 11Aa3-1 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(b) *Value.* The value of a security to which this section applies is the closing sale price on the valuation date, as published nationally in a general circulation daily newspaper.

§ 2676.28 Common and preferred stocks, warrants, and shares in closed-end mutual funds principally traded on other exchanges.

(a) *Applicability.* This section applies to common or preferred stock, warrants, or shares in a closed-end mutual fund, if the plan sponsor reasonably believes that the greatest volume of trades of the security normally occurs on a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934, other than the New York Stock Exchange or the American Stock Exchange.

(b) *Value.* The value of a security to which this section applies is the closing sale price of the security on that exchange for the valuation date, as published nationally in a general circulation daily newspaper.

§ 2676.29 Common and preferred stocks, warrants, and shares in closed-end mutual funds principally traded over-the-counter.

(a) *Applicability.* This section applies to common or preferred stock, warrants, or shares in a closed-end mutual fund, if the plan sponsor reasonably believes that the greatest volume of trades of the security normally occurs otherwise than on a national securities exchange, and also reasonably believes that the end-of-the-day bid and asked prices of the security as published nationally in a general circulation daily newspaper are those quoted on, and made available for publication by, the automated quotations system sponsored by the National Association of Securities Dealers, Inc. (a national securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934).

(b) *Value.* The value of a security to which this section applies is the average of the end-of-the-day bid and asked prices for the valuation date, as published nationally in a general circulation daily newspaper.

§ 2676.30 State and municipal obligations.

The value of a state or municipal obligation is the average of the bid and asked prices for the obligation for the valuation date, as published nationally in a general circulation daily newspaper.

§ 2676.31 Outstanding claims for withdrawal liability.

(a) *Value of claim.* The plan sponsor shall value an outstanding claim for withdrawal liability owed by an employer described in paragraph (b) of this section in accordance with paragraphs (a)(1) and (a)(2) below:

(1) If the schedule of withdrawal liability payments provides for one or more series of equal payments, the plan sponsor shall value each series of payments as an annuity certain under § 2676.13(c)(1) or (d)(1).

(2) If the schedule of withdrawal liability payments provides for a final payment of a different amount than the payments in the series described in paragraph (a)(1), the plan sponsor shall value the payment as a lump-sum payment under § 2676.13(b)(1).

(b) *Employers neither liquidated nor in insolvency proceedings.* The plan sponsor shall value an outstanding claim for withdrawal liability under paragraph (a) of this section if, as of the valuation date—

(1) the employer has not been completely liquidated or dissolved; and

(2) the employer is not the subject of any case or proceeding under Title 11, United States Code, or any case or proceeding under similar provisions of state insolvency laws. The claim for withdrawal liability of an employer that is the subject of a proceeding described in paragraph (b)(2) shall be valued under paragraph (a) of this section if the plan sponsor determines that the employer is reasonably expected to be able to pay its withdrawal liability in full and on time.

(c) *Claims against other employers.* The plan sponsor shall value at zero any outstanding claim for withdrawal liability owed by an employer that does not meet the conditions set forth in paragraph (b) of this section.

Issued in Washington, D.C., on this 31st day January, 1984.

By delegation of Raymond Donovan, Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Ford B. Ford,

Under Secretary of Labor.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this notice of proposed Rulemaking.

Thomas Veal,

Acting Secretary, Pension Benefit Guaranty Coporation.

FR Doc. 85-3845 Filed 2-15-85; 8:45 am]

BILLING CODE 7708-01-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 March 8, 1985, to April 8, 1985, on the Advance Notice of Proposed Rulemaking concerning air quality regulations for portions of the Outer Continental Shelf adjacent to California which was published in the **Federal Register** on January 7, 1985 (50 FR 838). The extension of the comment period is in response to requests received from the public to allow additional time for collection of complex air quality data.

DATES: Comments must be postmarked or received on or before April 8, 1985.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; (703) 860-7916, (FTS) 928-7916.

Dated: February 11, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 85-3958 Filed 2-15-85; 8:45 am]

BILLING CODE 4310-MR-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-22 and 201-45

Federal Information Resources Management Regulation (FIRMR); Records Management

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice announces the availability of a proposed FIRMR amendment that will establish FIRMR Parts 201-22, Records Management Programs, and 201-45, Management of Records. This regulation consists of those provisions of Federal Property Management Regulation (FPMR) Subpart 101-11, Records Management, for which GSA will continue to be responsible after April 1, 1985, when the National Archives and Records Service (NARS) becomes an independent agency to be known as the National Archives and Records Administration (NARA). The subject matter includes the creation of records and the management of mail, files, records, directives, forms, reports, micrographics, and records equipment and supplies. No changes have been made in authorities, policies, or procedures from those contained in FPMR Subpart 101-11, from which these proposed provisions are derived.

DATES: Any comments on the proposed provisions should be submitted in writing to the Policy Branch, OIRM at the address shown below on or before March 21, 1985.

ADDRESS: Comments should be sumbitted to the General Services Administration, KMPP, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Mullins, Policy Branch, Office of Information Resources Management, telephone 202-566-0194 or FTS, 566-0194. Copies of the proposed FIRMR amendment may be obtained by calling this number.

SUPPLEMENTARY INFORMATION: (a) Public Law 98-497, the National Archives and Records Administration Act of 1984, was signed into law on October 19, 1984. Effective April 1, 1985, NARS will become an independent agency known as the The National Archives and Records Administration (NARA). As a result, responsibility for the administration of the provisions now contained in FPMR Subpart 101-11 will be divided between GSA and NARA. This regulation incorporates into the FIRMR those provisions of FPMR Subpart 101-11 for which GSA will retain responsibility. A subsequent FPMR amendment will delete those provisions from the FPMR; and NARA intends to establish a regulation that will include the FPMR provisions for which NARA will be responsible.

(b) This proposed regulation contains no substantive changes to the provisions that now appear in FPMR Subpart 101-11. The intent is to reformat the FPMR provisions into the FIRMR format and numbering system and to make editorial changes to accurately reflect the current organizational structure within GSA's Office of Information Resources Management and the pending separation of NARS from GSA.

(c) The General Services Administration has determined that this rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This is a Government-wide management regulation that will have little or no net cost effect on society.

List of Subjects in 41 CFR Parts 201-22 and 201-45

Records, Records management.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: January 22, 1985.

John J. Landers,

Acting Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 85-4111 Filed 2-15-85; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 206, 232, 233, 234, 238, and 240

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 273

Aid to Families With Dependent Children and Food Stamp Program

AGENCIES: Social Security Administration, Department of Health and Human Services; Food and Nutrition Service, Department of Agriculture.

ACTION: Notice of Intent to Develop Regulations.

SUMMARY: The Social Security Administration and the Food and Nutrition Service intend to review and consider regulatory revisions that can be made without statutory amendment to bring about increased consistency between the Aid to Families with Dependent Children (AFDC) Program and the Food Stamp Program. The two agencies are soliciting comments and recommendations from the public and will consider suggestions for revisions which are permissible under existing Federal laws.

DATE: Closing date for receipt of comments April 22, 1985. The agencies will not reply, but will give consideration to written comments and suggestions.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 20203, or delivered to the Office of Family Assistance, Social Security Administration, Room B-448, Transpoint Building, 2100 Second Street SW., Washington, D.C. 20201, between 8:00 a.m. and 4:30 p.m., on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: At the Social Security Administration: Ms. Barbara Levering, Office of Family Assistance, Social Security Administration, Transpoint Building, 2100 Second Street SW., Washington, D.C. 20201, telephone (202) 245-2637.

At the Department of Agriculture: Ms. Bonny O'Neil, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, telephone (703) 756-3414.

SUPPLEMENTARY INFORMATION: In the interest of developing greater consistency in eligibility policies and procedures between the AFDC and Food Stamp Programs, public comments are being solicited on recommended program changes that can be brought about within existing statutory requirements of the respective programs. Recommendations should contain specific suggestions for changes in policy or procedure which would result in reducing the burden on both the individuals participating in the programs and for the agency workers making case decisions. We are particularly interested in soliciting ideas on how to make similar requirements in the two programs identical and in streamlining processes.

We ask that commenters limit their recommendations to regulatory provisions and policies within the purview of the Department of Agriculture or Department of Health and Human Services. Examples of areas that are within the discretion of the Departments include:

1. Notification requirements in closing cases differ when a recipient fails to appear at a scheduled redetermination. AFDC regulations require only a notice; food stamp regulations require a notice and an additional effort to reschedule the redetermination. Because there is no specific statutory language requirement for these policies, regulations could be changed to bring about consistency.

2. Regulations requiring social security numbers (SSN) differ. In both programs an SSN or proof that an SSN has been applied for is required. In the Food Stamp Program, if the individual participates based on having filed for an SSN, he/she must provide it to the State within 30 days. A 30-day good cause extension is available. In AFDC there is no fixed time limit for providing the SSN.

Regulations mandated by statutes of the two programs (the Food Stamp Act of 1977 as amended and title IV–A of the Social Security Act) are not within the scope of this initiative. Some examples of areas that are not within Departmental discretion on which comments should not be submitted include the following:

1. The authorizing statutes for both programs set forth requirements for what income must be included and excluded. To the extent that the statutory requirements differ, consistent policies cannot be imposed through the rulemaking process.

2. The authorizing statutes for both programs set forth the requirements for making deductions from gross income to determine the net income level on which benefits are based. The requirements for the two programs differ, and for the most part cannot be revised without a change in the statute, which would require congressional action.

3. Because the statutes establish different eligibility criteria, including different income standards, a "categorical eligibility" approach cannot be established through the rulemaking process.

Conclusion

By eliminating differences in the two programs and creating greater consistency, we hope to improve and simplify program administration and ease the burden placed upon the individuals applying for assistance.

List of Subjects

45 CFR Parts 206, 232, 233, 234, 238, and 240

Public assistance programs, Family Assistance Office.

7 CFR Parts 271 and 273

Food stamps.

John R. Block,
Secretary of Agriculture.

Dated: February 8, 1985.

Margaret M. Heckler,
Secretary of Health and Human Services.

[FR Doc. 85–3982 Filed 2–15–85; 8:45 am]

BILLING CODE 4190–11–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 100

[MM Docket No. 85–32; FCC 85–61]

Technical Standards for Direct Broadcast Satellite Service; Amendment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC proposes to adopt technical standards for the Direct Broadcast Satellite Service. This action, which is based primarily on recommendations of the Advisory Committee on Technical Standards for DBS Service, encourages industry to continue its efforts to develop further this service.

DATE: Comments are due by March 20, 1985 and replies by April 4, 1985.

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

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, Washington, D.C. 20554, (202) 632–9660.

SUPPLEMENTARY INFORMATION: Final report of The Advisory Committee On Technical Standards For The Direct Broadcast Satellite Service, June 30, 1984.

List of Subjects in 47 CFR Part 100

Direct broadcast satellite service, Communications equipment, Satellites.

Notice of Proposed Rulemaking

In the matter of amendments of subpart C of part 100 of the Commission's Rules and Regulations with respect to Technical Standards for Direct Broadcast Satellite Service; MM Docket No. 85–32, FCC 85–61

Adopted: February 6, 1985.

Released: February 11, 1985.

By the Commission.

1. The purpose of this preceeding is to consider adoption of technical standards for the Direct Broadcast Satellite Service (DBS). This action proposes to adopt recommendations of the Advisory Committee on Technical Standards for the DBS Service (Advisory Committee) as submitted to the Commission in its Final Report, on June 30, 1984. This proceeding is being considered to enhance the development of the DBS service by proposing technical requirements for use by all permittees in the design of compatible DBS systems.

Background

2. In 1980, the Commission initiated a DBS proceeding, General Docket No. 80–398, 45 FR 51914 (August 5, 1980), concerning preparations for the then forthcoming 1983 Region 2 Administrative Radio Conference (RARC–83).[1] The results of that proceeding served as the basis for the Commission's coordination, with industry and with other governmental agencies in formulating the United States technical proposals and positions for the conference. In a parallel proceeding, Docket 80–603, 45 FR 72719 (November 3, 1980), the Commission determined that applications for DBS systems need only show compliance with the technical guidelines as then specified in the Final Acts of WARC–77/79; and further, that systems eventually be capable of meeting the technical parameters adopted at the future RARC–83.

3. In the fall of 1982, the Commission granted several of the "first-round" applications, allowing applicants to begin construction of DBS systems. These authorizations were granted several months before orbital assignments and operating parameters were established at the RARC–83 Conference. In addition, these permittees were required to demonstrate "due dilligence" in completing contracting for, or commencing construction of their satellites (per 47 CFR 100.19) within one year of the grant of their permits.

4. In July 1983, the RARC–83 Conference established the technical guidelines for DBS service in Region 2. Such factors as frequencies, orbital positions, uplink and downlink channelization plans, service areas, maximum power levels, reference antenna patterns, antenna polarizations, and guardbands were specified in the

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[1] RARC–83 established the technical guidelines for the Direct Broadcast Satellite Service in Region 2.

Final Acts of the Conference. In addition to specific technical parameters, RARC-83 also formulated an allocation plan which met most of the desired channel requirements of the participating Region 2 nations while establishing acceptable interference levels. Thus, this allocation plan, with its derived interference levels, became the reference against which any individual nation's future DBS service deviation or modification would be measured. Also, upon completion of the RARC-83 Conference, the Commission adopted a *Memorandum Opinion and Order* that extended the period for the due diligence requirement of the first-round permittees to July 17, 1984.[2] That action also gave the permittees further notice to amend the parameters of their proposals to conform to the outcome of RARC-83. To date, no systems have become operational, although several first round permittees have successfully complied with the due diligence requirement.

5. One additional note is important in considering the background of this proceeding. Participants of RARC-83 recognized that deviations from the Final Acts' technical parameters may be desired by individual nations' administrations. Thus, The Final Acts themselves were designed to provide considerable flexibility in implementation. Consequently, nations may deviate from the plan without prior consent provided that no other nation's overall equivalent desired-signal-to-undersired-signal protection margin is reduced as outlined in the Final Acts. Otherwise, deviations are permitted only with the consent of the affected nations' administrations. To allow additional flexibility, the United States took reservations on two significant technical issues at the RARC-83 conference, concerning (1) antenna polarization, and (2) power flux density.[3] Consequently, this is the basis for consideration of any proposed standards that may be at variance with the technical guidelines of RARC-83.

Advisory Committee

6. *The Advisory Committee on Technical Standards for the DBS Service* (Advisory Committee) was created by the Commission on June 30, 1983, to meet two basic objectives: (1) to advise the Commission on the facts, circumstances, and considerations favoring or disfavoring the imposition of standardized requirements for DBS signal transmission or reception (other than those mandated by the Final Act of RARC-83); and (2) to develop and submit to the Commission recommendations as to what specific standards would be appropriate for the Agency to impose. The Advisory Committee was divided into three subcommittees: (1) Transmission Standards; (2) Receiver Standards; and (3) Encryption Standards. These subcommittees and their working groups met on numerous occasions throughout the year. On June 30, 1984, the Advisory Committee submitted its Final Report to the Commission.

7. The members of the Advisory Committee have worked diligently to develop an industry consensus on standards. The Advisory Committee stated that, although it started with widely divergent viewpoints, it had made significant progress toward a consensus. While the Advisory Committee did not reach a total consensus on a broad range of technical issues, its subcommittees did develop a number of recomendations for consideration as mandatory and voluntary transmission and receiver standards for DBS service.

8. By this Notice the Commission invites comment as to whether to adopt DBS transmission and reception requirements, based on the recommendations characterized as "mandatory" in the Final Report of the Advisory Committee. We note that only some of these were unanimously agreed to by Advisory Committee participants. Notwithstanding the fact that some of the participants of the Advisory Committee maintained that it was too early to consider setting standards for DBS service at this time, they were willing to concur with mandating a limited number of specific technical standards. Further, we note that even the standards the Advisory Committee maintained that it was too early to consider setting standards for DBS service at this time, they were willing to concur with mandating a limited number of specific technical standards Further, we note that even the standards the Advisory Committee recommends as mandatory are not all of the type which we would normally incorporate into the Commission's Rules. The Commission does support further voluntary development of recommendations on the basis that they are a signficant step towrds industry self regulation. The Commission also seeks comments as to whether to adopt as standards those recommendations which the Advisory Committee recommended should be "voluntary." Our goal is to adopt only those standards which are required to limit interference among DBS systems and to assure a reasonable degree of interoperability of systems and receivers in the hands of the public. We will rely on voluntary standards as much as possible; therefore we invite comment on the need for our mandating each of the proposed standards as well as on the details of the standards. In this connection we note the recent work being done by the Direct Broadcast Satellite Association, a decision by the Department of Justice not to challenge the development of industry standards and the guidelines for technical regulations which we adopted in Docket 83-114.[4] We do have some reservations as to whether it is necessary to adopt any standards, either "mandatory" or "voluntary," into the Rules in order to assure that the industry will have adequate technical standards. We therefore encourage public comment, both on the proposed standards and on whether voluntary mechanisms are likely to obviate the need for Commission Rules in this area.

"Mandatory Standards" of the Advisory Committee

9. The Advisory Committee recommended some basic mandatory technical parameter issues, including:

(1) Transmission of a standard video automatic gain control (AGC) reference in any video signal that is intended for viewing on NTSC-type receivers.[5]

(2) Use of circular polarization with uplink polarization opposite to downlink polarization.

(3) Prescription of method of energy dispersal when required.

(4) Universal use of 11.2 GHz as the local oscillator frequency for DBS receivers.

(5) Adoption of a channel numbering plan.

(6) Retention of a DC component in video signals.[6]

[2] Processing Procedures Regarding the Direct Broadcast Satellite Service 95 FCC 2d 250 (1983).

[3] At RARC-83 the U.S. reserved the right to: (1) operate with either sense of antenna polarization on any channel; and (2) use power flux density of -105 dBW/m[2] instead of the RARC-83 limitation of -107dBW/m[2].

[4] Report and Order, Docket No. 83-114, 49 FR 48305 (December 12, 1984) at para. 27.

[5] The National Television Systems Committee (NTSC) developed the form of video/audio transmission signal characteristics now used for terrestrial television in the United States.

[6] The Advisory Committee reported that some of its members favored the preservation of the DC component on a *voluntary* basis. However, the majority favored a *mandatory* standard because they believe that failure to preserve the DC component by even one operator would defeat the purpose of the standard. Thus, the majority recommended that this standard be imposed on all DBS transmissions with either NTSC or component type signal format.

Each issue will be developed separately.

Issue 1: AGC

10. The Advisory Committee found that there should be a requirement for a video AGC reference signal to be transmitted with all DBS broadcasts. This would allow the peak-to-peak video signal applied to a VHF remodulator automatically to cause constant and normal modulation of the visual carrier. The Final Report concluded that transmission of this reference signal would assist DBS receiver designers in providing video automatic gain control. It was recommended that the vertical interval reference (VIR) signal be used as is currently provided for in terrestrial television transmission on line 19 of both fields within the vertical blanking interval.[7]

11. The Commission does not, however, require transmission of the VIR signal in terrestrial television broadcasting, but rather only makes provision for its use on line 19. As the VIR signal is not a mandatory terrestrial requirement, it is not apparent to the Commission why DBS systems would not paralled terrestrial television systems, in that terrestrial systems provide for video AGC without its mandated presence of the VIR signal. Therefore, it does not seem appropriate to *require* transmission of the VIR signal. Rather, as in terrestrial systems, we may *reserve* line 19 of the vertical blanking interval for VIR transmission in DBS systems. The Commission invites further comment on this issue.

Issue 2: Circular Polarization

12. The Advisory Committee recommended that circular polarization be standardized for downlink transmission. This agrees with the parameter outlined in the Final Acts of RARC–83. The Advisory Committee also recommended that circular polarization be standardized for uplink transmission, but with opposite sense to the downlink polarization. This provision differs from the Final Acts of RARC–83 which specifies the same sense of polarization on uplink and downlink. The United States, however, took a "reservation" on this issue, thus indicating the need for further consideration of either polarization sense to be utilized. The Advisory Committee noted that the choice of uplink/downlink polarization scheme is of paramount importance for successful operation of several DBS systems at a single orbital location. Simultaneous use or differing uplink/downlink polarization schemes at the same orbital position would result in insufficient adjacent channel isolation; thus, prohibiting use of all channels at that orbital position. The Advisory Committee reported that all present commercial satellite systems have employed opposite sense of polarization to uplink and downlink channels. It further indicated that satellite design could be simplified if opposite polarization senses are used. Therefore, the Advisory Committee recommended that a polarization scheme be adopted as a standard which assigns opposite senses of circular polarization to any given channel on feeder uplinks and downlinks.

13. Generally, RARC–83 allocated odd channels with direct, right-hand circular polarization and even channels with indirect, left-hand circular polarization for both uplink and downlink. For nations with orbital positions of this configuration, the effect of the Advisory Committee's recommendation is at worst negligible, and at best an enhancement of the overall protection margin. However, there is a potential for interference with nations occupying the five orbital positions allocated with odd channels as indirect and even channels as direct polarization.[8] This potential interference exists because the uplink signals, which under the RARC–83 were afforded co-channel isolation provided by cross-polarization, would become co-polarized.

14. The United States DBS system authorizations granted specific channels and orbital positions to this point have all specified opposite sense uplink and downlink polarizations. They also have been analyzed on an individual basis at the power levels proposed (which are lower than those used in RARC–83) and have been found to be acceptable within RARC–83 tolerances, without invoking the U.S. polarization reservation. Thus, since polarization schemes cannot be mixed at any one particular orbital position, 110 degrees, 119 degrees and 148 degrees west longitude orbital positions have already been "standardized" as opposite sense polarization positions. Moreover, our preliminary Spectrum Orbit Utilization Program (SOUP) analysis indicates that if all U.S. positions were switched from same sense polarization to opposite sense polarization of uplink to downlink, at full power (a worst case situation), the interference impact in the five orbital positions previously noted is limited to 0.1 dB. This is still within the RARC–83 limits notwithstanding the U.S. reservation. The Commission, therefore, believes that these effects are negligible. But, in the interest of ensuring protection to the maximum extent possible to all orbital positions, the Commission invites any calculation results or comments from parties who may have performed independent analysis in this area that either confirm or contradict our conclusion.

15. It should be noted that the Commission's concern is not one of "international right." Because the United States has the antenna polarization reservation per RARC–83, we are clearly within our jurisdiction to reassign domestically the polarization scheme. Our concern, rather, stems from the desire to preserve the integrity of all the RARC–83 allocations. Since the Final Acts specify a same sense polarization scheme, and the Advisory Committee specified an opposite sense polarization scheme, we are requesting comments regarding the technical merits and considerations involved. We further invite comments on the necessity of adopting a particular polarization scheme standard for orbital positions at which a single operator utilizes the full complement of 32 channels, as opposed to positions which will be shared by several operators. We believe, however, that the benefits of the Advisory Committee's recommendation to provide spectrum efficiency, compatibility and ease of design, merit proposal or rules mandating opposite sense circular polarization of uplink and downlink transmissions for domestic DBS orbital positions.

Issue 3: Energy Dispersal

16. Use of energy dispersal is mandated by RARC–83 to conform to limits necessary for inter-regional sharing of the spectrum.[9] Specific limits

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[7] In terrestrial television broadcasting, the Vertical Interval Reference (VIR) signal, when combined with suitable circuitry, enables automatic correction of the receiver's *video gain* and other picture signal conditions. However, it is most often referred to as a signal used at the receiver as a reference for correct color reproduction.

[8] The orbital positions and nations potentially affected are: 74 degrees—Brazil; 92.5 degrees—Various Carribean Countries; 95 degrees—Equador; 96 degrees—Bermuda; 107.5 degrees—Honduras, El Salvador, Nicaragua, Guatemala.

[9] Energy dispersal is a technique of artificially spreading the signal power over a larger bandwidth. It is commonly used in satellite communication for two basic purposes: reduction of peak power spectral density (an average over some bandwidth) of the satellite transmission, and interference reduction. A typical energy dispersal waveform is a triangle or sawtooth waveform of low frequency (approximately 30 Hz) with peak-to-peak deviation such that the modulation index for this waveform is very high.

are found in Section 3.18 of Annex 5, Part 1, of the Final Acts of RARC–83. The Advisory Committee has recommended that the Commission prescribe the type of energy dispersal to be utilized on a mandatory basis when required by the Final Acts. Energy dispersal techniques must be employed to control power flux density levels in defined restricted radiation areas outside of Region 2.

17. The Commission has found that exact determination of power flux density values based upon information provided by DBS applicants is difficult. The primary reason for this is the lack of specificity in the detail of the shaped radiation beams being proposed. This lack of detail impacts on other areas of application processing as well. For instance, an exact computer interference analysis cannot be performed without having precise details of the shaped beams being proposed. Furthermore, these details are needed for the International Frequency Registration Board (IFRB) referral. However, the information required is now specifically outlined in Section 12(h) of Annex 2, Part 1, of the Final Acts. Thus, the Final Acts shall form the basis of the proposed informational requirements in an application for DBS.

18. The proposed rules require that each DBS applicant file calculations to determine the applicability of energy dispersal to each specific proposal. Calculations should include showings of power flux density levels toward all critical areas outside of Region 2 which could potentially be affected, per Annex 6, Part 1, of the Final Acts. As previously mentioned, this showing should include detailed information on shaped beams proposed for all modes of operation. We intend for this requirement to be applied to existing permittees, as well as pending applications. In cases where energy dispersal is shown to be required by the above mentioned calculations, the Commission would impose a condition on the instrument of authorization stating the method and details of energy dispersal to be used. Generally, specific methods of energy dispersal will be supplied by applicants for Commission consideration. Therefore, we are inviting comments regarding the desirability and effectiveness of the various means of energy dispersal, such as continuous modulation with program material or some appropriate signal waveform.

Issue 4: Local Oscillator Frequency

19. The Advisory Committee submitted a recommedation to use 11.2 GHz as the local oscillator frequency for receivers in order to control egressive interference from the outdoor unit (ODU) receiver located at the antenna. Also, as an incidental benefit, this would facilitate interchangeability of receivers. The principal source of egressive signals is unwanted emissions from the first local oscillator in the low-noise converter (LNC) portion of the receiver. Radiation of these unwanted emissions through the receiving antennas of a large number of DBS receiving terminals is allegedly a potential source of interference to sensitive microwave relay receivers. To control such egressive interference, the Advisory Committee recommended that the local oscillator frequency be standardized at 11.2 GHz, which falls in a guard band of standardized radio relay channeling plans spanning the 10.7–11.7 GHz band.

Issue 5: Channel Numbering

20. The RARC-83 Final Acts specify that the even numbered channels are to be used with left-hand circular polarization and odd numbered channels with right-hand circular polarization. The Advisory Committee recommended redesignating the channels so that the left-hand polarized channels would be numbered consecutively from 1 to 16 and the right-hand polarized channels would be numbered consecutively from 17 to 32. The Advisory Committees's recommedation is preferable because the *polarization selector* at the receiver antenna would be required to switch only once, instead of 32 times, as the consumer switches the channel selector in sequence through the full 32 channels. This would reduce mechanical wear on the device. In addition, it is anticipated that this would allow channel assignments to appear more closely grouped to the consumer. Therefore, we propose to adopt the plan recommended by the Advisory Committee.

Issue 6: DC Component

21. The Advisory Committee recommended that the Commission require that video transmissions contain a DC component. This would allow for the largest possible frequency deviation in FM transmission with a resulting improvement in signal-to-nosie ratio at the receiver compared to an AC coupled video signal with a DC component.[10] Such improvement can also be gained at the expense of requiring a more complicated automatic frequency control (AFC) system at the receiver. (For example, present Fixed Statellite Service transmissions are AC coupled and have a simple AFC circuit). We find merit in this recommendation of the Advisory Committee and are proposing it as a mandatory standard.

"Voluntary Standards" of the Advisory Committee

22. The Advisory Committee made recommendations to industry for the adoption of certain standards on a voluntary basis. These standards are those which the Advisory Committee members, for various reasons, believed should not be mandated. Thus, agreement on voluntary standards implies the intent by industry participants to follow these proposed measures on a voluntary, but discretinary basis. In addition, the Avisory Committee recommended that the proposed voluntary standards be further investigated and reviewed by qualified industry standards groups. While the Commission is not proposing to adopt these voluntary standards, it if fully endorsing this approach on the part of industry to set certain technical standards without the necessity of governmental intervention.

23. Therefore, the Commission commend the work of the industry and the Advisory Committee in this regard, and further encourages the industry and representative groups, such as, the Direct Broadcast, Satellite Association (DBSA) and the electronic Industries Association (EIA), to continue this effect to finalize various component standards for DBS systems. We also note that in early October of 1984, the Department of Justice, Anitrust Division, said it had no present intention to challenge the plans of DBSA to form a standards committee to develop and recommend voluntary technical standards for the DBS industry.[11] For completeness of the record, a brief discussion of the most prominent voluntary recommendations follows.

Voluntary Transmission Standards

24. *Video format.* The Advisory Committee reported that a majority of the working group on signal format believed that a component video format should be the standard, on a voluntary bais. However, a specific component

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[10] It should be noted that while FM modulation is asumed, licensees are under no obligation to use FM (See Final Act, RARC–83, Annex 5, Section 3.1). However, in such AC couped systems deviation must be limited to avoid power spillover into adjacent channels when there are large changes in average picture signal level.

[11] Per U.S. Department of Justice release of October 15, 1984 see business review letter of October 12, from Assistant Attorney General, Antitrust Division to counsel for DBSA.

format could not be defined at the time because several systems were under development. Although the Advisory Committee suggested a preference for a component format such as B-MAC or T-MAC, it reported that available data on the relative performance and implementaion costs associated with these formats precluded it from recommending a speicific format.[12] Further tests in this area appear to be needed.

25. *Audio format.* The Advisory Committee reported that insertion of audio in the video blanking intervals using Time Divison Multiplex (TDM) should be standardized on a voluntary basis. It concluded, however, that a specific format also could not be defined at this time because the audio format will depend on which video format is finally selected. The Advisory Commitee suggested that TDM audio systems provide multiple audio channels in a spectrum-efficient way, and that they should be employed instead of aural subcarriers, as is now the common practice. The Advisory Committee stated that, because of the deficiencies of FM subcarriers in power/bandwidth-limited FM transmission systems, FDM-based audio should not be the bais for any recommendation. The Advisory Committee added that several incompatible TDM audio formats were proposed. However, all of these systems were proprietary and specific technical details had not been disclosed due to ongoin investigations on optimizing performance and on the need to provide secure encrypted systems.

26. *Video pre-emphasis characteristic.* The Advisory Committee recommeded that a single characteristic for each video format should be established on a voluntary basis. However, it reported that the exact characteristics could not be specified at this time because the establishment of such characteristics depends on the details of the video format selected for use. In other words, the pre-emphasis characteristic is strongly dependent upon the spectrum of the baseband signal. Thus NTSC and each component format requires a unique per-emphasis characteristic for optimum performance. The Advisory Committee further suggested that the conventional CCIR pre-emphasis for NTSC is not really suitable for systems at or near FM threshold, as may be encountered with typical DBS systems under precipitation attenuation. However, an optimum NTSC pre-emphasis characteristic has not yet been determined nor experimentally verified. The Advisory Committee noted that only in the case of B-MAC has the video pre-emphasis characteristic for DBS been established and tested. Therefore, it did not make a recommendation for any pre-emphasis characteristics since they have not been investigated over a broad range of both technical system characteristics and program materials.

27. *No transmission of reciver per-correction.* The Advisory Committee recommended that no receiver pre-correction be applied to the video signal. Since this stands in contast to terrestrial NTSC transmissions, the Advisory Committee concluded that such a voluntary standard should be adopted by the industry to avoid confusion.

28. *No transmission of black level set-up.* The Advisory Committee recommended that black level set-up should not be transmitted except for NTSC with audio subcarrier(s). It found that, although black level set-up should be present in the signal fed to TV sets, if need not be transmitted on the statellite link, but it should be added in the DBS receiver's baseband processor.

29. *Frequency Modulation (FM) for analog transmissions.* The Advisory Committee recommended that FM modulation should be standardized on a voluntary basis for analog transmission. It also noted that digital modulation was not considered but its future use should not be precluded. In additon, the Advisory Committee noted that digital modulation schemes are not presently being considered for video transmission primarily because of the cost. The Advisory Committee indicate, however, that digital processing will most likely be employed within the baseband portion of DBS home receiver terminals, and burst digital modulation may be utilized for audio and data.

Voluntary Receiver Standards

30. *Limit 11.2 GHz local oscillator emission at output flange to −73dBW.* In conjunction with the recommended 11.2 GHz local oscillator frequency, as discussed earlier to control egressive interference, the Advisory Committee further recommended that the level of emissions at 11.2 GHz, measured at the flange of receiving antenna feeds, be limited to −73 dBW. This value is based on theoretical analysis of a model population of DBS receivers with local oscillator frequency at 11.2 GHz. The Advisory Committee stated that the above value should be re-examined at some future time by an appropriate industry group such as the EIA or DBSA. The Advisory Committee suggested that these groups should either confirm or redefine a less stringent limit based on further theoretical analysis, and if feasible, an initial field test.

31. *Application of Part 15 of Commission Rules to DBS indoor units.* The Advisory Committee recommended application of Commission Part 15 Rules to control egressive interference from the DBS receiver indoor unit (IDU). Several sections of the rules (Part 15C, H, J, etc.) that specify signal radiation limits for home electronic equipment were noted. The Advisory Committee believes that these limits will be adequate to cover the IDU in DBS home receiver terminals. It should be pointed out that units which employ an RF modulated output for connection to the antenna terminals of a TV receiver fall under the rules for TV interface Devices in Part 15, Subpart H, and are subject to certification. The subject Part 15 standards, however, prescribe emission limits above 16 Hz. Therefore, the Advisory Committee recommended, and the Commission agrees, that the DBSA be encouraged to work together with the EIA to ensure that limits appropriate to the IDU are in fact developed.

32. *Adoption of Underwriter's Laboratory product standards.* To ensure the electrical safety of DBS home installation, including protection against lightning, the Advisory Committee recommended that DBS system operators adopt voluntary industry standards contained in the Underwriter's Laboratory Product Standards UL 1409, 1410, and 1414.

33. *"Type A" terminal minimum characteristics for DBS baseline receiver.* "Type A" DBS receiver is the lowest capability home terminal recommended by the Advisory Committee as a possible baseline receiver. It includes a full 500 MHz bandwidth, single polarization capability, control signal provided by indoor unit for accessory polarization selection switch, wideband frequency demodulator output, NTSC channels 3 and 4 remodulator, and/or composite video output, and/or RGB output, and stereo sound capability.

Other Considerations

34. One of the other issues considered by the Advisory Committee was the potential for compatibility of a single home terminal with two or more baseband signal formats. The Advisory Committee reported that the difficulty in this issue arises from the fact that it had not yet reached a conclusion or

[12] Time multiplexed analog component signal format (*T-MAC*) is a class of video signal formats in which the luminance and chrominance components of the baseband are time division multiplexed. A system called *C-MAC* has been developed for DBS in the United Kingdom. A very similar but simpler system called *B-MAC* has been developed for use in the United States.

recommendation concerning specific baseband signal formats. Thus, the Advisory Committee took into account the possibility that several baseband signal formats and several encryption algorithms might be in use simultaneously. However, the Advisory Committee stated that for practical purposes, it assumed that no more than three different television signal formats need be considered: TMAC, NTSC with specified audio format, and HDTV. The Advisory Committee finally recommended that the baseline DBS home terminal be able to receive and process only one signal format, but be provided with an output connection which would allow access to the unprocessed wideband baseband to allow interfacing and upgrading capabilities.

35. *Standard interfaces among elements of the DBS home terminal.* This recommendation was made by the Advisory Committee to assure the interchangeability of subsystems or components of DBS reception equipment. This measure will minimize the cost of expanding and improving reception equipment. In addition to such recommended items as the 20-Pin CENELEC baseband processor connector, other interface components must yet be developed.

36. *DBS receiver capacity to receive unencrypted transmissions.* The Advisory Committee recommended that DBS receivers designed for reception and decryption of subscriber-supported transmissions should be capable of receiving unencrypted (in-the-clear) transmissions of the same signal format without an additional outboard device. This would avoid duplication of the indoor unit and baseband processor unit.

37. The Advisory Committee made additional recommendations which contain fairly detailed technical specifications which might also impact the design of DBS receivers. These recommendations were labeled *Good Industry Practice and Suggested Industry Guidelines and included:*

(a) Adequate filtering to reduce image frequency interference.

(b) Low noise converter design to limit third order intermodulation products.

(c) Adequate shielding of outdoor unit to protect against IF interference.

(d) In-home electronic interference standards applied to DBS indoor unit.

(e) Development and publishing of preferred antenna noise and interference specifications for each major geographic region in DBS system operator's service area.

(f) Use of RG-59 or RG-6 foam coaxial cable between outdoor unit and indoor unit.

(g) Separation of antenna feed and low noise converter to facilitate polarization selection retrofitting.

(h) Uniform interface specifications between outdoor unit, indoor unit, outboard peripheral equipment and television sets.

38. Authority for the rule making proposed herein is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

39. Pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that the action proposed will not have a significant impact on a substantial number of small entities. The proposal imposes no obligations or requirements upon private entities since presently no small entities are active in the fledging DBS industry. To the extent that some may be considering potential entry into the DBS field, the proposed rules would aid in their planning and development.

40. 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 a substantive 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 must prepare a written summary of that presentation; on the day of oral presentation that written summary must be served on the Commission 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*, §§ 1.1241 and 1.1243 of the Commission's Rules and Regulations, 47 CFR 1.1241 and 1.1243.

41. Pursuant to applicable procedures set out in §§ 1.4 and 1.415 of the Commission's Rules and Regulations, 47 CFR 1.4 and 1.415, interested parties may file comments on or before March 20, 1985 and reply comments on or before April 4, 1985.[13] All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Reply comments shall be served on the person(s) who filed comments to which the reply is directed.

42. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and 5 copies of all comments, reply comments, pleadings, briefs or other documents shall be furnished to the Commission. Members of the general public who wish to participate informally in the proceeding may submit one copy of their comments, specifying the docket number in the hearing. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

43. It is ordered that the Secretary shall cause a copy of this *Notice* to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this *Notice* to be published in the **Federal Register.**

44. *Paperwork Reduction.* The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, and found to contain no need for new or modified form for information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 100—[AMENDED]

It is proposed to amend 47 CFR 100.21 to read as follows:

Section 100.21 would be revised in its entirety to read as follows:

[13] Under § 1.46(b) of the Commission's rules an extension of time will be granted upon a showing of good cause. 47 CFR 1.46(b).

§ 100.21 Technical requirements.

Direct Broadcast Satellite systems shall be operated in accordance with the sharing criteria and technical characteristic contained in the Final Acts of the Regional Administrative Conference for the Planning of the Broadcasting-Satellite Service in Region 2 (SAT–83), RARC–83, Geneva 1983; in addition to the following technical standards.

(a) DBS transmission systems shall use circular polarization with uplink polarization of opposite sense to downlink polarization.

(b) Based upon the system operator's submitted technical characteristics, which include but are not limited to all information specified in Annex 2, Part 1 of the Final Acts of RARC–83, all applicants for DBS facilities shall submit calculations to demonstrate the applicability of energy dispersal to all modes of operation of their specific proposal. Section 3.18 of Annex 5 of the Final Acts defines the conditions under which energy dispersal must be utilized. In cases where energy dispersal is shown to be needed to conform to the limits necessary for inter-regional sharing, a complete description of the method and details of the energy dispersal to be utilized shall be submitted. Upon analysis of the information, the Commission shall include appropriate details of energy dispersal provisions on the individual instrument of authorization.

(c) Direct broadcast satellite system receivers which cover the frequency range 12.2–12.7 GHz must use a first local oscillator frequency of 11.2 ± 0.05 GHz as a precondition for marketing pursuant to 47 U.S.C. 302 and Subpart I of Part 2 of this chapter.

(d) The DC component of the video signal shall be preserved at the input to the frequency modulator.

(e) Numerical designation of DBS channels.

Channel No.	Assigned frequency (MHz) (center of 24 MHz channel bandwidth)	
	Downlink[1]	Uplink
1	12238.58	17338.58
2	12267.74	17367.74
3	12296.90	17396.90
4	12326.06	17426.06
5	12355.22	17455.22
6	12384.38	17484.38
7	12413.54	17513.54
8	12442.70	17542.70
9	12471.86	17571.86
10	12501.02	17601.02
11	12530.18	17630.18
12	12559.34	17659.34
13	12588.50	17688.50
14	12617.66	17717.66
15	12646.82	17746.82
16	12675.98	17775.98
17	12224.00	17324.00
18	12253.16	17353.16
19	12282.32	17382.32
20	12311.48	17411.48
21	12340.64	17440.64
22	12369.80	17469.80
23	12398.96	17498.96
24	12428.12	17528.12
25	12457.28	17557.28
26	12486.44	17586.44
27	12515.60	17615.60
28	12544.76	17644.76
29	12573.92	17673.92
30	12603.08	17703.08
31	12632.24	17732.24
32	12661.40	17761.40

[1] Downlink circular polarization sense:
Left-hand circular polarization (Indirect Pol.) on Channels 1–16.
Right-hand circular polarization (Direct Pol.) on Channels 17–32.

[FR Doc. 85–4029 Filed 2–15–85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 33
Tuesday, February 19, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on February 26, 1985, from 4:00 p.m. to 6:00 p.m., a public information meeting will be held in the Small Assembly Room, Main Floor of the City and County Building in Knoxville, Tennessee.

The Executive Director of the Council has agreed to participate in this meeting at the invitation of the Federal Highway Administration in order to help meet the public involvement requirements of § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, state and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed construction of ramps to and from I-40/I-275 connecting to Henley Street and the realignment and widening of Western Avenue from Henley Street to Dale Avenue in Knoxville, Tennessee, an undertaking of the Federal Highway Administration and the Tennessee Department of Transportation. The project as proposed would affect five properties listed in the National Register of Historic Places: the Old Knoxville City Hall, the L & N Station, the L & N Freight Depot, the Iron Foundry/Nail Factory, the Fort Sanders Historic District and the Western Avenue Bridge over Second Creek; and the Western Avenue Bridge over Second Street, a property which may be eligible for the National Register. Consideration will be given to the undertaking, its effects on the National Register and eligible properties, and alternate courses of action that could avoid, mitigate, or minimize adverse effects on these properties.

This will be an "open house" meeting. There will be no formal presentations, but representatives of the Council, the Federal Highway Administration, the Tennessee Department of Transportation, and the Tennessee State Historic Preservation Officer will be present to provide factual information on the location, and design features of the project, and its effects to historic properties. The public is invited to ask questions and make their comments and views known about the project, and alternative designs. Specific areas of the room will be set aside to address the issues of project design; the social, economic, and environmental effects of the project; and the right-of-way and relocation assistance programs. Because this is an "open house" meeting, the public may attend at any time during the allotted time period.

Additional information regarding the purpose of the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Washington, DC. 20004, telephone number (202) 786-0505. Attention: Eleni Silverman.

Dated: February 13, 1985.

Robert R. Garvey Jr.,

Executive Director.

[FR Doc. 85-4013 Filed 2-15-85; 8:45 am]

BILLING CODE 4310-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Natural Resource Management Guide Meeting; St. Thomas, VI

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of meeting.

SUMMARY: The Farmers Home Administration (FmHA) State Office located in Montpelier, Vermont, and serving Vermont, New Hampshire and the Virgin Islands is announcing a public information meeting to discuss its draft Natural Resource Management Guide for the Virgin Islands.

DATES: Meeting on March 15, 1985, 1:00 p.m. to 3:00 p.m. Comments must be received no later than April 14, 1985.

ADDRESS: Meeting location at FmHA County Office, Federal Building, St. Thomas, Virgin Islands.

Written comments and further information will be addressed to: State Director, FmHA, 141 Main Street, Post Office Box 588, Montpelier, Vermont 05602, (802) 223-2371.

All written comments will be available for public inspection during regular work hours at the above address.

SUPPLEMENTARY INFORMATION: FmHA's 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 local levels and that affect the financing of FmHA activities in the Virgin Islands. 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.

Date: February 12, 1985.

John E. Hansel,

Acting Director, Program Support Staff.

[FR Doc. 85-3961 Filed 2-15-85; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

International Trade Administration

Northwestern University Medical School; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30

a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.: 84-254. Applicant: Northwestern University Medical School, Chicago, IL 60611. Instrument: Micromanipulator and Microdrive, Models MK-2-R and MO-103-R. Manufacturer: Narishige Scientific Instruments Laboratory, Japan. Intended use: See notice at 49 FR 35167.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides smooth movement of a microelectrode in increments as small as 2.0 micrometers on any of three axes. The National Institutes of Health advises in its memorandum dated January 11, 1985 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-4008 Filed 2-15-85; 8:45 am]

BILLING CODE 3510-DS-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No.: 84-287. Applicant: University of California, Los Angeles, Los Angeles, CA 90024. Instrument: Photo-Rotating Slit Lamp System, Model SL-45. Manufacturer: TOPCON Deutschland GmbH, West Germany. Intended use: See notice at 49 FR 39356.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument determines cataract formation by measuring size and intensity of opacified area of the lens using slit-image photography followed by densitometric image analysis. The National Institute of Health advises in its memorandum dated December 18, 1984 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-4009 Filed 2-15-85; 8:45 am]

BILLING CODE 3510-DS-M

Yale University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No: 84-275. Applicant: Yale University, New Haven, CT 06510. Instrument: Micromanipulator, Model PM 20(B) with Accessories. Manufacturer: Vertrieb Biomedizinscher Geraete, West Germany. Intended Use: See notice at 49 FR 37136.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument impales cellular membrane with a microelectrode with a lateral movement less than 0.1 micrometer. The National Institutes of Health advises in its memorandum dated December 18, 1984 that: (1) The capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85-4010 Filed 2-15-85; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing Related Research Results—HTLV-III of Aids

The inventions listed below are owned by the Department of Health and Human Services of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

SN 6-643,306, "Molecular Clones of the Genome of HTLV-III"

SN 6-660,137, "Use of Suramin for Clinical Treatment of Infection with Any of the Members of the Family of Human T Cell Leukemia (HTLV) Viruses Including Lymphadenopathy Virus (LAV)"

SN 6-664,972, "Production of Human T-Cell Leukemia (Lymphotropic) Retrovirus (HTLV-I) Envelope Protein Fragments in Bacteria and Use in Seroepidemiological Survey of Human Lymphoid Malignancies"

DHHS-E-92-95 "In Situ Detection of Human T-Cell Leukemic Virus Type III"

Any party interested in seeking a nonexclusive license under any or all of these patent applications should submit an application for such a license within forty-five days of the date of this notice. Forms and instructions for preparing and submitting such an application may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151. Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

[FR Doc. 85-4005 Filed 2-15-85; 8:45 am]

BILLING CODE 3510-04-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety: Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on March 4 and 5, 1985, in Richmond, Virginia. The purpose of this meeting is to discuss test methods and procedures for measuring the propensity of cigarettes and little cigars to ignite upholstered furniture and mattresses. A portion of this meeting will be closed to allow consideration of information which is designated trade secret or confidential.

DATES: The meeting will be from 10:00 a.m. until 5:00 p.m. on March 4; will resume at 9:30 a.m. on March 5, and adjourn that day.

ADDRESS: The meeting will be at the offices of Philip Morris, Broad Street and Interstate 64, Richmond, Virginia.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-587; 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars within minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on March 4 and 5, 1985, at the offices of Philip Morris, Broad Street and Interstate 64, Richmond, Virginia, to discuss test methods and procedures for measuring the propensity of cigarettes and little cigars to ignite upholstered furniture and mattresses. The agenda for this meeting also includes a tour of the Philip Morris plant.

A portion of the meeting will be open to observation by members of the public. Participation will be limited to members of the Technical Study Group and persons who have been requested by the Technical Study Group to make presentations. A portion of this meeting will be closed to allow consideration of information which is designated trade secret or confidential. The authorization to close a portion of the meeting is given in accordance with provisions of section 10 of the Federal Advisory Committee Act (5 U.S.C. App. I), section 6 of the Cigarette Safety Act of 1984 (Pub. L. 98-587; 98 Stat. 2925), and 5 U.S.C. 552b (3) and (4).

Dated: February 14, 1985.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 85-4186 Filed 2-15-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday-Friday, 6-8 March 1985.

Times of Meeting: 0900-1200 hours (Open) and 1300-1500 hours (Closed) and 1500-1700 hours (Open) on 6 March; 0830-1200 hours (Open) and 1300-1700 hours (Closed) on 7 March; and 0900-1200 hours (Closed) on 8 March.

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board 1985 Summer Study on Training and Training Technology—Applications for Airland Battle and Future Concepts/Army 21 will meet to discuss study Terms of Reference, receive orientation briefings, and organize study group panels and plan the research effort. The open portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and Title 5, United States Code, Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed in this portion of the meeting are so inextricably intertwined so as to preclude opening them to the public. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-3949 Filed 2-15-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, 12 and 13 March 1985.

Times of Meeting: 0830-1700 hours, both days (Closed).

Place: U.S. Army Electronic Warfare Laboratory, Fort Monmouth, NJ.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Electronic Warfare Laboratory (EWL) Effectiveness Review will meet for classified project briefings and in-depth discussions reviewing the internal technical program of EWL. The study purpose is to ensure continued excellence by providing independent evaluation on problems and causes of deficiencies, if any. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and Title 5 United States Code, Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-3950 Filed 2-15-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday-Friday, 12-15 March 1985.

Times of Meeting: 0800-1700 hours (Open) on 12 March; 0800-1200 hours (Open) and 1300-1700 hours (Closed) on 13 March; 0800-1500 hours (Closed) on 14 March; and 0800-1630 hours (Open) on 15 March.

Place: The Presidio of Monterey in Monterey, California.

Agenda: Both the Army Science Board Functional Subgroup on Human Capabilities and Resources and the Ad Hoc Subgroup on Soldier Research Issues will meet (the former 12-14 March, the latter 14-15 March) for orientation briefings and discussions and to consider manpower, personnel, training, health, and medical factors in the context of the Light Infantry Division, and to examine research conducted by the ARI (U.S. Army Research Institute for the Behavioral and Social Sciences), Field Unit at Monterey, California. The meeting will also serve as a tutorial for new members of the Functional Subgroup. Both efforts were combined for cost effectiveness since all the Ad Hoc Subgroup members are also members of the Functional Subgroup. Topics to be addressed include: (1) An overview of the Light Infantry Division concept, (2) training for the Light Infantry Division, (3) presentations on soldier-oriented research and development for the Light Infantry Division and medical research and development for the Light Infantry Division. The open portions of the meeting are open to the public. Any person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and Title 5, United States Code, Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed in this portion of the meeting are so inextricably intertwined so as to preclude pening them to the public. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-3951 Filed 2-15-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Stengthening and Endowment Grant Programs; Application Notice for Planning Grants, Renewable Development Grants, and Endowment Grants in Fiscal Year 1985; Extension of Closing Date for Certain Eligible Institutions of Higher Education

The Secretary extends to March 11, 1985, the closing date by which the institutions listed below may submit an application for a planning grant or a renewable development grant under the Strengthening Program authorized by Title III of the Higher Education Act 1965, as amended (HEA), or an endowment grant under the Endowment Grant Program authorized by Title III of the HEA. Those institutions include only those institutions that requested designation as an "eligible institution" between November 30, 1984, and December 31, 1984, on the basis of the eligibility notice published in the Federal Register of November 30, 1984, 49 FR 47084. The institutions referred to above that may apply for both a Strengthening Program and an Endowment Program grant are:

Walker State Technical College, AL
Yuba College, CA
Northeast Alabama State Junior College, AL
Touro College, NY
Belmont Technical College, OH
Bayamon University College/Inter-American University, PR
Lackawana Junior College, PA
Hudson Valley Community College, NY
College of the Redwoods, CA
Bayamon Technological University College, PR
Greater Hartford Community College, CT
Cleveland Institute of Art, OH
Buena Vista College, IA
University of Texas at El Paso, TX
Toccoa Falls College, GA
St. Petersburg Junior College, FL
Fisk University, TN
North Hennepin Community College, MN
Greater New Haven State Technical College, CT
Roxbury Community College, MA
Lexington Community College, KY
Indiana Vocational Technical College, IN
Arrowhead Community College, MN

Those institutions referred to above that may apply for an Endowment Program grant only are:

Western State College, Co
University of Hawaii at Hilo, HI
University of Hawaii, Kapiolana Community College, HI
Athens State College, AL
Coastal Carolina College, University of South Carolina, SC
Rio Hondo Community College, CA
South Seattle Community College, WA
Auburn University of Montgomery, AL
Miami-Dade Community College, FL
Marymount College of Kansas, KS
College of St. Scholastica, MN

The original application notice for the Strengthening Program, with a closing date of February 15, 1985, was published in the **Federal Register** of December 13, 1984, 49 FR 48606-48608. The original application notice for the Endowment Grant Program, with a closing date of January 25, 1985, was published in the **Federal Register** of November 15, 1984, 49 FR 45218-45219. The reader should refer to these previous application notices for complete information concerning available funds and program information.

The Strengthening Program is authorized under sections 311-313 and 341-347 of Title III of the HEA, 20 U.S.C. 1057-59, and 1066-1069. The Endowment Grant Program is authorized under section 333 of Title III of the HEA, 20 U.S.C. 1065a.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031, 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 as 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, S.W., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Further Information: For further information, contact Dr. Caroline J. Gillin, Director, Division of Institutional Development, Office of Postsecondary Education, U.S. Department of Education, Room 3042, Regional Office Building 3, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone (202) 245-2429.

(20 U.S.C. 1057-1059, and 1066-1069c)

(Catalog of Federal Domestic Assistance Numbers 84.031A-Strengthening Program; 84.031G-Endowment Program)

Dated: February 14, 1985.
Edward M. Elmendorf,
Assistant Secretary for Postsecondary Education.
[FR Doc. 85-4161 Filed 2-15-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Survey of Compensation Paid Scientists and Engineers

Correction

In FR Doc. 85-3427 beginning on page 5658 in the issue of Monday, February 11, 1985, make the following correction:

On page 5658, third column, in the AGENCY line of the preamble, "Office of Industries Relations" should have read "Office of Industrial Relations".

BILLING CODE 1505-01-M

Federal Energy Regulatory Commission

[Docket No. QF85-142-000]

Alexandria/Arlington Resource Recovery Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility; Correction

February 12, 1985.

In Docket No. QF85-142-000 appearing in the **Federal Register** issue of January 29, 1985 on page 3957 make the following correction: On page 3957 in the second paragraph, line four. "two waterwall" is corrected to read "three waterwall".

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-4032 Filed 2-15-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF84-518-001]

Catalyst Energy Development Corp.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

February 12, 1985.

On Janaury 23, 1985, Catalyst Energy Development Corporation (Applicant), and agent for Catalyst Golden Bear Cogeneration Partnership of 110 Wall Street, 27th Floor, New York, New York 10005 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Witco Chemical Corporation's Golden Bear Division Refinery in Oildale, California. The facility will contain a combustion turbine generator, heat recovery boiler, and Sealtherm oil heat recovery system. The steam and process heat will be used in the Witco Chemical Corporation's Golden Bear Division refinery. Electric energy will be sold to the Pacific Gas and Electric Company. The net electric power production capacity of the facility will be 32,000 kW. The primary energy source will be natural gas. The installation of the facility began in April, 1984.

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. 85-4031 Filed 2-15-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP85-214-000, et al.]

Natural Gas Certificate Filings; Montana-Dakota Utilities Co.

Take notice that the following filings have been made with the Commission:

1. Montana-Dakota Utilities Co.

[Docket No. CP85-214-000]

February 11, 1985.

Take notice that on February 4, 1985, Montana-Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP85-214-000 an application pursuant to section 7(c) of the Natural Gas Act (Act) for a certificate of public convenience and necessity authorizing the construction and operation of a sales tap to attach a new transportation customer, Ecological Engineering Systems, Inc. (EES), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On January 11, 1985, MDU filed in Docket No. CP85-214-000 a request pursuant to § 157.211 of the Regulations under the Act (18 CFR 157.211) for authorization to construct and operate the proposed sales tap in order to transport natural gas on behalf of EES. Upon further consideration, MDU states in the filing of February 4, 1985, that it requests that the request for authorization under the prior notice procedure be treated instead as a request for certificate authorization under section 7(c) of the Act.

MDU proposes to construct and operate a sales tap on its transmission system in McKenzie County, North Dakota, at an estimated cost of $6,500, which cost is to be borne by EES. MDU states that the delivery tap would be used to transport natural gas owned by EES from various receipt points on MDU's system for redelivery to EES at the proposed new tap for use as fuel for a new field compressor.

MDU asserts that the maximum volumes to be transported and redelivered on behalf of EES at the proposed tap would be 100 Mcf of gas per day. It is further asserted that the term of the transportation service would be for a period of two years from the date of initial deliveries. MDU states that the rate for the proposed transportation service would be the currently effective rate under MDU's Rate Schedule T-4.

Comment date: February 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP85-243-000]

February 11, 1985.

Take notice that on January 23, 1985, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85-243-000 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 Columbian Chemical Company (Columbian) and the operation of an existing tap necessary therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes herein to transport up to 7,000 Mcf of natural gas per day in order to implement a firm sale of natural gas to Columbian. Columbian, it is stated, owns and operates a carbon black plant located near Centerville, St. Mary Parish, Louisiana, where it produces carbon black for sale to manufacturers for use as a raw material in the production of rubber compounds, ink, plastics and coatings. It is asserted that the rate to be paid for the transportation service would be that provided for in Applicant's Rate Schedule No. 84–3.

It is stated that deliveries to Columbian would be made through an existing tap owned and operated by Applicant which was constructed under the exemption provided for in 18 CFR, Subpart A, § 284.3(c). Applicant further requests authorization to operate the tap to serve Columbian.

Comment date: March 1, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84–441–002]

February 7, 1985.

Take notice that on February 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84–441–002, a further amendment to its application filed in Docket No. CP84–441–000 pursuant to sections 7(c) and 7(b) of the Natural Gas Act to request authorization to: (1) Reduce or relinquish sales service to certain customers, (2) provide transportation of natural gas on a firm basis for certain customers, (3) abandon certain interruptible transportation services and (4) construct and operate the facilities necessary to render the firm transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant alleges that certain of its customers have indicated reduced market requirements from those used in establishing Applicant's current sales delivery obligations to those customers. To accommodate its customer's new market requirements, Applicant requests authorization to abandon the maximum daily quantities (MDQ) and annual volume limitations (AVL) of the following customers:

Customer	Rate schedule	Current		Proposed	
		MDQ (Mcf per day)	AVL (Mcf per year)	MDQ (Mcf per day)	AVL (Mcf per year)
Columbia Gas Transmission Corp	CD-3	486,180	170,155,700	386,180	133,655,750
The Inland Gas Co., Inc	CD-2	51,000	18,615,000	21,000	7,665,000
North Penn Gas Co	So-4		5,497,800		
	CD-4	41,820	15,264,300	36,340	13,264,100
East Tennessee Natural Gas Co	CD-1	325,719	102,564,658	325,719	96,647,595
New York State Electric & Gas Corp	CD-5	31,901	7,783,100	26,000	6,733,000
Equitable Gas Co	CD-4	75,863	27,689,995	63,732	23,262,180

Applicant states that certain of its customers have indicated a need for firm transportation service. Except in the case of The Connecticut Natural Gas Corporation, Applicant states that the proposed transportation services are firm storage gas transportation. Applicant proposes that such firm storage transportation services would be performed pursuant to proposed firm Rate Schedules FSST–E and FSST–NE which would be included in Applicant's FERC Gas Tariff, Volume No. 1. For service under Rate Schedules FSST–E and FSST–NE, Applicant proposes respective demand charges of $22.11 and $26.27 times the maximum daily volume to be transported. Applicant requests authority to abandon interruptible storage gas transportation which would be superseded or replaced by firm storage transportation service under proposed Rate Schedules FSST–E or FSST–NE. Applicant also seeks authority to provide 15,000 Mcf per day of firm transportation service for The Connecticut Natural Gas Company under proposed Rate Schedule T–149 with a proposed demand charge of $26.27 times the maximum daily transportation volume.

Except for The Connecticut Natural Gas Company, Applicant explains that the proposed firm storage transportation services are related to storage services provided by Honeoye) Storage Corporation (Honeoye), Penn-York Energy Corporation (Penn-York) and/or Consolidated Gas Transmission Corporation (Con Gas) to the following customers:

[Million cubic feet per day]

Rate schedule per customer	Storage contractor		
	Penn-York	Con Gas	Honeoye
FSST–NE			
The Berkshire Gas Co	1,273		
Boston Gas Co	5,800	909	6,000
Commonwealth Gas Co		8,277	
The Connecticut Light & Power Co	3,537		
The Connecticut Natural Gas Corp	4,924	591	
EnergyNorth, Inc	3,773		909
Fitchburg Gas & Electric Co	2,727		
Valley Gas Co	2,330		
Total FSST–NE	29,364	9,727	6,909
FSST–E			
Long Island Lighting Co			10,000
Total FSST–E			10,000

In order to render the proposed firm transportation, Applicant proposes to construct and operate the $99,043,000 in new facilities detailed in the Appendix to this notice. Included in this cost is a proposed new delivery point that Applicant proposes to establish to Boston Gas Company to deliver the proposed firm storage gas.

Applicant states that in estimating the cost of the facilities necessary to provide the proposed transportation services in its application in Docket No. CP84-441-000, Applicant assumed that the facilities pending authorization in Phase II of Docket No. CP81-107-000, *et al.*, related to the transportation of gas for customers of Boundary Gas Incorporated would already be in service at the time the construction of the facilities for transportation service proposed in this proceeding would occur. Applicant now proposes to construct facilities for the transportation services in this proceeding prior to the time the facilities in Docket No. CP81-107-00, *et al.*, would be in place. Accordingly, Applicant is amending its application in Docket No. CP84-441-000 to request authorization for the facilities required to provide the increased capacity necessary to render the services proposed herein prior to the construction of the facilities necessary in Docket No. CP81-107-000, *et al.* Applicant states that it would amend its application in Docket No. CP81-107-000 to delete the request for authorization of those facilities proposed herein.

Applicant indicates in its application that the Niagara Interstate Pipeline System's proposals in Docket No. CP83-107-000 were taken into consideration when determining the facilities necessary to render the proposed firm transportation services and for the proposed revised sales delivery obligations. Applicant alleges that neither Docket No. CP83-107-000 authorization nor additional storage capacity is required to provide the firm transportation services proposed by this amendment.

Because of the revisions to the firm transportation services proposed in this amendment, Applicant has modified the initial rates applicable to the proposed firm transportation services. As provided in Applicant's application in Docket No. CP84-441-000, Applicant states that the initial rates for the proposed firm transportation services herein are also designed to recover the cost of constructing and operating the facilities necessary to provide the capacity used to render these services.

Appendix

TENNESSEE GAS PIPELINE COMPANY—CONSTRUCTION COST ESTIMATE

(Project: Summary—Firm storage service transportation)

Schedule No.	Description	Unit	Quantity	Unit cost	Amount	Total
2	30" Pipeline Loop from MLV 238 +4.2 to MLV 239 +6.2 Cayuga County, New York	Mile	2.0	$799,500.00	$1,599,000	
3	30" Pipeline Loop from MLV 240 to MLV 242 +3.7, Madison County, New York	Mile	5.7	723,859.65	4,126,000	
4	30" Pipeline Loop from MLV 246 +4.9 to MLV 248 +6.9, Herkimer and Otsego Counties, New York	Mile	2.0	764,500.00	1,529,000	
5	30" Pipeline Loop from MLV 251 to MLV 251 +3.5, Albany County, New York	Mile	3.5	846,857.14	2,964,000	
6	30" Pipeline Loop from MLV 262 +6.8 to MLV 264, Hampden and Worcester Counties Massachusetts	Mile	15.0	934,866.67	14,020,000	
7	30" Pipeline Loop from MLV 264 to MLV 264 +3.8, Worcester County, Massachusetts	Mile	3.8	889,473.68	3,380,000	
8	30" Pipeline Loop from MLV 314 +7.6 to MLV 315, Tioga County, Pennsylvania	Mile	11.5	779,217.39	8,961,00	
9	30" Pipeline Loop from MLV 320 +12.9 to MLV 321, Susquehanna County, Pennsylvania	Mile	4.0	946,750.00	3,787,000	

TENNESSEE GAS PIPELINE COMPANY—CONSTRUCTION COST ESTIMATE—Continued

[Project: Summary—Firm storage service transportation]

Schedule No.	Description	Unit	Quantity	Unit cost	Amount	Total
10	30" Pipeline Loop from MLV 325 +1.1 to MLV 325 +4.3, Sussex County, New Jersey.	Mile	3.2	1,285,937.50	4,115,000	
11	Engine/Compressor Addition at Station 313, Potter County, Pennsylvania.	H.P	2,000	2,825.00	5,650,000	
12	Turbine/Compressor Upgrade at Station 315, Tioga County, Pennsylvania.	H.P	1,800	47.78	86,000	
13	Turbine/Compressor Addition at Station 319, Bradford County, Pennsylvania.	H.P	4,500	869.78	3,914,000	
14	Turbine/Compressor Station 325, Sussex County, New Jersey.	H.P	7,000	1,907.29	13,351,000	
15	Turbine/Compressor Addition at Station 267, Middlesex County, Massachusetts.	H.P	2,000	2,176.00	4,352,000	
16	10" Pipeline Replacement, Norwalk Delivery, from Valve 339A-101 to Valve 339A-102, Fairfield County, Connecticut.	Mile	1.7	758,235.30	1,289,000	
17	8" Pipeline Loop, Torrington Lateral, from Valve 259B-101C +3.8 to Valve 259A-102, Hartford and Litchfield Counties, Connecticut.	Mile	4.4	388,636.36	1,710,000	
18	12" Pipeline Loop, Concord Lateral, from Valve 270B-104 +1.9 to Valve 270B-105, Rockingham and Hillsboro Counties, New Hampshire.	Mile	12.2	494,016.39	6,027,000	
19	12" Pipeline Loop, Haverhill Lateral, from Valve 270B-301 +3.0 to Valve 270B-302, Essex County, Massachusetts and Rockingham County, New Hampshire.	Mile	5.4	484,843.75	3,103,000	
20	Meter Station Facilities in the Town of Acton, Middlesex County, Massachusetts.	Lot	1		150,000	
	Total Direct Cost—1985					$84,113,000
	Overhead	Lot1				10,935,000
	Allowance for funds used during construction.	Lot	1			
	Regulatory Fee	Lot				193,000
	Total project cost—1985					99,043,000

Comment date: February 22, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Western Gas Interstate Company and Phillips Petroleum Company

[Docket No. CP84-494-000]

February 7, 1985.

Take notice that on October 19, 1984, Phillips Petroleum Company (Phillips), 336 Home Savings & Loan Building, Bartlesville, Oklahoma 74004, filed in Docket No. CP84-494-000, a motion to intervene pursuant to § 385.214 of the Commission's Rules of Practice and Procedure in support of Western Gas Interstate Company's (WGI) request for clarification of the jurisdictional status of certain natural gas exchange agreements and joins in WGI's request for temporary and permanent certificates of public convenience and necessity authorizing continuation of natural gas exchanges and future delivery points, all as more fully set forth in the motion which is on file with the Commission and open to public inspection.

On June 15, 1984, WGI filed in Docket No. CP84-494-000 pursuant to section 7(c) of the Natural Gas Act an application for a certificate of public convenience and necessity authorizing the continued operation of certain transmission facilities, continuation of a sale for resale and delivery of natural gas to Southern Union Gas Company, continuation of natural gas exchanges with Phillips, the addition of three delivery points and deletion of one delivery point under the Phillips exchange agreements, and granting blanket authority to add and delete delivery points under the Phillips exchange agreements.

In its application, WGI stated that it has exchanged natural gas with Phillips in the Texas and Oklahoma panhandles since 1969 pursuant to three exchange agreements. WGI further stated that it previously believed that the exchanges were non-jurisdictional, but now believes that its participation in the exchanges may be subject to the Natural Gas Act jurisdiction.

Phillips states that while it supports WGI's efforts to clarify the jurisdictional status of the exchanges, Phillips believes that at least insofar as its participation is concerned, these exchanges are not jurisdictional under the rationale of *Southern Union Gathering Co.*, 15 FERC ¶ 61.132 (1981). Phillips further states that to the extent, if any, that the exchanges are found to be jurisdictional, Phillips supports WGI's request for clarification and joins in WGI's request for temporary and permanent certification of existing exchange arrangements and future delivery points.

Comment date: February 22, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Algonquin Gas Transmission Company

[Docket No. CP84-654-001]

February 7, 1985.

Take notice that on January 25, 1985, Algonquin Gas Transmission Company (Applicant), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP84-654-001 an amendment to its application filed in Docket No. CP84-429-000 pursuant to section 7(c) of the Natural Gas Act to reflect a modification of firm volumes of gas proposed to be sold to its resale customers and in the facilities proposed to be constructed and operated, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

Applicant states that its proposed amendment reflects the changes resulting from Texas Eastern Transmission Corporation's (TETCO) amendment filed in Docket No. CP84-429-001 on January 2, 1985, in which TETCO proposes to make an additional 69,084 million Btu equivalent of natural gas per day of best-efforts and firm sales to Applicant.

Applicant explains that its proposed restructured sales program, as filed with the subject amendment, requests authorization for: (1) An interim, best-efforts sales program and (2) a permanent two-stage firm sales program.

The Interim Best-Efforts Program

Applicant requests a limited-term certificate of public convenience and necessity with pregranted abandonment to

(1) Sell an additional supply of 69,084 million Btu equivalent of interruptible natural gas per day to be purchased from TETCO;

(2) Sell the additional interruptible TETCO volume under Applicant's proposed best-efforts Rate Schedule F-4 Interim, less an amount required for system fuel, to increase the following 14 resale customers' maximum daily quantities (MDQ):

INTERIM INTERRUPTIBLE QUANTITY INCREASES

[Rate schedule F-4 interim MDQ]

Customer	(million Btu)
Bay State Gas Co	5,112
Boston Gas Co	0
Bristol & Warren Gas Co	301
Colonial Gas Co	7,718
Commonwealth Gas Co	15,000
The Connecticut Light & Power Corp	7,877
The Connecticut National Gas Corp	11,514
Fall River Gas Co	3,500
City of Norwich, Connecticut	685
Orange and Rockland Utilities, Inc	1,104
The Pequot Gas Co	86
The Providence Gas Co	12,000
South County Gas Co	187
The Southern Connecticut Gas Co	4,000
Total	69,084

(3) Offer additional best-efforts volumes of gas to the resale customers in the event additional gas is made available from TETCO and/or the resale customers given above do not purchase all the gas available to them on a given day; and

(4) Permit Applicant to offer the proposed interim best-efforts program from the time the proposed TETCO interim service to Applicant is approved in Docket No. CP84-429-001 through December 31, 1985, or until the commencement of Applicant's proposed permanent firm sales program.

The Permanent Firm Sales Program

Following the period of the proposed interim, best-efforts service, Applicant requests a certificate of public convenience and necessity to sell an additional 69,084 million Btu equivalent of firm gas per day to be purchased from TETCO for resale in two stages:

(1) During the development period required to purchase and construct the facilities necessary to resell the entire 69,084 million Btu equivalent of natural gas per day to be purchased from TETCO, purchase for resale 33,000 million Btu equivalent of firm natural gas per day under Applicant's proposed firm Rate Schedule F-4, less an amount required for system fuel, to increase the following 14 resale customers' MDQ's and annual contract quantities (ACQ):

FIRM SERVICE—DEVELOPMENT PERIOD INCREASES

Customer	Rate schedule F-4 MDQ (million Btu)	Rate schedule F-4 ACQ (million Btu)
Bay State Gas Co	2,442	891,330
Boston Gas Co	9,279	3,386,835
Bristol & Warren Gas Co	144	52,560
Colonial Gas Co	1,325	483,625
Commonwealth Gas Co	8,161	2,978,765
The Connecticut Light & Power Co	0	0
The Connecticut Natural Gas Corp	2,750	1,003,750
Fall River Gas Co	1,672	610,280
City of Norwich, CT	327	119,355
Orange & Rockland Utilities, Inc	527	192,355
The Pequot Gas Co	41	14,965
The Providence Gas Co	4,058	1,481,170
South County Gas Co	89	32,485
The Southern Connecticut Gas Co	2,185	797,525
Total	33,000	12,045,000

(2) After the required facilities are complete, purchase and resell the entire 69,084 million Btu equivalent of firm natural gas per day from TETCO, under Applicant's proposed firm Rate Schedule F-4, less an amount required for system fuel, to increase the following 14 resale customers' MDQ's and ACQ's:

FULL FIRM SERVICE INCREASES

Customer	Rate schedule F-4 MDQ (million Btu)	Rate schedule F-4 ACQ (million Btu)
Bay State Gas Co	5,112	1,865,880
Boston Gas Co	0	0
Bristol & Warren Gas Co	301	109,865
Colonial Gas Co	7,718	2,817,070
Commonwealth Gas Co	15,000	5,475,000
The Connecticut Light & Power Co	7,877	2,875,105
The Connecticut Natural Gas Corp	11,514	4,202,610
Fall River Gas Co	3,500	1,277,500
City of Norwich, CT	685	250,025
Orange & Rockland Utilities, Inc	1,104	402,960
The Pequot Gas Co	86	31,390
The Providence Gas Co	12,000	4,380,000
South County Gas Co	187	68,255
The Southern Connecticut Gas Co	4,000	1,460,000
Total	69,084	25,215,660

Applicant alleges that it has filed the subject amendment with the information necessary for the Commission to act promptly on the proposed limited-term certificate which does not require the construction and operation of facilities. Therefore, Applicant states that it would shortly supplement this amendment to provide the Commission with the additional information pertinent to the proposed Rate Schedule F-4 firm service increases.

Comment date: February 22, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation

[Docket No. CP85-216-000]

February 8, 1985.

Take notice that on January 11, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-216-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Ampen Pittsburgh Forgings Company (Ampco) under the certificate issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 1,050 million Btu of natural gas per day, less retainage, for Ampco until June 30, 1985, effective the date deliveries of gas commence hereunder. Columbia states that the gas to be transported hereunder would be purchased from J&J Enterprises by Ampco and would be used as a process gas and boiler fuel in Ampco's Coraopolis, Pennsylvania, plant. Columbia indicates that the gas to be purchased by Ampco involves gas supplies released by Columbia and that such supplies are subject to the ceiling price provisions of Sections 107 and 108, of the Natural Gas Policy Act of 1978. It is further stated that Columbia would receive the gas at existing delivery points in various counties in Pennsylvania and redeliver such gas to Columbia Gas of Pennsylvania, Inc., the distributor company serving Ampco.

Columbia states that it would charge 29.93 cents per dt equivalent of gas as set forth in its Rate Schedule TS-1. It is further stated that Columbia would retain 2.43 percent for company use and unaccounted-for gas, also as set forth in Columbia's rate schedule.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 25, 1985, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85-229-000]

February 8, 1985.

Take notice that on January 15, 1985, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001 (referred to jointly as Columbia) filed in Docket No. CP85-229-000 a joint request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Jeannette Sheet Glass Corporation (Jeannette Sheet) for use in its glass melting furnaces and its infra red heating process under certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, 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.

Columbia proposes to transport up to 3.8 billion Btu of natural gas per day for Jeannette Sheet's Pennsylvania plant until June 30, 1985. Columbia states that the gas to be transported would be purchased from The Resource Group, Inc. (Resource Group). The transportation agreement specifies the points of receipt by Columbia Gulf and the point of redelivery by Columbia Gas to Columbia Gas of Pennsylvania, Inc., the distribution company serving Jeannette Sheet.

Columbia Gulf States that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: Offshore to Kentucky 23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky 14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky 12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky 6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Gas states that it would charge one of the rates in its Rate Schedule T-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky, 21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky, 29.93 cents per dt equivalent provided the volumes are within the Resource Group's customers' total daily entitlements (TDE). However, Columbia Gas states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia at Leach, Kentucky, and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of the Resource Group's customers TDE. Columbia Gas further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Gas states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: March 25, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Louisiana Intrastate Gas, a Division of Celeron Corporation

[Docket No. CP81-409-001]

February 11, 1985.

Take notice that on January 9, 1985, Louisiana Intrastate Gas, a Division of Celeron Corporation (Petitioner), P.O. Box 1352, Alexandria, Louisiana 71301, filed in Docket No. CP81-409-001 a petition to amend the Commission's order issued March 3, 1982, in Docket No. CP81-400-000, *et al.*, pursuant to Section 284.127 of the Commission's Regulations so as to authorize a new point of delivery to an existing long-term transportation agreement with Arkla Energy Resources, a division of Arkla, Inc. (Arkla), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the point is located at the interconnection between the facilities of the Petitioner and the facilities of Texas Gas Transmission Corporation (Texas Gas) Rapides Parish, Louisiana. It is explained that at this new point Petitioner would accept gas which Texas Gas has transported for Arkla for further transportation by Petitioner on behalf of Arkla pursuant to the transportation agreement filed July 9, 1981. Petitioner states that Texas Gas is transporting the gas for Arkla under a two-year transportation agreement and under Texas Gas' blanket certificate issued pursuant to Commission Order No. 60. Arkla would reimburse Petitioner for the expenses of installing facilities to operate the new delivery point, it is stated.

Comment date: March 1, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 filing 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 be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the 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. 85-3977 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C169-062-001, et al.]

Conoco Inc.; Notice of Applications for Abandonment of Service

February 12, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 28, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and Date filed	Applicant	Purchaser and Location	Price per 1,000 ft [3]	Pressure base
CI69-062-001, D, Jan. 7, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Tennessee Gas Pipeline Company, NE¼ and S½ Cameron 83, Offshore Louisiana.	(1)	
CI85-185-000, B, Jan. 11, 1985	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Warren Petroleum Company, Hamon State E-8913, Lea County, New Mexico.	(2)	
CI85-186-000, B, Jan. 18, 1985	MAPCO Oil & Gas Company, 1800 S. Baltimore, Tulsa, Okla. 74119.	Northern Natural Gas Company, Seward County, Kansas.	(3)	
CI85-187-000, B, Jan. 18, 1985	do	Colorado Interstate Gas Company, Hugoton Field, Finney County, Kansas.	(3)	
CI85-188-000, B, Jan. 18, 1985	do	Northern Natural Gas Company, Hugoton Field, Finney County, Kansas.	(3)	
CI85-189-000, B, Jan. 18, 1985	do	Northern Natural Gas Company, Hugoton Field, Texas County, Oklahoma and Stevens County, Kansas.	(3)	
CI85-190-000, B, Jan. 18, 1985	do	Northern Natural Gas Company, Hugoton Field, Stevens County, Kansas.	(3)	
CI85-191-000, B, Jan. 18, 1985	do	Western Gas Interstate Company, Texas County, Oklahoma.	(3)	
CI85-192-000, B, Jan. 18, 1985	do	Western Gas Interstate Company, Wide Awake Field, Seward County, Kansas.	(3)	
CI85-193-000 (G-19961), B, Jan. 22, 1985.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	United Gas Pipe Line Company, Springer Field, Montgomery County, Texas.	(4)	
CI85-194-000 (CI69-1164), B, Jan. 23, 1985.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Texas Gas Transmission Corporation, Six Mile Lake Field, St. Mary Parish, Louisiana.	(5)	
CI85-195-000 (CI77-739), B, Jan. 23, 1985.	do	Southern Natural Gas Company, Dalcour Field, Plaquemines Parish, Louisiana.	(6)	
CI85-196-000 (CI78-369), B, Jan. 24, 1985.	do	Southern Natural Gas Company, Dalcour Field, Plaquemines Parish, Louisiana.	(7)	
CI85-197-000, B, Jan. 25, 1985	Robert J. Sommerville, 905 Fox Avenue, Harrisville, W. Va. 26362.	Consolidated Gas Supply Corporation, Ritchie County, West Virginia.	(8)	
CI85-198-000, B, Jan. 28, 1985	Tyson Oil & Gas Company, TERM Energy Corporation, Agent, 110 N. Spring Street, Harrisville, W. Va. 26362.	Consolidated Gas Transmission Corporation, Freemans Creek District, Lewis County, West Virginia.	(9)	
CI85-199-000 (CI77-187), B, Jan. 30, 1985.	Terra Resources, Inc., P.O. Box 2329, Tulsa, Okla. 74101.	United Gas Pipe Line Company, Lapeyrouse Field, Terrebonne Parish, Louisiana.	(10)	
CI85-200-000 (G-2840), B, Feb. 1, 1985.	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kansas 67201.	Phillips Petroleum Company, Panhandle West Field, Moore County, Texas.	(11)	
CI85-201-000 (CI69-382), B, Feb. 1, 1985.	do	Phillips Petroleum Company, Panhandle West Field, Hutchinson County, Texas.	(11)	
CI85-202-000 (CI69-368), B, Feb. 1, 1985.	do	Phillips Petroleum Company, Panhandle West Field, Hutchinson County, Texas.	(11)	
CI85-203-000 (G-4507), B, Feb. 1, 1985.	do	Colorado Interstate Gas Company, Panhandle West Field, Hutchinson County, Texas.	(11)	
CI85-204-000 (CI63-1060), B, Feb. 1, 1985.	do	Panhandle Producing Company, Panhandle West Field, Hutchinson County, Texas.	(11)	
CI85-205-000 (CI79-279), B, Jan. 31, 1985.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Tennessee Gas Pipeline Company, Little Lake Field, Jefferson Parish, Louisiana.	(12)	
CI85-206-000 (CI63-1509), B, Jan. 31, 1985.	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Valero Interstate Transmission Corporation, McAllen Ranch, Schmidt and Monte Christo Fields, Hidalgo County, Texas.	(13)	
CI85-207-000 (CI81-200-000), B, Jan. 31, 1985.	do	Valero Interstate Transmission Corporation, Monte Christo Field, Hidalgo County, Texas.	(13)	
CI85-208-000, B, Jan. 31, 1985	James F. Scott, P.O. Box 112, Salem, W. Va. 26426.	Consolidated Gas Transmission Corporation, Dessie Moore GPC 4172, CC C-805, Harrison County, West Virginia.	(14)	

—Continued

Docket No. and Date filed	Applicant	Purchaser and Location	Price per 1,000 ft 3	Pressure base
CI85-209-000, B, Jan. 31, 1985	do	Consolidated Gas Transmission Corporation, Homer Rohr, GPC 3412, CC 3021, Upshur County, West Virginia.	(14)	
CI85-285-000 (CI78-1174), B, Feb. 5, 1985.	Energy Reserves Group, Inc.	El Paso Natural Gas Company, Clara Couch Field, Crockett County, Texas.	(11)	
CI85-210-000, B, Jan. 31, 1985	James F. Scott, P.O. Box 112, Salem, W. Va. 26426.	Consolidated Gas Transmission Corporation, Duane Southern GPC 4198 CC E-227, Harrison County, West Virginia.	(14)	
CI85-211-000, B, Jan. 31, 1985	do	Consolidated Gas Transmission Corporation, Norma Brumfield GPC 3412, CC 3013, Barbour County, West Virginia.	(14)	
CI85-212-000, B, Jan. 31, 1985	do	Consolidated Gas Transmission Corporation, Monroe GPC 3937, CC A-215, Coal Field, Harrison County, West Virginia.	(14)	
CI85-213-000 (CI64-655), B, Jan. 31, 1985.	Shell Western E&P Inc., P.O. Box 4684, Houston, Texas 77210.	Valero Interstate Transmission Corporation, Schmidt Field, Hidalgo County, Texas.	(13)	
CI85-214-000, B, Feb. 1, 1985	Alamco, Inc	Consolidated Gas Transmission Corporation, Freemans Creek District-Lewis County, West Virginia.	(13).	
CI85-215-000, B, Feb. 1, 1985	do	Consolidated Gas Transmission Corporation, Sardis District-Harrison County, West Virginia.	(14)	
CI85-216-000, B, Feb. 1, 1985	do	Consolidated Gas Transmission Corporation, Southwest District-Doddridge County, West Virginia.	(14)	
CI85-217-000 (CI63-1543), B, Feb. 4, 1985.	Sun Exploration and Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Northern Natural Gas Company, Share, S.E. Field, Ochiltree County, Texas.	(16)	
CI85-218-000 (G-2800), B, Feb. 4, 1985.	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kansas 67201.	Colorado Interstate Gas Company, Panhandle West Field, Hutchinson, Moore and Potter Counties, Texas.	(11)	
CI85-220-000, B, Feb. 1, 1985	Scott Bailey Gas Co	Consolidated Gas Transmission Corporation, Siers Run, Minnora, WV, Calhoun County, West Virginia.	(9)	
CI85-221-000 (CI79-334), B, Feb. 4, 1985.	Gulf Oil Corporation, P.O. Box 2100, Houston, Texas 77252.	Panhandle Eastern Pipe Line Company, N.W. Avard Field, Woods County, Oklahoma.	(17)	
CI85-225-000 (CI65-492), B, Feb. 5, 1985.	Carroll Resources, Inc.	Consolidated Gas Transmission Corporation, Bragg Run, Braxton County, West Virginia.	(18)	
CI85-226-000 (CI73-59), B, Feb. 5, 1985.	Energy Reserves Group, Inc.	Columbia Gas Transmission Corporation, Northwest Branch Field, Acadia Parish, Louisiana.	(11)	
CI85-227-000, B, Feb. 4, 1985	Interstate Drilling, Inc.	Consolidated Gas Transmission Corporation, Vadis Field, Lewis County, West Virginia.	(9)	

1 OCS-1478 (NE¼ and S½ East Cameron 83) expired on 4-4-80.

2 Contract may be terminated by either party giving thirty (30) days written notice of intent to do so. The State E-8913 Gas Unit Com Well #1 is the only well subject to said contract and there has not been any production since August, 1980 and ARCO advised Warren Petroleum Company that the Casinghead Gas Contract will be cancelled as to ARCO's interest effective 12-1-84.

3 By Assignment of oil and gas lease or leases effective 1-1-85, MAPCO Oil & Gas Company assigned all of its right, title and interest in and to that certain producing acreage.

4 Contract expired 4-13-80, there are no remaining reserves as the only producing acreage committed under this Contract was assigned to Gideon Oil Company in 1965 and ARCO plans no further development.

5 Primary term of the contract between Gulf and Texas Gas dated 5-9-69 does not expire until 8-1-90, all production to the lease ceased and the last well was plugged and abandoned on 1-25-80. Applicant no longer owns an interest in any of the acreage which was originally covered by this contract.

6 Applicant no longer holds an interest in the acreage that was subject to the 6-3-77 contract and although the contract governing this sale of natural gas does not expire until 1-31-88, all production ceased in 1980.

7 Production by Applicant from the lease ceased during 1980 and on 8-29-80, Gulf surrendered the lease back to the lessee and Applicant no longer holds an interest in the acreage that was subject to the 7-19-77 contract.

8 No lines available to transport gas. Company that transported gas for Applicant abandoned their lines.

9 Low Production.

10 Pelican RA SU G depleted and plugged and abandoned 11-15-84; Gas Purchase Contract dated 10-25-78 expired of its own terms 11-1-83.

11 Effective 1-1-84, Energy Reserves Group, Inc. assigned all of its interest in the Panhandle West Field to Virgil Hess.

12 Contract governing the sale of natural gas from the lease expired on 6-23-81, a rollover contract has not been negotiated since no sales of natural gas were being made at that time, and no future sales are anticipated. All natural gas which is being produced subject to this contract is used for lease fuel or gas lift and there are no plans for further development of the lease.

13 Purchaser has filed to abandon its interstate service.

14 No longer economical to produce.

15 Unprofitable Production.

16 Assignment & Bill of Sale executed on 1-13-84, effective 12-1-83, wherein Sun Exploration & Production Company assigned its interest in Property No. 541250, Hargrove-Hardy Gas Unit, Lease No. 91393, to Kenneth W. Corry. Sun no longer has leaseholdings and retains no interests under Rate Schedule No. 159.

17 Gulf cancelled the leases covering their interest in the remaining acreage, production from the leases ceased in October 1981 and Applicant no longer owns an interest in the acreage.

18 Non-producer.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-4041 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-212-000]

Hydrodynamics, Inc.; Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 8, 1985.

On January 28, 1985, Hydrodynamics, Inc. (Applicant), of P.O. Box 413, Red Lodge Montana 59068 submitted for filing and 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 1,800 kilowatt hydroelectric facility is located in Carbon County, Montana.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protect with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. 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. 85-4039 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7624-001]

Independence Electric Corp.; Surrender of Preliminary Permit

February 12, 1985.

Take notice that Independence Electric Corporation, Permittee for the Riverdale Project No. 7624, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 7624 was issued on February 27, 1984, and would have expired on January 31, 1987. The project would have been located on the French Broad River, in Knox and Sevier Counties, Tennessee.

The Permittee filed the request on January 28, 1985, and the preliminary permit for Project No. 7624 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. 85-4042 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6921-001]

Mountain West Hydro, Inc.; Notice of Surrender of Preliminary Permit

February 12, 1985.

Take notice that Mountain West Hydro, Inc., Permittee for the Dry Ridge Project No. 6921, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6921 was issued on December 4, 1984, and would have expired on June 30, 1986. The project would have been located on an unnamed tributary of the Roaring River in Clackamas County, Oregon.

The Permittee filed the request on January 16, 1985, and the preliminary permit for Project No. 6921 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. 85-4043 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-12-000]

Northwest Exploration Co.; Notice of Application for Withdrawal of Final Eligibility Determinations

Issued: February 12, 1985.

In the matter of State of Colorado Oil & Gas Conservation Commission, Sections 102 and 107 NGPA Determinations, Northwest Exploration Company Clough No. 126 Well, FERC No. 8211449 and State of Colorado Bureau of Land Management, Sections 102 and 107 NGPA Determinations, Northwest Exploration Company, Rulison No. 121 Well, FERC No. 8120114.

On November 26, 1984, Northwest Exploration Company (Northwest) filed with the Federal Energy Regulatory Commission (Commission) applications for withdrawal of final eligibility determinations for the Clough No. 126 Well and the Rulison No. 121 Well, respectively, pursuant to the Commission's authority under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982).

1. The Clough No. 126 Well

Northwest states that the Colorado Oil & Gas Conservation Commission made an affirmative determination that the subject well qualified as a new onshore well under section 102(c)(1)(B)(i) of the NGPA on November 16, 1981, and that the determination became final on January 31, 1982, forty-five days after the Commission received notice of that agency's determination, pursuant to § 275.202(a) of the Commission's regulations. Northwest states that the original application was in error and that the well did not qualify as a new onshore well under the NGPA since, upon further review, it was determined that there was at least one marker well within the 2.5 mile radius of the Clough No. 126 Well, thereby disqualifying the well as a new onshore well. Northwest also states that the agency made an affirmative determination that the subject well qualified as a high-cost gas well under section 107 of the NGPA, which determination became final on June 20, 1983. Northwest states that withdrawal of the section 102 application will not affect the purchase price of the gas sold from the well because Northwest has refunded the section 107 price for all purchases from the initial delivery date.

2. The Rulison No. 121 Well

Northwest states that the Colorado Bureau of Land Management made an affirmative determination that the subject well qualified as a new onshore well under section 102(c)(1)(B)(i) of the NGPA on March 2, 1981, and that the determination became final on April 30, 1981, forty-five days after the Commission received notice of that agency's determination, pursuant to § 275.202(a) of the Commission's regulations. Northwest states that the original application was in error and that the well did not qualify as a new onshore well under the NGPA since, upon further review, it was determined that there was at least one marker well within the 2.5 mile radius of the Rulison No. 121 Well, thereby disqualifying the well as a new onshore well. Northwest also states that the agency made an affirmative determination that the subject well qualified as a high cost gas well under section 107 of the NGPA, which determination became final on December 30, 1982. Northwest states that withdrawal of the section 102 application will not affect the purchase price of the gas sold from the well because Northwest has refunded the section 107 price for all purchases from the initial delivery date.

The Commission hereby gives notice that the question of whether refunds, plus interest as computed under § 154.102(c) of the Commission's regulations (18 CFR 154.102(a) (1984)) will be required is a matter which is subject to the review and final determination by the Commission.

Any person desiring to be heard or to make any protest to the requested reopenings and withdrawals should file, within 30 days after publication of this notice in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 211 (1984)). All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party or to participate as a party in any hearing must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-4045 Filed 2-15-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-21-000]

NuMaineCo Corp.; Notice of Petition for a Declaratory Order

February 12, 1985.

The filing Company submits the following:

Take notice that On February 6, 1985, NuMaineCo Corporation ("NuMaineCo"), a corporation newly organized for the purpose of acquiring the ownership interests in the Seabrook No. 1 nuclear generating unit of the Maine joint owners in the unit, filed a petition requesting the Commission to make the following determinations by declaratory order: (1) NuMaineCo will be permitted, as successor to the Maine joint owners share in Seabrook No. 1, to value the transferred assets at the level of the investment of the Maine joint owners in the assets on the date of transfer and (2) the proposed capital structure for NuMaineCo and the proposed rates of return on the components of that structure are just and reasonable.

NuMaineCo states that, as a result of negotiations with investors in NuMaineCo and the Maine joint owners, the arrangements described in its petition are subject to change and that revisions to its proposal in the course of the proceeding are possible. NuMaineCo requests expedited consideration allowing a final order to be issued by June 14, 1985.

Any person desiring to be heard or to protest said filing or to be appraised of any changes in the proposal in the course of the proceeding should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-4044 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-181-000]

Wehran Energy Corp.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

February 8, 1985.

On January 8, 1985, Wehran Energy Corporation (Applicant) of 666 East Main Street, Middletown, New York 10940, 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 proposed small power production facility will be located at the sanitary landfill, Old Forge Road (Oxford Turnpike), North Smithfield, Rhode Island. The facility, initially, will consist of two 550 kilowatt internal combustion engine-generator sets fueled by municipal waste in the form of methane gas. The electric power production capacity of the facility will be approximately 1,000 kilowatts.

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. 85-4040 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RE80-10-003]

Wisconsin Power & Light Co.; Notice of Application for Exemption

February 12, 1985.

Take notice that Wisconsin Power & Light Company (WP&L) filed an application on December 31, 1984 for exemption from certain requirements of Part 290 of the Federal Energy Regulatory Commission's (FERC) regulations concerning collection and reporting of cost of service information under Section 133 of the Public Utility Regulatory Policies Act (PURPA), Order No. 48 (44FR58687, October 11, 1979). Exemption is sought from the requirement to file on or prior to June 30, 1986, information on the costs of providing electric service as specified in Subparts B, C, D, and E of Part 290.

In its application for exemption WP&L states, in part, that it should not be required to file the specified data for the following reasons:

> FERC granted WP&L exemptions from the reporting requirements of Subparts B, C and E for the filings due on or prior to November 1, 1980, June 30, 1982, and June 30, 1984. The exemptions were granted by FERC in light of the fact information they supplied by WP&L to the Public Service Commission of Wisconsin, in support of pending rate proceedings, constituted alternate compliance with PURPA.
>
> The Public Service Commission of Wisconsin has considered and adopted all PURPA rate making standards.

Copies of the application for exemption are on file with FERC and are available for public inspection. FERC's regulations require that said utility also apply to any state regulatory authority having jurisdiction over it to have the application published in any official state publication in which electric rate change applications are usually noticed, and that the utility publish a summary of the application in newspapers of general circulation in the affected jurisdiction.

Any person desiring to present written views, arguments, or other comments on the application for exemption should file such information with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, on or before 45 days following the date this notice is published in the **Federal Register.** Within that 45 day period, such person must also serve a copy of such comments on: Mr. John L. Walker, Wisconsin Power and Light Company, 222 West Washington Avenue, Madison, Wisconsin 53703.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-4046 Filed 2-15-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-2779-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICR is available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382-2742 of FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Pesticides and Toxic Substances Programs

• *Title:* Health and Safety Data Reporting: Submission of Lists and Copies of Health and Safety Studies—Renewal (EPA #0575).

Abstract: Chemical manufacturers and processors must automatically submit health and safety studies to EPA on chemicals the Interagency Testing Committee designates for 12-month response. EPA will use this information to assess health and environmental effects of the substances, and the need for further testing.

Respondents: Chemical manufacturers and processors.

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation & Information Management Division, 401 M Street, SW., Washington, D.C. 20460;

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: February 11, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-3849 Filed 2-15-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 85-12]

Selection Process for 2.5 GHz OFS Licenses

January 15, 1985.

In response to the *Memorandum Opinion and Order* released June 23, 1983 in Docket No. 19671, 48 FR 32,578 (July 18, 1983), the Commission has received approximately 2,100 applications proposing to operate private distribution systems on the three Operational-Fixed Service (OFS) H-group channels in the 2.5-2.69 GHz band. Most of the applications submitted are mutually exclusive with one or more other applications.

Based upon our initial analysis of the applications and the proposed uses, we conclude that there are no substantial material differences in the applications which necessitate comparative hearings. Licensees therefore will be selected by lottery. See *Second Report and Order* in Gen. Docket No. 81-768, 93 FCC 2d 952, 988-89 (1983). The use of lotteries to resolve these mutually exclusive applications, all of which propose the commercial distribution of data at 2.5 GHz, will significantly benefit the public interest by assuring expedited delivery of the proposed services to potential users. The lotteries will be conducted pursuant to the authority contained in Section 1.972 of the Commission's Rules and Regulations.

To facilitate the conduct of the lotteries, the Private Radio Bureau will apply the following procedures:

(1) Applicants will be considered only for the specific H-group channel identified on each application. Only one H-group channel will be authorized to a single applicant in any particular geographic area.

(2) After each application in a mutually exclusive area has been rank-ordered using the random selection process, the Commission will examine each application in detail to determine which applications may be granted. This examination will include an analysis of whether the application was timely filed against all other competing co-channel applications, the proximity of the proposed station to previously authorized stations, any other issues which may have been raised in petitions to deny, and a consideration of the technical merits and completeness of the application. For purposes of determining mutual exclusivity and applying the filing periods specified in § 1.227(b)(4) of the Rules, any application proposing a transmitter site which is less than 50 miles from a co-channel transmitter site specified by another applicant will be considered to be mutually exclusive with that other application. Similarly, any application proposing a transmitter site which is less than 50 miles from a previously authorized transmitter on the same channel will not be granted. Applicants may submit a detailed engineering analysis to demonstrate that an exception to the 50-mile standard would be warranted in situations with unique terrain conditions or peculiar propagation characteristics. Applicants who request an exception to the 50-mile standard must indicate their willingness to accept interference from all licensees whose grants are based on a separation of 50 miles between transmitters. Licenses issued to applicants for operation at less than 50 miles from other licensees will be conditioned to indicate that they are on a secondary basis to previously authorized OFS stations.

(3) Using the criteria specified above, the Commission will issue licenses for the H-group channels beginning with the first grantable application assigned the highest priority in the lottery and proceeding sequentially according to the rankings determined by the lottery and the analysis of the data before us.

A subsequent public notice will announce the date on which the lotteries will be conducted and additional procedural matters.

The Commission will be receptive to settlement agreements among competing applicants. All applicants are encouraged to consider any settlement proposals which may be proffered. Only settlement agreements which eliminate mutual exclusivity for an entire area will be considered. Partial settlements will not be considered by the Commission. All settlement agreements are subject to final approval by the Commission.

These procedures will become effective on January 16, 1985.

Additional information regarding the applicants for this lottery session may be obtained from Michael B. Hayden at (717) 337-1421. Procedural questions may be directed to Frederick J. Day at (202) 634-2443.

Action by the Commission January 10, 1985 by Public Notice. Commissioners

Fowler (Chairman), Quello, Dawson, Rivera and Patrick.

William J. Tricarico,

Secretary, Federal Communications Commission.

Dissenting Statement of Commissioner Henry M. Rivera

RE: Public Notice Announcing Lottery Selection Process for 2.5 GHz OFS Licenses

While I have no objection to awarding these licenses by lottery, the Commission has committed legal error by failing to apply the diversity preference scheme contained in Section 309(i) of the Communications Act [1] to these lotteries. Under the service rules adopted by the Commission in 1983, the operational fixed service spectrum at 2.5 GHz may not be used for home video distribution until August 1, 1985.[2] At that time, only six months from now, OFS licensees will be free to use their facilities to distribute any communications service, including programming and other information, directly to interested members of the general public. That ability, combined with the fact that OFS licensees retain control over their transmissions, put these authorizations squarely within the ambit of section 309(i)(3), which requires the award of significant preferences to applicants who would promote ownership diversity in the media.[3] Because OFS licensees retain content control and can provide communications to the general public there can be no question that this qualifies as a medium of mass communication as defined by Congress.[4]

[1] 47 U.S.C. 309(i) (1982).

[2] *Private Operational Fixed Microwave Service*, 48 FR 32578, 32582–84 (July 18, 1983).

[3] Section 309(i)(3)(C) states, in pertinent part: "The term 'medium of mass communications' includes 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." (Emphasis added).

[4] That the many applications currently pending before the Commission propose non-video uses was required by the Commission's 1983 Private Operational Fixed Microwave Service order, (*supra*, note 2) and, thus, is immaterial for purposes of analyzing section 309(i)(3)'s applicability here. The pertinent fact is that, by the time these OFS licenses are issued or very shortly thereafter, their holders may disseminate programming or other information services and may exercize editioral control over such programming. It does not seem unreasonable to suspect that the new OFS licensees will do precisely that, given that many of these applications were filed by MMDS applicants, parties to ITFS leases contemplating home entertainment distribution, and traditional over-the-air broadcasters.

Therefore, diversity preferences are mandatory in these lotteries.[5]

[FR Doc. 85-4037 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

[FCC 85-13]

Selection Process for 18 GHz Private DTS Licenses

January 15, 1985.

In response to the *Second Report and Order* released September 30, 1983 in General Docket No. 79-188, 48 FR 50322 (November 1, 1983), the Commission received approximately 600 applications proposing to operate private Digital Termination Systems (DTS) in the 17,700–19,700 MHz (18 GHz) band. Many of the applications submitted are mutually exclusive with other DTS applications.

Based upon our initial analysis of the applications, we conclude that there are no substantial material differences in the applications which would warrant comparative hearings. Licensees therefor will be selected by lottery. See *Second Report and Order* in Gen. Docket No. 81-768, 93 FCC 2d 952, 988–89 (1983). The use of lotteries to resolve these mutually exclusive application cases will significantly benefit the public interest by assuring expedited delivery of the proposed services to potential users. The lotteries will be conducted pursuant to the authority contained in § 1.972 of the Commission's Rules and Regulations.

To facilitate the conduct of the lotteries, the Private Radio Bureau will apply the following procedures:

(1) In accordance with the Commission's decision of August 8, 1984 (*Memorandum Opinion and Order* in Gen Docket Nos. 79-188 and 82-334, released August 17, 1984), the frequencies specified in the pending applications will be modified to reflect the new channeling plan for the 17,700–19,700 MHz band. The modification plan adopted by the Commission provides that:

Applications for former DTS channels			Will be considered for new DTS channels		
Channel number	Nodal (MHz)	User (MHz)	Channel number	Nodal (MHz)	User (MHz)
1	18360–18370	18940–18950	25	18820–18830	19160–19170
2	18370–18380	18950–18960	26	18830–18840	19170–19180
3	18380–18390	18960–18970	27	18840–18850	19180–19190
4	18390–18400	18970–18980	28	18850–18860	19190–19200
5	18400–18410	18980–18990	29	18860–18870	19200–19210

(2) After each application in a mutually exclusive area has been rank-ordered using the random selection process, the Commission will examine the applications in detail to determine which applications may be granted. This examination will include an analysis of whether the application was timely filed against all other competing co-channel applications, other issues which may have been raised in petitions to deny, and a consideration of the technical merits and completeness of the application. For purposes of determining mutual exclusivity and applying the filing periods specified in § 1.227(b)(4) of the rules, any application proposing a nodal station transmitter site which is less than 35 miles from a co-channel nodal station transmitter site specified by another applicant will be considered to be mutually exclusive with that other application. Applicants may submit a detailed engineering analysis to demonstrate that an exception to the 35-mile standard would be warranted in situation with unique terrain conditions or peculiar propagation characteristics. Applicants who request an exception to the 35-mile standard must indicate their willingness to accept interference from all licensees whose grants are based on a separation of 35 miles between transmitters. Licenses issued to applicants for operation at less than 35 miles from other licensees will be conditioned to indicate that they are on a secondary basis to previously authorized OFS stations.

(3) Using the criteria specified above, the Commission will issue licenses beginning with the first grantable application assigned the highest priority in each lottery and proceeding sequentially according to the ranking determined by the lottery and the analysis of the data before us.

A subsequent public notice will announce the date on which the lotteries will be conducted and additional procedural matters.

[5] *Accord Second Report and Order in Docket 80-112*, adopted November 21, 1984 (MMDS Lotteries). And because of the mass media nature of OFS, the Commission must also bring the service into compliance with the teachings of *NAB* v. *FCC*, 740 F.2d 1190 (D.C. Cir. 1984). *See Private Operational Fixed Service*, *supra*, 49 FR at 24135, 24137 (Dissenting Statement of Commissioner Henry M. Rivera).

The Commission will be receptive to settlement agreements among competing applicants. All applicants are encouraged to consider any settlement proposals which may be proffered. Only settlement agreements which eliminate mutual exclusivity for an entire area will be considered. Partial settlements will not be considered by the Commission. All settlement agreements are subject to final approval by the Commission.

These procedures will become effective on January 16, 1985.

Additional information regarding the applicants for this lottery session may be obtained from Michael B. Hayden at (717) 337-1421. Procedural questions may be directed to Frederick J. Day at (202) 634-2443.

Action by the Commission January 10, 1985 by Public Notice. Commissioners Fowler (Chairman), Quello, Dawson, Rivera and Patrick.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-4038 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Information Collection Requirements Approved by OMB

February 7, 1985.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, Agency Clearance Officer, (202) 632-7513.

OMB No.: 3060-0070

Title: Request for Waiver of Re-examination Waiting Period and Notification of Action

Form No.: FCC 757-B

The approval on FCC 757-B has been extended through 12/31/87. The January 1982 edition with an OMB expiration date of 12/31/84 will remain in use until updated forms are available.

OMB No.: 3060-0099

Title: Annual Report

Form No.: FCC Form M

A revised FCC Form M has been approved for use through 3/31/87. The revised forms will be made available for the report to be filed in 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-4023 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget Review

February 11, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris R. Peacock, Agency Clearance Officer, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB No.: 3060-0016

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or FM Translator Station

Form No.: FCC 346

Action: Revision

Estimated Annual Burden: 20,540 Responses; 595,660 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-4024 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order; Beacon Broadcasting, and New South Broadcasting Corp.

In re Application of:

Beacon Broadcasting, Morgantown, NC. Req: 760 kHz, .5kW, D.	MM Docket No. 84-1309; File No. BP-830421AC.
New South Broadcasting Corp., WASC, Fairforest, NC. Has: 1530 kHz, 1kW, D (Spartanburg). Req: 760 kHz, 5 kW, DA-D (Fairforest).	MM docket No. 84-1310; File No. BP-840712AE.

For Construction Permit.

Adopted: December 20, 1984.

Released: February 6, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority has under consideration: (a) The mutually exclusive applications of Beacon Broadcasting (Beacon) and New South Broadcasting Corporation (New South); (b) a petition to dismiss or deny filed against the beacon application by Capital Cities Communications, Inc., licensee of WJR, Detroit, Michigan (Capital Cities); (c) an objection filed against the New South application by Beacon; and (d) related pleadings.

2. *The Beacon application.* Beacon failed to attach an exhibit which is required when the applicant affirmatively answers question 8(a) and (b) regarding relationships among parties and broadcast interests of family members. Accordingly, an appropriate amendment is required.

3. The Beacon application indicates that Ernest Penley, part-owner of the proposed station, is program director of WPTL, an existing AM station whose 1 mV/m contour overlaps the 1 mV/m contour of the proposed station. A cross-interest policy issue will be designated for hearing, since the exact or total nature of Ernest Penley's position and relationship with WPTL cannot be determined from the application. *K & M Broadcasting, Inc.*, 19 FCC 2d 947 (1969).

4. Since the present tower sketch in the Beacon application appears to indicate a series feed, contrary to the indication on Section V-A that shunt feed is to be used, the applicant must submit a revised tower sketch clearly depicting the method of shunt feed to be utilized. Beacon should file an amendment providing this information.

5. Capital Cities asserts that Beacon's operation would cause interference to WJR's groundwave service of a kind prohibited by § 73.37 of the Rules, that no mention has been made of the effect of the shunt feed line on the antenna system, and that no method is mentioned as to how the radiation will be restricted to 175 mV/m kW. Commission studies indicate that there would be no prohibited overlap between the proposed operation and WJR, based on M-3 conductivities. Concerning the shunt feed and the restricted efficiency, appropriate conditions will be imposed on the construction permit, if granted. Therefore, Capital Cities' petition to dismiss or deny is granted to the extent indicated herein, and is denied in all other respects.

6. *The New South application.* Beacon contends that Fairforest, New South's proposed community of license, does not qualify as a community (city, town or other political subdivision) for purposes of our rules. In support, Beacon maintains that Fairforest is not incorporated, is not a government entity, and is labeled a "neighborhood" by the 1980 census. New South, in turn, argues that Fairforest has distinct boundaries, its own post office and zip code, sixty-one businesses and a state-appointed Magistrate. We are unable to determine on the basis of this information whether Fairforest is in fact a community for

purposes of Commission Rules. An issue will therefore be specified.[1]

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient, and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding to be held before an Administrative law judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the nature of Ernest Penley's position as program director of Station WPTL, Canton, North Carolina, and whether, in light thereof, grant of the application of Beacon Broadcasting would violate the Commission's cross-interest policy.

2. To determine whether Fairforest is a community for purposes of Commission Rules.

3. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that Beacon Broadcasting file the amendments specified herein with the presiding Administrative Law Judge within 30 days after this Order is released.

10. It is further ordered, that the petition to dismiss or deny filed by Capital Cities Communications, Inc. is granted to the extent indicated herein, and is denied in all other respects.

11. It is further ordered, that should the application of Beacon Broadcasting be granted, the construction permit shall contain the following conditions:

1. The proposed antenna shall be excited with a symmetrical folded unipole feed, utilizing a minimum of three folds. (No slant wire is authorized.)

2. Before program tests are authorized, permittee shall submit sufficient data to establish that the inverse distance field at one mile is restricted to 175 mV/m kW, as proposed.

12. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order should be served on the Chief, Data Management Staff, Audio Division, Mass Media Bureau, Room 350, 1919 M Street, NW. Washington, D.C. 20554.

13. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85–4016 Filed 2–15–85; 8:45 am]

BILLING CODE 6712-01-M

[1] As the issue raised in Beacon's pleading concerns the operation of our acceptance criteria, we have considered it at this stage of the proceeding.

Christian Communications, Inc., and John R. Powley; Hearing Designation Order

In re Applications of:

Christian Communications, Inc.	MM Docket No. 85–19, File No. BPCT–840620KG.
John R. Powley	File No. BPCT–840809KH.

For construction permit, Ashland, Virginia.

Adopted: January 23, 1985.

Released: February 8, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Christian Communications, Incorporated (Christian), and John R. Powley for authority to construct a new commercial television station on Channel 65, Ashland, Virginia.

2. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.[1]

3. Except as indicated by the issued specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Christian Communications, Incorporated and John R. Powley would each constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to Issue 1.

[1] The Commission is not in receipt of FAA's determination for the towers proposed by Christian and John R. Powley.

6. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4020 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

GRK Productions, Inc., and Robin C. Brandt; Hearing Designation Order

In re Applications of:

GRK Productions, Inc.	MM Docket No. 85-12; File No. BPCT-840813KG.
Robin C. Brandt	File No. BPCT-841005KP.

For construction permit, Cadillac, Michigan.

Adoption: January 17, 1985.

Released: February 7, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of GRK Productions, Inc. (GRK), and Robin C. Brandt (Brandt) for authority to construct a new commercial television station on Channel 33, Cadillac, Michigan.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and populations that each proposes to serve. Consequently, the area and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to either of the applicants.

3. No determination has been made that the tower height and location proposed by GRK and Brandt [1] would not consititute a hazard to air navigation. Accordingly, and appropriate issue will be specified.

4. GRK and Brandt each proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power of more than 1,000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts, *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of either application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applicants are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designed for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before and Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a resonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that, in the event of a grant of either application, the construction permit shall contain the following condition:

Subject to the condition that operation with the effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, gave notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by §73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief; Video Services Division, Mass Media Bureau.

[FR Doc. 85-4017 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

[1] The Commission is not in receipt of FAA's determination for the tower proposed by either applicant.

Applications for Consolidated Hearing; Keith E. Lamonica and Connie T. Catsis

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Keith E. Lamonica; Gallup, NM.	BPH-830926AC	84-1331
B. Connie T. Catsis; Gallup, NM.	BPH-840104AH	84-1332

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown

below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A and B
2. Comparative, A and B
3. Ultimate, A and B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the aplicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, N.W., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-4022 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Microband Corporation of America, and Broadcast Data Corp.; Hearing Designation Order

In re Applications of Microband Corp. of America for construction permit in the Multipoint Distribution Service for a new station at Montpelier, Vermont, (CC Docket No. 85-10, File No. 6682-CM-P-80), and Broadcast Data Corp. for construction permit in the Multipoint Distribution Service for a new station at Barre, Vermont. (File No. 10297-CM-P-80).

Adopted January 8, 1985.

Released February 7, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Montpelier/Barre Vermont. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) the anticipated and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Broadcast Data Corp. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned to the following:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. ANSWERING Service, Inc., et al*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

(b) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing in *Cellular Mobile Systems of Texas, Inc., et al.*, CC Docket No. 83-660, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release data. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. See also *Rule § 1.4(b)(2)*.

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register**.

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85-4019 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

Mobile TV 61, Inc., and South Alabama Telecasters; Hearing Designation Order

In re Applications of:

Mobile TV 61, Inc.	MM Docket No. 84-1328; File No. BPCT-840530KL.
South Alabama Telecasters	MM Docket No. 84-1329; File No. BPCT-840723KL.

For Construction Permit for New Television Station, Mobile, Alabama.

Adopted: December 20, 1984.

Released: February 6, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications[1] for authority to construct a new commercial television station on Channel 61, Mobile, Alabama.

2. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contours, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

[1] Mobile TV 61, Inc. filed an amendment on October 12, 1984, after the "B" cut-off date, supplying information required to be reported pursuant to § 1.65 of the Commission's Rules. Accordingly, the amendment is accepted for § 1.65 purposes only and no comparative advantage will accrue to Mobile TV 61.

4. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. A negative response to this question must be accompanied by an explanation. Mobile VT 61, Inc. answered negatively to Item 10; however, it did not submit the required explanation. Mobile TV 61, Inc. will be required to submit its exhibits in the form of an amendment to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

5. Section V-C, Item 10(c), FCC Form 301, requires the applicant to show the legal boundaries of the principal community proposed to be served on the city grade contour map. The city grade contour map submitted by South Alabama Telecasters, does not clearly indicate the legal boundaries of Mobile and it cannot be determined therefore, whether the entire city of Mobile would be within the predicted city grade contour as required by Section 73.685 of the Commission's Rules. The applicant will therefore be required to submit a proper map depicting the legal boundaries of Mobile, Alabama.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that Mobile TV 61, Inc., shall submit its explanation for its negative answer to Section II, Item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

9. It is further ordered, that South Alabama Telecasters, shall submit a map clearly depicting the legal boundaries of Mobile, Alabama and indicating whether its proposal meets the city grade coverage required by Section 73.685 of the Commission's Rules, to the Presiding Administrative Law Judge within 20 days after the release of this Order.

10. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4015 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

John R. Powley, and Kimbell Television Co.; Hearing Designation Order

In re Applications of:

John R. Powley	MM docket No. 85-11; File No. BPCT-840625KI.
Tedford E. Kimbell and Mary Jane Harper d/b/a Kimbell Television Company.	File No. BPCT-840809KO.

For Construction Permit, Brady, Texas.

Adopted: January 17, 1985.

Released: February 7, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of John R. Powley, and Tedford E. Kimbell and Mary Jane Harper d/b/a/ Kimbell Television Company (Kimbell) for authority to construct a new commercial television station on Channel 13, Brady, Texas.

2. The effective radiated visual power, antena height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the areas and populations that each proposes to serve. Consequently, the areas and populations which would be within the predicated 56 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accure to either of the applicants.

3. No determination has been reached that the tower heights and locations proposed by John R. Powley and Kimbell would not constitute a hazard to air navigation.[1] Accordingly, and issue regarding this matter will be specified.

4. Kimbell has not certified nor demonstrated its financial qualifications.[2] Although the financial standards are unchanged, the Commission has changed the application form to require only certification as to financial qualifications. Accordingly, the applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the

[1] The Commission is not in receipt of FAA's determination for the tower proposed by either applicant.

[2] Applicant has indicated that the required documents are being assembled for certification.

Administrative Law Judge who shall then specify an appropriate issue.

5. Kimbell intends to operate the proposed facility as primarily a satellite of commonly-owned station KLST(TV), Channel 8, San Angelo, Texas. Since John R. Powley does not propose a satellite operation, it follows, that Kimbell must justify the need for a satellite. Accordingly, an appropriate issue will be specified as to the need for a satellite operation.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by John R. Powley, and Tedford E. Kimbell and Mary Jane Harper d/b/a Kimbell Television Company would each constitute a hazard to air navigation.

2. To determine, with respect to Tedford E. Kimbell and Mary Jane Harper d/b/a Kimbell Television Company, whether circumstances exist which would make operation as a "satellite" necessary for Brady, Texas.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that within 20 days of the release of this Order, Tedford E. Kimbell and Mary Jane Harper d/b/a/ Kimbell Television Company shall submitt a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the required certification cannot be made.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

10. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass media Bureau.

[FR Doc. 85-4018 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Sanibel Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Sanibel Broadcasting Co.; Sanibel, FL	BPH-830204AH	85-13
B. Hillebrand Broadcasting, Inc.; Sanibel, FL	BPH-830217AI	85-14
C. Buenos Aires Radio; Sanibel, FL	BPH-830531AK	85-15
D. Gumbo Limbo Broadcasting, Inc.; Sanibel, FL	BPH-830610AC	85-16
E. Pearlyn Ionie Miller et al. d/b/a Sanibel Radio, Ltd.; Sanibel, FL	BPH-830622AF	85-17
F. Island Broadcasting, Inc.; Sanibel, FL	BPH-830713AA	85-18
G. Martin R. Schneider & Martin P. Schneider d/b/a Sanibel-Captiva FM Associates; Sanibel, FL	BPH-830714AL	85-19
H. Punta Ybel Communications; Sanibel, FL	BPH-830714AM	85-20
I. Sanibel Communications Company; Sanibel, FL	BPH-830714AN	85-21
J. Riviera Communications Sanibel, Inc.; Sanibel, FL	BPH-830714AO	85-22
K. High Tech Industries, Inc.; Sanibel, FL	BPH-830714AP	85-23
L. Sophie G. Dirks d/b/a Island Sounds; Sanibel, FL	BPH-830714AQ	85-24
M. Harte-Hanks Radio, Inc. (WRBQ); Tampa, FL	BPH-830744AT	85-25

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 Fed. Reg. 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. 307(b), All applicants.
2. Ultimate, All applicants.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW, Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-4014 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Telecrafter Corp.; and Raleigh Microwave Communications; Hearing Designation Order

In re Applications of:

Telecrafter Corporation	CC Docket No. 85-15; File No. 50164-CM-P-82.
Raleigh Microwave Communications.	File No. 50229-CM-P-82.

For Construction Permits in the Multipoint Distribution Service for a new station at The Dalles, Oregon.

Adopted: January 18, 1985.

Released: February 8, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at The Dalles, Oregon. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be

required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, It is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The realtive merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Telecrafter Corporation, Raleigh Microwave Communications and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commisson's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Division.

[FR Doc. 85-4021 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

Meeting Regarding International (High Frequency) Broadcasting

There will be a meeting regarding International (High Frequency) Broadcasting held on February 20, 1985, at 9:30 AM at Commission headquarters in Room 315, 1919 "M" St., NW.

The Agenda will be as follows:

1. Brief Report on the results of the First Session of the World Administrative Radio Conference for the Planning of the High Frequency Bands Allocated to the Broadcasting Service (WARC-HFBC).
2. Discussion of intersessional work.
3. Discussion of requirements form.
4. Questions and summary.

The meeting is open to the public and all interested parties are invited to participate.

For further information, please call Charles H. Brieg or Thomas Polzin, at (202) 254-3394.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-4025 Filed 2-15-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-053.
Title: Atlantic and Gulf/West Coast of South America Conference.
Parties:
Lykes Bros. Steamship Co., Inc.
CCNI (Compania Chilena De Navigacion Interoceania)
Chilean Line (Compania Sud Americana De Vapores, S.A.)
Delta Steamship Lines, Inc.
Linabol (Lineas Navieras Bolivianas S.A.)
Peruvian State Line (Compania Peruana De Vapores)

Synopsis: The proposed amendment would add United States Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202-002744-054.
Title: Atlantic and Gulf/West Coast of South America Conference.
Parties:
Lykes Bros. Steamship Co., Inc.
CCNI (Compania Chilena De Navigacion Interoceania)
Chilean Line (Compania Sud Americana De Vapores, S.A.)
Linabol (Lineas Navieras Bolivianas S.A.)
Peruvian State Line (Compania Peruana De Vapores)

Synopsis: The proposed amendment would delete Delta Steamship Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202-005200-048.
Title: Pacific Coast European Conference.
Parties:
Blue Star Line, Ltd.
Compagnie Generale Maritime
A/S Det Ostasiatiske Kompagni
Hapag-Lloyd AG
Intercontinental Transport (ICT) B.V.
Johnson Line AB
Sea-Land Service, Inc.

Synopsis: The proposed amendment would delete Italia-D'Amico Line, United Yugoslav Line (Splosna Plovba Piran) and Zim Israel Navigation Co., Ltd. as parties to the agreement. It would delete references to direct all-water services to the Mediterranean from the geographic scope of the agreement. It would also restate the agreement to conform with the format requirements of the Commission's regulations and incorporate mandatory provisions required by the Shipping Act of 1984. The parties have requested a shortened review period.

Agreement No.: 202-007590-039.
Title: United States Atlantic and Gulf/Colombia Conference.
Parties:
Coordinated Caribbean Transport, Inc.
Flota Marcante Grancolombia, S.A.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would delete Delta Steamship Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202-007590-040.
Title: United States Atlantic and Gulf/Colombia Conference.
Parties:
Coordinated Caribbean Transport, Inc.
Delta Steamship Lines, Inc.

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

Flota Mercante Grancolombia, S.A.
Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed amendment would add United States Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 202-007890-021.

Title: West Coast of South America Northbound Conference.

Parties:
Lykes Bros. Steamship Co., Inc.
CCNI (Compania Chilena De Navigacion Interoceania)
Chilean Line (Compania Sud Americana De Vapores, S.A.)
Linabol (Lineas Navieras Bolivianas S.A.)
Peruvian State Line (Compania Peruana De Vapores)

Synopsis: The proposed amendment would add United States Lines, Inc. as a party to the agreement. The parties have requested a shortened review period and a waiver of the format requirements of the Commission's regulations.

Agreement No.: 212-01086-004.

Title: Italy-U.S.A. North Atlantic Pool Agreement.

Parties:
Costa Armatori, S.p.A.
Italia di Navigazione, S.p.A.
Sea-Land Service, Inc.
Farell Lines, Inc.
Jugolinija
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would delete the expiration date of the agreement and substitute the Mediterranean U.S.A. Freight Conference for references to the West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference. It would also restate the agreement to conform with the format requirements of the Commission's regulations. The parties have requested a shortened review period.

Agreement No.: 202-010636-006.

Title: U.S. Atlantic-North Europe Conference.

Parties:
Atlantic Container Line (G.I.E.)
Dart-ML Limited
Hapag-Lloyd AG
Double Eagle Lines, Inc.
Sea-Land Service, Inc.
Trans Freight Lines, Inc.
United States Lines, Inc.
Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would expand the scope of the agreement to include Wallhamn, Sweden. The parties have requested a shortened review period.

Agreement No.: 202-010676-002.

Title: Mediterranean/U.S.A Freight Conference.

Parties:
Atlanttrafik Express Services, Ltd.
Achille Lauro
C.I.A Venezolana de Navegacion
Compania Transatlantica Espanola S.A.
Constellation Lines, S.A.
Costa Line
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolumbiana S.A.
"Italia" Societa' per Azioni de Navigazione
Jugolinija
Jugooceanija
Lykes Lines
Nedlloyd Lines
Nordana Line/Dannebrog Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would authorize the parties to succeed to the rights and obligations of existing service contracts and other shipper agreements of the four conferences which it is replacing. The parties of the agreement have decided to implement the conference effective March 5, 1985. The parties have requested that the agreement be considered non-substantive and have requested a shortened review period.

Agreement No.: 217-010723.

Title: International Navigation Limited/Lash Carriers, Inc. Space Charter and Cooperative Working Agreement.

Parties:
International Navigation Limited (INL)
Lash Carriers, Inc. (LCI)

Synopsis: The proposed agreement would establish a space chartering and cooperative working arrangement between the parties in the trade between United States Atlantic and Gulf ports, and United Kingdom and European ports between Scandinavia and Gibraltar, regardless of the origin or destination of the cargoes. It would permit INL, the time charterers of three LASH vessels and accompanying barges, to charter back to the owner, LCI, barges and all barge-carrying spaces on the westbound voyages of the three vessels, with charter rates to vary with results of both eastbound and westbound voyages. It would also permit LCI to contract with a third party to subcharter the barges and westbound vessel space.

By Order of the Federal Maritime Commission.

Dated: February 13, 1985.

Francis C. Hurney,
Secretary.

[FR Doc. 85-4057 Filed 2-15-85; 8:45 am]

BILLING CODE 6730-01-M

Notice of Concorde/Nopal Line Petition

On January 23, 1985, Concorde/Nopal Line (Concorde/Nopal) petitioned the Federal Maritime Commission pursuant to section 19 of the Merchant Marine Act of 1920 (46 U.S.C. app. 876) to issue rules to meet or adjust conditions, which Concorde/Nopal alleges are unfavorable to shipping in the U.S/Venezuela trade. Concorde/Nopal charges that its ability to compete for U.S. export cargo to Venezuela was constricted by the existence and enforcement of cargo reservation laws and decrees promulgated by the Government of Venezuela.

Upon consideration of the Concorde/Nopal Petition, the Commission was persuaded that the most expeditious action was required. Accordingly, the Commission requested the assistance of the Department of State in reaching a diplomatic resolution of the problems encountered by Concorde/Nopal and notified the Department that it would simultaneously institute a proceeding by issuance of a proposed rule to meet or adjust the apparently unfavorable conditions. The public was informed of the filing of Concorde/Nopal's Petition and the Commission's intended action by press release issued on January 31, 1985.

Concorde/Nopal, by letter dated February 13, 1985, has now informed the Commission that the Venezuelan Ministry of Transportation and Communications may be "prepared to grant it, within a reasonable time after application, a permit to compete in the South Florida/Venezuela general cargo trade" and that it will "attempt to work out suitable provisions of a permit which would enable Concorde/Nopal to transport commercial cargo in the aforesaid trade." Concorde/Nopal advises that it expects that a permit "will be granted within the next two weeks." Concorde/Nopal therefore requests that the Commission defer action on its Petition to permit amicable resolution of the matter. Based upon the apparent progress through Concorde/Nopal's own contacts with the Government of Venezuela, the Department of State also now recommends that the Commission withhold issuance of a proposed rule at this time.

The Commission will, accordingly, delay issuance of the proposed rule and defer any other action on the Petition until its meeting the week of March 18, 1985.

By the Commission February 14, 1985.

Bruce A Dombrowski,

Assistant Secretary.

[FR Doc. 85-4197 Filed 2-15-85; 10:24 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Evangeline Bancshare, 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 March 8, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Evangeline Bancshares, Inc.*, Ville Platte, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Evangeline Bank and Trust Company, Ville Platte, Louisiana.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancenter One Group, Inc.*, Ellisville, Missouri; to acquire 100 percent of the voting shares or assets of Bankcenter One/St. Charles, N.A., St. Charles, Missouri, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3955 Filed 2-15-85; 8:45 am]

BILLING CODE 6210-01-M

First Cordell Banco, Inc.; 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 disupte, 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 March 8, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Cordell Banco, Inc.*, Cordell, Oklahoma; to acquire Flemming Insurance Agency, Cordell, Oklahoma, thereby engage in general insurance activities in Cordell, Oklahoma, a town with a population not exceeding 5,000.

Board of Governors of the Federal Reserve System, February 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-3956 Filed 2-15-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Property Resources Service

[Wildlife Order 157]

Kilauea Point Light Station, Kauai, Hawaii 9-U-HI-560; Transfer of Property

Pursuant to section 2 of Pub. L. 537, 80th Congress, approved May 19, 1948 (16 U.S.C. 667c), notice is hereby given that:

1. By transfer letter from the General Services Administration dated December 19, 1984, the property comprising 31 acres of fee land and 3.75 acres of easements and improvements identified as Kilauea Point Light Station, Kauai, Hawaii, 9-U-HI-560, has been transferred to the Department of the Interior, Fish and Wildlife Service.

2. The above described property was conveyed for the purpose of carrying out the national migratory bird management program in accordance with the provisions of section 1 of said Pub. L. 80-537 (16 U.S.C. 667b), as amended by Pub. L. 92-432.

Dated: February 8, 1985.

Earl E. Jones,

Acting Commissioner, Federal Property Resources Service.

[FR Doc. 85-3967 Filed 2-15-85; 8:45 am]

BILLING CODE 6820-96-M

National Archives and Records Service

Advisory Committee on Preservation; Meeting

Notice is hereby given that the Executive Committee of the Advisory Committee on Preservation will meet on Wednesday, March 13, 1985, from 10:00 a.m. to 5:00 p.m. in Room 410 of the National Archives Building, Washington, D.C.

The agenda for the meeting will be:

1. Future structure of the Committee within the newly established National Archives and Records Administration.

2. Summary of the Committee's work

3. Value and usefulness of the Committee.

The meeting will be open to the public. For further information, call Alan Calmes on 202-523-3159.

Dated: February 7, 1985.

Robert M. Warner,

Archivist of the United States.

[FR Doc. 85-3966 Filed 2-15-85; 8:45 am]

BILLING CODE 6820-26-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Tuesday, March 26, 1985, at 9:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The main purpose for the meeting is the review, discussion, and final recommendation on the Bruno Creek road alternatives at the Cyprus Thompson Mine. Current Salmon District issues will also be discussed.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:00 a.m. and 10:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by March 22, 1985.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to: Kenneth G. Walker, District Manager, Salmon District BLM, Box 430, Salmon, Idaho 83467.

Dated: February 6, 1985.

Jerry W. Goodman,

Associate District Manager.

[FR Doc. 85-3964 Filed 2-15-85; 8:45 am]

BILLING CODE 4310-GG-M

Salmon District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Grazing Advisory Board.

DATE: The meeting will be held at 10:00 a.m., Friday, March 29, 1985.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The purpose of the meeting will be to discuss: (1) Range improvement projects, (2) the grazing fee review and evaluation report, (3) update on the BLM/Forest Service Interchange, (4) update on the Lemhi RMP, (5) the range program.

The meeting is open to the public. Anyone may make oral statements to the Board or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467, by March 25, 1985. Time will be provided at 1:00 p.m. for oral statements.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection within 30 days following the meeting.

Dated: February 6, 1985.

Kenneth G. Walker,

District Manager.

[FR Doc. 85-3965 Filed 2-15-85; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of a Draft Environmental Assessment; Natural Gas Exploration and Production Activities on the D'Arbonne National Wildlife Refuge, Ouachita and Union Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Assessment, "Natural Gas Exploration and Production Activities on the D'Arbonne National Wildlife Refuge, Quachita and Union Parishes, Louisiana," will be available for public review on March 1, 1985. The U.S. Fish and Wildlife Service proposes to implement special conditions relating to natural gas exploration and production activities. These special conditions are needed to eliminate or minimize adverse impacts on fish and wildlife and other surface resources on the refuge.

A public meeting will be held in Monroe, Louisiana, to receive oral and/or written statements.

DATES: Written comments must be received no later than April 8, 1985, to be considered.

The public meeting is tentatively scheduled to be held in Monroe, Louisiana, during the week of March 18. Specifics concerning the meeting will be announced through established channels as soon as final arrangements have been made.

ADDRESS: Written comments should be sent to: Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Butts, Chief, Branch of Planning and Coordination, Office of Wildlife Resources; (404) 221-3543 or FTS 242-3543.

Dated: February 11, 1985.

James W. Pulliam, Jr.,

Regional Director, Fish and Wildlife Service.

[FR Doc. 85-3898 Filed 2-14-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 9, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 6, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Baldwin County

Fairhope, *Whittier Hall*, 201 Magnolia Ave.

Silverhill, *Svea Land Company Office*, S. 6th St.

Jefferson County

Birmingham, *Avalon*, 3005-3015 Highland Ave. and 3000-3020 13th Ave. South

Macon County

Tuskegee, *North Main Street Historic District*, 600, 615, 616 N. Main, 101, 110 E. Water, 700 Water, 701 Maple and 811 N. Maple Sts.

Mobile County

Mobile, *Hunter House*, 504 St. Francis St.

Tuscaloosa County

Northport vicinity, *Hassell, John, House*, Rt. 1 Watermelon Rd.
Tuscaloosa, *Carson Place*, 610–36th Ave.
Tuscaloosa, *City National Bank*, 2301 University Blvd.
Tuscaloosa, *Foster Home/Sylvan Plantation*, Off US 11

Wilcox County

Pine Apple, *Hawthorne House*, 9 N. Broad St.

FLORIDA

Duval County

Jacksonville, *Riverside Historic District*, Roughly bounded by Seaboard Coastline RR, Riverside and Memorial Pks., St. Johns River and Seminole

Georgia

Thomas County

Thomasville, *Bethany Congregational Church*, 112 Lester St.

INDIANA

Hancock County

Greenfield, *Greenfield Courthouse Square Historic District*, Roughly bounded by North, Hinchman, South and Pennsylvania Sts.

NEW HAMPSHIRE

Belknap County

New Hampton, *New Hampton Community Church*, Main St.

Carroll County

Wolfeborough, *Cotton Mountain Community Church*, Stoneham Rd.

Cheshire County

Keene, *Grace United Methodist Church*, 34 Court St.

Grafton County

Dorchester, *Dorchester Common Historic District*, Roughly bounded by N. Dorchester 2 mile NW of intersection with NY 118.
Hebron, *Hebron Village Historic District*, Roughly bounded by Hebron Village Cemetery, N. and W. Shore Rds., Hobart Hill and Groton Rds.
Holderness, *Holderness Free Library*, Junction of US 3 and NH 113.

Merrimack County

Webster, *Old Webster Meeting House*, Off NH 127 on Battle St.
Webster, *Webster Congregational Church*, Off NH 127 on Long St.

Strafford County

Dover, *Public Market*, 93 Washington St.
Somersworth, *Green Street School*, 104 Green St.

OHIO

Brown County

Ripley, *Ripley Historical District*, Roughly bounded by Main, Front, 2nd, 3rd and 4th Sts.

Delaware County

Delaware, *Austin Hall (Ohio Wesleyan University TR)* OWU, W. Central Ave. & Elizabeth St.
Delaware, *Edwards Gymnasium/Pfeiffer Natatorium (Onio Wesleyan University TR)*, OWU Main Campus, S. Sandusky St.
Delaware, *Ohio Wesleyan University Student Observatory (Ohio Wesleyan University TR)*, OWU, W. William St.
Delaware, *Sanborn Hall (Ohio Wesleyan University TR*, OWU, W. Campus.
Delaware, *Selby Field (Ohio Wesleyan University TR)*, OWU, Henry St.
Delaware, *Slocum Hall (Ohio Wesleyan University TR)*, OWU Main Campus, Sandusky St.
Delaware, *Stuyvesant Hall (Ohio Wesleyan University TR)*, OWU, W. William St.
Delaware, *University Hall-Gray's Chapel (Ohio Wesleyan University TR)*, OWU Main Campus, Sandusky St.

Franklin County

Columbus, *Central High School*, 75 S. Washington Blvd.

Portage County

Ravenna, *Etna House (Ravenna Commercial Center MRA)*, 219½ W. Main St.
Ravenna, *Griffin, A.B., 409 S. Walnut St.*
Ravenna, *Phoenix Block (Ravenna Commercial Center MRA)*, NE corner of Main and Chestnut Sts.
Ravenna, *Riddle Block #1 (Ravenna Commercial Center MRA)*, SE corner of Chestnut and Main Sts.
Ravenna, *Riddle Block #11 (Ravenna Commercial Center MRA)*, 133—137 Main St.
Ravenna, *Riddle Block #5 (Ravenna Commercial Center MRA)*, 141—145 E. Main St.
Ravenna, *Riddle Block #9 (Ravenna Commercial Center MRA)*, 113—115 W. Main St.

Stark County

Brewster, *Brewster Railroad YMCA/Wandle House*, 45 S. Wabash Ave.

OKLAHOMA

McIntosh County

Eufaula, *C.L. Cooper Building*, 5B and Harrison

PENNSYLVANIA

Allegheny County

Pittsburgh, *Byrnes & Kiefer Building*, 1127–1133 Penn Ave.
Pittsburgh, *William Penn Hotel*, Mellon Sq. between 6th and Oliver Sts.

Bucks County

Center Bridge, *Center Bridge Historic District*, Bounded by Ely and Laurel Rds. on River Rd.
Doylestown vicinity, *Fretz Farm*, Almshouse Rd. and PA 611

Chester County

Marshallton vicinity, *Cope's Bridge*

Dauphin County

Harrisburg, *Harrisburg Cemetery*, 13th and Liberty Sts.

Lancaster County

Ephrata, *Mentzer Building*, 3 W. Main St.

Lawrence County

New Wilmington, *Thompson, S.R., House*, Market St.

Montgomery County

Wyndmoor, *Stotesbury Club House*, 7830 Eastern Ave.

Montour County

Danville, *Danville Historic District*, Bounded by Courthouse Alley E., Front St. S., Haney's Alley W. and Mahoning St. N.

Philadelphia County

Philadelphia, *Goodman Brothers and Hinlein Company*, 1238 Callowhill St.
Philadelphia, *La Blanche Apartments*, 5100 Walnut St.
Philadelphia, *Overbrook Farms*, Roughly bounded by City Line Ave., 58th St., Woodbine Ave. and 64th St.

Washington County

West Alexander Borough, *West Alexander Historic District*, Roughly bounded by Main, N. Liberty and Mechanic Sts.

Westmoreland County

New Alexander, *Patterson, Samuel, House*, RD 1—Box 155 on PA 981

York County

North Codorus Township, *York Iron Company Mine*, N. of Green Valley Rd. between Jefferson and Seven Valleys

WISCONSIN

Door County

Fish Creek, *Church of the Atonement*, Fire No. 9410

La Crosse

La Crosse, *Wisconsin Telephone Company Building*, 125 N. 4th St.

Price County

Phillips, *Bloom's Tavern, Store and House*, 396 S. Avon Ave.

Rock County

Clinton, *Clinton Water Tower (Water Works Structures of Rock County—19th Century TR)*, High St.
Janesville, *Janesville Pumping Station (Water Works Structures of Rock County—19th Century TR)*, 500 Blk. River St.

15 day commenting period for following properties waived at the request of property owners, State, and local elected officials.

OHIO

Knox County

Gambier, *Kokosing House*, 221 Kokosing Dr.

WEST VIRGINIA

Summers County

Pence Springs, *Pence Springs Hotel Historic District*, Roughly bounded by Buggy Branch, Buggy Branch Rd., WV 3 and Pence Springs Access Rd.

[FR Doc. 85-4086 Filed 2-15-85; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Final Environmental Impact Statement for the Proposed John Henry No. 1 Mine, King County, WA

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

ACTION: Notice of availability of final environmental impact statement (OSM-EIS-13).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available a final environmental impact statement (EIS) on the proposed John Henry No. 1 mine. The EIS has been prepared to assist the Department of the Interior in making a decision on Pacific Coast Coal Company's permit application to surface mine coal in and adjacent to Black Diamond, Washington.

ADDRESS: Copies of the final EIS may be obtained from Allen D. Klein, Administrator, Attn: Charles Albrecht, OSM, Western Technical Center, Second Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Chief, Environmental Analysis Branch (telephone: 303-844-5656), at the Denver, Colorado, location given under **ADDRESS.**

SUPPLEMENTARY INFORMATION: The proposed John Henry No. 1 mine is a new surface coal mine. Pacific Coast Coal Company proposes to mine a maximum of 385,000 tons per year of run-of-mine coal at peak production levels or 5.32 million tons over 16.2 years at the mine. A coal processing facility capable of producing 250,000 tons of clean coal per year is also proposed. Approximately 363 acres of land would be disturbed during the life of the mine. Reclamation (spoil backfilling and contouring, topsoil replacement, and vegetation planting) would be completed within 19 years of commencement of the mining operation.

Two alternative decisions that are available to the Secretary of the Interior and that are evaluated in the EIS are: (1) Approval of the permit application with or without conditions and issuance of a Federal permit and (2) disapproval of the permit application. OSM has identified the first alternative above as its preferred alternative.

A notice of availability of the draft EIS was published in the **Federal Register** on March 26, 1984 (49 FR 11260).

The final EIS contains a full revised text of the analysis presented in the draft EIS, the written comments and oral testimony from the public hearing submitted to OSM on the draft, and OSM's responses to those comments it considered substantive.

Dated: February 12, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85-3983 Filed 2-15-85; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30620]

Rail Carriers; Chicago, West Pullman & Southern Railroad Co.; Modified Certificate of Public Convenience and Necessity

February 12, 1985.

On January 31, 1985, a notice was filed by the Chicago, West Pullman & Southern Railroad Company (CWFS) for a modified certificate of public convenience and necessity under 49 CFR Part 1150 Subpart C. As of January 31, 1985, CWPS is authorized to operate over the following two lines of railroad for a period of 120 days. The first is the former line of the Illinois Central Gulf Railroad Company between Milepost 2.42 near Freeport, IL, and Milepost 61.37 at Madison, WI. The State of Wisconsin Department of Transportation (WISDOT) and the South Central Wisconsin Rail Transit Commission acquired portions of the line following the Commission's decision in Docket No. AB-43 (Sub-No. 28) *Illinois Central Gulf Railroad Company—Abandonment—between Freeport, IL, and Madison, WI* (not printed), served December 22, 1980. The second line is the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company line between Milepost 11.0 at Janesville, WI, and Milepost 90.6 at Mineral Point, WI. WISDOT also acquired this line which is embraced within an order of abandonment issued January 21, 1980, by the United States District Court for the Northern District of Illinois, Eastern Division, in a reorganization proceeding brought under 11 U.S.C. 205.

The lines are controlled by the South Central Wisconsin Transit Commission and the Pecatonia Rail Transit Commission, which are public agencies of the State of Wisconsin. CWPS will operate the lines pursuant to service agreements with the Transit Commissions.

This notice must be served upon the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and upon the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-4063 Filed 2-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-10)

Intrastate Rail Rate Authority; Kansas

AGENCY: Interstate Commerce Commission.

ACTION: Notice of certification.

SUMMARY: The Commission grants final certification to the Kansas Corporation Commission under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that it modify its standards and procedures as noted in the full decision.

DATE: If the necessary changes are made, certification will begin March 21, 1985.

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: February 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-4061 Filed 2-15-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-242 (Sub-1X)[1]]

Rail carriers; Maryland and Pennsylvania Railroad Company; Abandonment; Exemption in York County, PA

The Maryland and Pennsylvania Railroad Company (MPA) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments*, as modified by *Exemption of Out of Service Rail Lines*, 1 I.C.C. 2d 55, decided April 16, 1984. MPA will abandon three (3) segments of rail line in York County, PA, as follows: Segment 1, consists of 133,056 feet, or 25.20 miles, beginning at mile post 66.8 or 3538+66, then to mile post 41.6, or 2220+74. Segment 2, Dallastown Branch, consists of 5,280 feet, or 1.0 mile, beginning at mile post 69.5, or 3657+80, thence to 52+80. Segment 3, the Slate Hill Branch, consists of 10,180 feet, or 1.93 miles, beginning at mile post 43.4 or 2310+95, thence to 101+80.

MPA has certified (1) that no local traffic has moved over the line for at least 2 years, (2) the line does not handle overhead traffic, and (3) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service on the line either is pending with the Commission or has been decided in favor of the complainant within the 2 year period preceding this notice. The Pennsylvania Public Utility Commission has been notified. See *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on March 21, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by March 1, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 11, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Alfred P. Smith, General Manager, Maryland and Pennsylvania Railroad Company, 1 West Market Street, York, PA 17401.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 12, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-4064 Filed 2-15-85; 8:45 am]

BILLING CODE 7035-01-M

[1] MPA initially filed a petition on November 7, 1984, seeking an exemption under 49 U.S.C. 10505, with respect to 38.23 miles of rail line in York County, PA, and Harford County, MD. However, by letter dated January 7, 1985, MPA resegmented the lines into those qualifying for exemption under 49 CFR 1152 Subpart F, and that qualifying for exemption under 49 U.S.C. 10505. The pertinent portion of the latter line will be separately considered in Docket No. AB-242X.

[Finance Docket No. 30617]

Rail Carriers; Norfolk & Western Railway Co.; Assumption of Liability Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11301 the assumption of obligation and liability by Norfolk and Western Railway Company, as guarantor, with respect to a note or notes to be issued by the Hillsdale County Railway Company not exceeding $100,000 prinicpal amount.

DATES: This exemption is effective February 15, 1985. Petitions to reopen must be filed by March 11, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30617 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: J. Gary Lane, One Commercial Place, Norfolk, VA 23510.

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: February 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary

[FR Doc. 85-4062 Filed 2-15-85; 8:45 am]

BILLING CODE 7035-01-M

Railroad Abandonments; Staten Island Railroad Corp., et al.

In the matter of: Docket No. AB-231: The Staten Island Railroad Corporation, Abandonment and Discontinuance of Service, in Richmond County, NY and Union County, NJ; Notice of Findings: Docket No. AB-6 (Sub-No. 210) Burlington Northern Railroad Company, Abandonment, in LaSalle, Bureau and Whiteside Counties, IL Notice of Findings; and Finance Docket No. 30609; Southern Pacific Transportation Company, Trackage Rights Exemption.

Notices in the above entitled proceedings were mistakenly published twice in the **Federal Register**. The notice in AB-231 was correctly published at 50 FR 5329, February 7, 1985, the notice in AB-6 (Sub-No. 210) at 50 FR 5442, February 8, 1985, and the notice in Finance Docket No. 30609 at 50 FR 5328, February 7, 1985. All three notices were incorrectly published at 50 FR 5688 and 5689, February 11, 1985. These second publications are to be disregarded.

James H. Bayne,

Secretary.

[FR Doc. 85-4060 Filed 2-15-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

National Cooperative Research Act of 1984; Merrell Dow Pharmaceuticals Inc. and Hoffmann-La Roche Inc. Joint Venture

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Merrell Dow Pharmaceuticals Inc. ("MDPI"), on behalf of a joint venture to which it is a party, has filed a written notifcation simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture and (2) the nature and objectives of the joint venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activity, are given below.

The joint venture is comprised of MDPI and Hoffmann-La Roche Inc. The parties have agreed to collaborate on clinical studies to evaluate the effect of concomitant administration of DFMO (difluoromethylornithine) and interferon for the treatment of metastatic malignant melanoma, providing for the mutual exchange of all data from the collaborative studies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-4002 Filed 2-15-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importer of Controlled Substances; Withdrawal of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)) and in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), a Notice of Application was published in **Federal Register**, Vol. 49, No. 87, Thursday, May 3, 1984, that Bio-Fine Pharmaceutical, Inc., 3600 Cambridge, Las Vegas, Nevada 89109, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Raw Opium (9600)—Schedule II

Opium Plant Form (9650)—Schedule II

Notice is hereby given that Bio-Fine Pharamaceuticals, Inc. has withdrawn said application.

Dated: February 8, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 85-3984 Filed 2-15-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 15, 1984, Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II
Fentanly (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than March 21, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

February 11, 1985.

[FR Doc. 85-3987 Filed 2-15-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR) this is notice that on October 15, 1984, Mallinckrodt, Inc., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Fentanyl (9801).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than (March 21, 1985).

Dated: February 8, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-3986 Filed 2-15-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Withdrawal of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR) a Notice of Application was published in the **Federal Register**, Vol. 49, No. 85, Tuesday, May 1, 1984, that Bio-Fine Pharmaceuticals, Inc., 3600 Cambridge, Las Vegas, Nevada 89109, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Codeine (9050)	Schedule II
Morphine (9300)	Schedule II
Opium Extracts (9610)	Schedule II
Opium Fluid Extracts (9620)	Schedule II
Tincture of Opium (9630)	Schedule II
Powdered Opium (9639)	Schedule II
Granulated Opium (9640)	Schedule II

Notice is hereby given that Bio-Fine Pharmaceuticals, Inc. has withdrawn said application.

Dated: February 8, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 85-3985 Filed 2-15-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) will meet in Washington, D.C on March 4-5, 1985. The meeting will begin at 9:30 a.m., on Monday, March 4, in Room C-2318 of the Frances Perkins Building, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C.

The National Advisory Committee was established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The agenda will include reports on recent activities of OSHA and NIOSH and discussions of issues relating to these Agencies.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairman of the Committee to the extent which time permits.

For additional information contact: Clarence Page, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3662, Third Street and Constitution Avenue, N.W. 20210, Telephone: (202) 523-8024.

Official records of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed in Washington, D.C. this 15th day of February, 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-4193 Filed 2-15-85; 10:21 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-35; Exemption Application No. D-5395 et al.]

Grant of Individual Exemptions; ESI Profit Sharing Retirement Plan and Trust, 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.

ESI Profit Sharing Retirement Plan and Trust (the Plan) Located in Portland, OR

[Prohibited Transaction Exemption 85-35; Exemption Application No. D-5395]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale, pursuant to the escrow arrangement described in the notice of proposed exemption, of certain employer real property by the Plan to Electro Scientific Industries, Inc., a party in interest with respect to the Plan, provided the terms of such transaction are at least as favorable to the Plan as those of similar transactions between unrelated parties.

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 December 4, 1984 at 49 FR 47448.

For Further Information Contact: Mrs. Miriam Freund 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 Plans): Located in Dallas, TX

[Prohibited Transaction Exemption 85-36; Exemption Application Nos. D-5464 and D-5465]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The 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 RPLC Leases (the Leases) by American Petrofina, Incorporated, 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 is July 12, 1984.

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 December 14, 1984 at FR 48825.

For Further Information Contact: Mr. David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Newspaper Agency Corporation Pension Trust (the Plan) Located in Salt Lake City, UT

[Prohibited Transaction Exemption 85-37; Exemption Application No. D-5540]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)((2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The continued leasing of certain improved real property (the Property) from the Plan to Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, (2) the guarantee by Kearns-Tribune Corporation and Deseret News Publishing Corporation of the Employer's obligation under such lease, and (3) the possible future sale of the Property by the Plan to the Employer pursuant to Articles 19 or 20 of such lease; provided the terms of each of these transactions are at least as favorable to the Plan as those the Plan could obtain in similar transactions with unrelated parties, and provided further that in the event of any such sale, the sales price is not less than the fair market value of the Property on the date of the sale, disregarding any reduction in value attributable to the Employer's rights under Articles 19 and 20 of such lease.

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 December 4, 1984 at 49 FR 47451.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

A.F. Abdullah, M.D., Pension Plan (the Plan) Located in Hagerstown, MD

[Prohibited Transaction Exemption 85-38; Exemption Application No. D-5678]

Exemption

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 borrowing by the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms of and conditions of such loans are at least as favorable to the Plan as those it could obtain from 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 December 4, 1984 at 49 FR 47457.

For Further Information Contact: Mrs. Miriam Freund 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 provisons 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 12th day of February 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Walfare Benefit Programs, Department of Labor.

[FR Doc. 85-3970 Filed 2-15-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5228 and D-5229] et al.

Proposed Exemptions; Baton Rouge Building and Construction Industry Plan, 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 Hearings 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, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The Applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Baton Rouge Building and Construction Industry Plan (the Program) Located in Baton Rouge, Louisiana

[Application Nos. D-5228 and D-5229]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply 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 described herein, are complied with during the operation of the Program.

Summary of Facts and Representations

1. Employee benefit plans co-sponsored by labor organizations and associations of employers engaged in the building and construction industry in the greater Baton Rouge, Louisiana area are in the process of establishing the Baton Rouge Building and Construction Industry Foundation (the Foundation). 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. The Foundation will provide a procedure and system whereby member plans may invest in construction mortgage loans. The Foundation will comply with all requirements of the Code and the Act. The Foundation will provide that any qualified plan co-sponsored by an affiliated union or association of 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.

2. 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 26, 1976) in the jurisdiction covered by the plans participating in the Program (the greater Baton Rouge, Louisiana area), and request such institutions to allow the plans to participate in construction loans of $200,000 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 home remodeling or minor additions, i.e. $25,000, $50,000, in the Program. The applicant represents that more than 75% of the construction loans originated by the lending institutions will be at or above the $200,000 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 12% to 20% 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.

3. 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 participate in the loan, forward the amount of its participation to the lending institution. The lending institution will keep all such advances productively invested 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 Foundation 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 resonable expenese 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]

[1] Part 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, includng 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

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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 applicant represents 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 particpating plans will invest ab initio together with a lending institution and will not be purchasing participation interest 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 violations 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 participating 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 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 paticipating 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]

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.)

Northern New England Benefit Trust (the Plan) Located in Manchester, New Hampshire

[Application No. D-5469]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in acordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to the leasing of office space by the Plan to Bruce Wadsworth, Inc. (BWI), under the terms described in ths notice of proposed exemption, provided such terms 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 is a Taft-Hartley health and welfare plan which was established in 1966 as a result of negotiations between management and labor in the trucking industry. Benefits provided include medical, surgical, hospital, dental, vision, life and prescription drugs. The Plan currently has approximately 5,200 participants, and had net assets of $7,239,261 as of August, 1983.

2. BWI is a New Hampshire corporation established in 1966 for the general purpose of consulting and administering employee benefit programs. BWI's sole stockholder is Bruce Wadsworth. Mr. Wadsworth has been a service provider to the Plan since its inception. Mr. Wadsworth is currently the fund manager for the plan.

3. Since 1966, Mr. Wadsworth has been an on-site manager for the Plan. In addition, he has used his office space to

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transaction if, for example, the loan is made in the context of an arrangement for a specific participating employer to furnish a porton of the construction, and such employer has a controlling influence over the plan's decision to make the loan.

[3] 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 interest of plan participants and beneficiaries in their retirement income. For example, a decision to make a loan may not be influenced by a desire to stimulate the construction industry and generate employment, unless the loan, when judged solely 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).

perform a limited amount of service on behalf of other clients. This partial use of space at the Plan's premises was a part of his compensation. The applicants represent that the use of the Plan's office space by Mr. Wadsworth to perform services for the Plan has been statutorily exempt from the prohibited transaction restrictions of section 406 of the Act by reason of section 408(b)(2) of the Act.[4] The applicants further represent that the use of Plan office space by Mr. Wadsworth to perfrom services for other plans was exempt from the restrictions of section 406 of the Act by reason of section 414(c)(2) of the Act.[5] Mr. Wadsworth ceased to conduct his other limited business from the Plan's office space as of June 3, 1984, pending the disposition of the applicants' request for exemption for the subject transaction.

4. The Plan now proposes to lease to BWI office space in the Plan's office building (the Building) located at 51 Goffstown Road, Manchester, New Hampshire. Pursuant to a written lease agreement, BWI will lease the premises for a period of five years, with options to renew for three additional five year terms upon the same terms and conditions as set forth in the original lease agreement, except for rent which would, on each occasion, be re-negotiated at arm's-length by BWI and the Plan's trustees. Exercise of the options to renew would be subject to the approval of the trustees. In addition, the trustees would retain the right to terminate the lease upon not more than 60 days notice. BWI would not be allowed to assign or sublet the premises without written approval of the trustees. BWI will be required to maintain general public liability insurance protecting the Plan from any and all liability occasioned by accident or disaster. As additional rent, BWI will be required to pay a pro rata, annual maintenance change.

5. Mr. Harold F. Kelman (Mr. Kelman) of Kenney Appraisal Associates, Inc., an independent appraiser in Manchester, New Hampshire, has appraised the Building as having a fair market value of $735,000 as of August 29, 1984. BWI is to lease 195 square feet of the Building, which represents approximately 1.5% of the rentable space in the Building. Thus, the space to be rented to BWI represents approximately 0.1% of the Plan's total assets.

6. The initial monthly rent under the proposed lease will be $152, or an annual rental of $1,824. Mr. Kelman has represented that this would be the fair market rental value of the office space to be rented to BWI. The trustees of the Plan represent that they have reviewed the proposed lease and the appraisal by Mr. Kelman, and they have determined that the proposed lease is appropriate for the Plan and in the Plan's best interests. Further, the Plan's trustees represent that they will monitor the lease and take whatever actions are necessary to enforce the Plan's rights under the lease.

7. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because (1) the office space to be leased to BWI represents about 0.1% of the Plan's assets; (2) the rent to be paid to the Plan is the fair market rental as determined by an independent appraiser; (3) the Plan's trustees have determined that the proposed lease is appropriate for the Plan and in the Plan's best interests; and (4) the Plan's trustees will monitor the lease and take whatever action is necessary to enforce the Plan's rights under the lease.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Coulter Affilates Employees' Retirement Plan and Trust (the Plan) Located in Phoenix, Arizona

[Application No. D-5562]

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 Procedures 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason section 4975 (c)(1) (A) through (E) of the Code shall not apply to a ground lease (the Ground Lease) of certain unimproved real property (the Real Property) between the Plan and Coulter Cadillac, Inc. (the Employer); and the exercise by the Plan of a put option (the Put Option requiring the Employer to acquire the Real Property for cash, provided that the terms of the transactions are no less favorable to the Plan than those available in arm's length transactions with an unrelated party.

Effective Date: This exemption, if granted, will be effective December 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit plan having 160 participants and total assets of $2,366,991 as of July 31, 1984. The trustees of the Plan (the Trustees) are Messrs. Dean Coulter, William Coulter, Jack Chaplain and Dick Sidabras. The Trustees make investment decisions for the Plan.

2. The Employer is a franchised General Motors automobile dealer maintaining its principal place of business at 1188 East Camelback Road, Phoenix, Arizona.

3. In 1971, the Plan purchased the Real Property from unrelated parties. The Real Property, which is irregularly-shaped, is located in Phoenix, Arizona and it faces the west side of 10th Place and the intersection of 11th Street and Medlock Drive. The Plan acquired the Real Property in two separate transactions. The first parcel was purchased from Southern Broadcasting Company in April 1971 for $27,548. The Plan purchased the second parcel in June 1971 from Gordon and Dorma Bomine for $18,043. At present the Real Property is unencumbered.

4. Following the 1971 acquisitions, the Plan began leasing the Real Property to the Employer for use as an employee parking lot.[6] To permit this leasing arrangement to continue, an administrative exemption is requested from the Department.

The amended Ground Lease, which was entered into by the parties on December 1, 1984, requires the Employer to pay all applicable maintenance expenses, transaction privilege taxes and insurance premiums. The Ground Lease provides for an initial five year term at an annual rental of $20,000.[7] It

[4] In this proposed exemption, the Department expresses no opinion as to whether such provision of office space is exempt under section 408(b)(2) of the Act.

[5] In this proposed exemption, the Department expresses no opinion as to whether such use of Plan office space by Mr. Wadsworth was exempt under section 414(c)(2) of the Act.

[6] The exemption application states that the past leasing of the Real Property by the Plan to the Employer satisfies the terms and conditions of section 414(c)(2) of the Act. However, the Department expresses no opinion as to whether these conditions have been met.

[7] Although the Employer originally entered into the amended Ground Lease on July 1, 1984, the lease terms provided that the Plan receive a monthly rental payment equal to .833 percent of the fair market value of the Real Property. This rental amount was less than the fair market rental value of the Real Property as determined by an independent appraiser. (See item 5.) Accordingly, the parties agreed to revise the amended Ground Lease and increase the amount of rental payment to reflect the Real Property's fair market rental value. The Employer represents that it will compensate the Plan for the rental deficiency and make interest payments (should they be required by the independent fiduciary for the Plan), from July 1, 1984 until December 1, 1984 as well as pay all excise

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gives the Employer five successive renewal options, each of five years' duration, on essentially the same terms and conditions but at increased rentals.

All renewals under the Ground Lease must be approved by First Interstate Bank, N.A. (First Interstate), the independent fiduciary for the Plan with respect to the proposed transactions. At its discretion, First Interstate is empowered to cause the Real Property to be reappraised in order that it may adjust the rent to reflect the fair market rental value of the premises. The Ground Lease further authorizes First Interstate to select the independent M.A.I. appraiser who will revalue the Real Property. In performing the appraisal, the Ground Lease stipulates that the appraiser must determine whether the Real Property requires a greater valuation due to any unique value the premises may have to the Employer.

The Grand Lease also provides the Plan with the right to sell the Real Property to the Employer for cash at its fair market value as determined on the date of sale by an independent M.A.I. appraiser selected by First Interstate. The Employer will pay all costs that are associated therewith. Although the Put Option is exercisable by First Interstate, the Plan is required to give the Employer six months' advance written notice before such action is taken. If the Put Option is exercised, the appraiser will consider the special value factor in rendering the appraiser opinion.

5. The rental amount paid by the Employer was determined by Mr. Larry Burke (Mr. Burke), an M.A.I. appraiser who is affiliated with the real estate appraiser firm of Burke, Hansen and Homan, Inc. located in Phoenix, Arizona. On December 15, 1983, Mr. Burke placed the fair market value of the Real Property at $175,000 but he did not express an opinion on the rental value of the premises in his appraisal report. Mr. Burke concluded that the highest and best use of the Real Property was for its continued use as a parking facility.

In an August 15, 1984 addendum to the appraisal, Mr. Burke initially determined that the Real Property had a fair market rental value of $17,500 per year. However, because of the proximity of the Real Property to the Employer's business premises, Mr. Burke stated that the Real Property was of unique and special value to the Employer. Therefore, he recalculated the fair market rental value of the Real Property at $20,000 per year (or $1,667 per month).

6. As stated previously, First Interstate will serve as the independent fiduciary for the proposed transactions. First Interstate is completely unrelated to the Plan, the Employer and the officers and directors of the Employer. As the independent fiduciary, First Interstate will monitor the terms of the proposed transactions. Specifically, First Interstate will ensure that all rentals are timely paid, that the terms of the Ground Lease are fair and reasonable with respect to the Plan, and that all obligations of the Employer are properly carried out throughout the lease term. First Interstate will approve all renewals of the Ground Lease before the options are exercised by the Employer. In addition, First Interstate will periodically review the transactions to determine whether it is appropriate for the Plan to exercise the Put Option. Finally, First Interstate will take all actions that are necessary and proper to protect the interests of the Plan and its participants and beneficiaries during the term of the Ground Lease.

First Interstate believes that the proposed transactions are appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries because they ensure a favorable rate of return on the Plan's assets, can be administered with relative ease, and provide a secure investment for the Plan. First Interstate has reviewed the Ground Lease and it approves of its terms. First Interstate also believes that the Put Option is a very advantageous provision for the Plan inasmuch as it can be exercised by the First Interstate at any time to accommodate changes in the Plan's investment needs and it is not subject to any conditions or obligations on the part of the Plan.

7. In summary, it is represented that the proposed transactions satisfy the provisions of section 408(a) of the Act because: (a) First Interstate, which will monitor the terms of the Ground Lease and the Put Option on behalf of the Plan, approves of the transactions and believes that the investment is an appropriate one for the Plan and in the best interests of the Plan's participants and beneficiaries; (b) the rental under the Ground Lease is based on the fair market rental value of the Real Property as determined by an independent M.A.I. appraiser; (c) at First Interstate's discretion, the Real Property is to be reappraised by an independent M.A.I. appraiser selected by First Interstate in order that the rent may be adjusted; (d) the Employer is responsible for paying all taxes, maintenance costs and insurance premiums in its use of the Real Property for the Ground Lease duration; and (e) the Put Option provision contained in the Ground Lease is exercisable on behalf of the Plan by First Interstate at any time during the lease term First Interstate considers it appropriate.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

W. Stephen Kopala, Inc. Employees' Retirement Plan and Trust (the Plan)

Located in Wheeling, Illinois

[Application No. D-5695]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan by the Plan of $190,000 (the Loan) to the 300 North Wolfe Road Joint Venture (the Joint Venture), a party in interest with respect to the Plan, provided the terms of the Loan are not less favorable to the Plan than those obtainable in a transaction with an unrelated third party.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with three participants and net assets of approximately $774,330 as of May 31, 1984. The trustees of the Plan are W. Stephan Kopala and his wife, Doris V. Kopala, both of whom are officers of W. Stephen Kopala, Inc. (the Employer), the sponsor of the Plan. The Employer is in the business of representing manufacturers with respect to molds for scientific equipment.

2. An exemption is requested to permit the Plan to make the Loan to the Joint Venture, which is comprised by W. Stephen Kopala and Daniel Kopala, both of whom are participants in the Plan.*

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taxes that may be due the Internal Revenue Service within 60 days of the granting of the proposed exemption.

*The Department expresses no opinion as to the applicability of section 72(p) of the Code to the Loan. Section 72(p) of the Code states that certain loans made by a plan to a participant in or beneficiary of such plan will be treated as having been received by such individual as a distribution under the plan.

The amount of the Loan represents less than 25% of the Plan's current assets. The Loan will have a twenty-year term at an interest rate of 14% per annum and will be amortized in equal monthly payments of principal and interest over the entire term of the Loan. The Loan will be secured by first mortgages on two improved parcels of real property (the Wheeling Property and the Lincolnwood Property, collectively, the Properties).

3. The Wheeling Property is owned by the Joint Venture and consists of a three-tenant office building located at 300 N. Wolfe Road, Wheeling, Illinois. Approximately 36% of the building is leased to the Employer. The remainder is leased to unrelated parties. The Wheeling Property was appraised on August 30, 1984, by Mr. Robert A. Schmitt, appraiser, and Mr. Louis J. Meyer, M.A.I., S.R.P.A. of Muriello/Meyer and Associates, Elk Grove Village, Illinois, who determined its fair market value on that date to be $220,000. The Lincolnwood Property is a residential property located at 7016 North Keating, Lincolnwood, and is owned and occupied by W. Stephen Kopala and his wife, Doris Kopala. The Lincolnwood Property was appraised on June 19, 1984, by Mr. John P. Manning, an independent fee appraiser associated with R. J. Schmitt & Associates, Real Estate Appraisers and Consultants, Arlington Heights, Illinois. Mr. Manning determined its fair market value, as of June 19, 1984, to be $146,000. Messrs. Schmitt, Meyer and Manning are independent of the Kopalas, the Joint Venture and the Employer.

4. The Loan proceeds will be used primarily to refinance the amounts owing under a purchase money note (the Wheeling Note) dated June 30, 1980, with respect to the Wheeling Property and a mortgage note dated June 29, 1984, with respect to the Lincolnwood Property (the Lincolnwood Note, collectively, the Notes). The applicants state that there are no other encumbrances on the Properties and that the amounts owing under both Notes will be paid in full upon consummation of the Loan. The aggregate value of the Properties as determined by the appraisals is equal to approximately 192% of the proposed Loan amount. The applicants represent that the collateral for the Loan will at all times be equal to at least 150% of the outstanding loan balance.

5. David C. Miller & Associates, Ltd. (Miller), a firm comprised by three certified public accountants and located in Northbrook, Illinois, has been appointed to act as an independent fiduciary for the Plan with respect to the Loan. Although Miller has done some accounting work for the Employer, fees received from this work have represented less than 1% of Miller's total income for any fiscal year. Miller has no other relationships with the Kopalas, the Employer or the Joint Venture, and states that it fully understands its responsibilities, obligations and liabilities as an independent fiduciary under the Act. Miller currently acts as the accounting firm for approximately seventy qualified retirement plans and has also acted on occasion as an advisor with respect to various investments of these plans.

6. Miller states that it has reviewed the needs of the Plan, the terms and conditions of the Loan and the appraisals of the Lincolnwood and Wheeling Properties, and has determined that the proposed Loan is in the best interest of the Plan and its participants and beneficiaries. Miller states that the Loan amount, which represents less than 25% of the Plan's current assets, is appropriate for the Plan in light of the Plan's liquidity needs and portfolio mix. Miller states also that the Loan is protective of the rights of the participants of the Plan because the appraised value of the Properties comprising the collateral for the Loan is in excess of 192% of the Loan amount. Miller represents that the proposed interest rate of 14% per annum will provide a favorable rate of return for the Plan.

7. Miller will monitor all terms and conditions of the Loan and will require that the borrower obtain mortgage, liability and all risk insurance on the Properties and that all such insurance policies name the Plan as mortgagee payable. Miller will also take any enforcement actions necessary to protect the rights of the Plan with respect to the Loan. If the value of the collateral should ever fall below 150% of the outstanding Loan balance, Miller will demand that additional collateral be pledged so that the value of the collateral will at all times be equal to at least 150% of the outstanding Loan balance. Immediately prior to the consummation of the Loan, Miller will again review the Plan's investments and the terms and conditions of the Loan and will allow the Loan to be consummated only if it determines at that time that the Loan is appropriate for, in the best interest of and protective of the rights of the Plan's participants and beneficiaries.

8. In summary, the applicant represents that the proposed Loan will satisfy the statutory criteria of section 408(a) of the Act because (a) the Loan will be secured by first mortgages on insured collateral which will at all times throughout the term of the Loan have a value not less than 150% of the Loan's outstanding balance; (b) Miller, an independent, qualified party, will serve as the fiduciary of the Plan with regard to the Loan, and has determined that the Loan is an appropriate and suitable investment for the Plan; and (c) Miller will monitor all terms and conditions of the Loan and enforce the performance of the Joint Venture's obligations under the terms of the Loan.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

Maritime Association—I.L.A. Pension Fund (the Plan) Located in Houston, Texas

[Application No. D-4732]

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: (1) 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 loan (the Loan) by the Plan of $2 million in Crow-Southpoint #1, Ltd. (Crow), a party in interest with respect to the Plan; and (2) the restrictions of section 406(a) and 406(b)(1) 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 receipt by Crow of lease commissions paid by a joint venture (the Venture) that exists between the Plan and Crow, provided that the terms and conditions of the transactions are not less favorable to the Plan than those obtainable in similar transactions with an unrelated party.

Effective Date: The effective date of this proposed exemption, if granted, will be October 27, 1982.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan established July 24, 1957, pursuant to a collective bargaining agreement between the South Atlantic and Gulf Coast District, I.L.A. (the Union) and the West Gulf Maritime Association (the Employers). The management of the Plan is vested in a 12

member board of trustees (the Trustees) half of whom are appointed by the Employers and half by the Union. As of September 30, 1982, the Plan had 6,590 participants and net assests of $162,776,714.

2. On April 7, 1982, the Trustees were advised by the Texas State Department of Highways and Public Transporation that the building owned by the Plan and housing its administrative office was to be condemned for the purpose of highway expansion. On June 8, 1982, the Trustees were advised that this building was to be vacated no later than June 1, 1983. The Trustees immediately contacted the Plan's real estate advisor, John D. O'Connell (O'Connell), president of TCMI, Inc. located in Houston, Texas. TCMI, Inc. oversees the real estate and operating business investments for the Clint Murchison Interests.

3. O'Connell has been associated with the Plan as its real estate advisor for approximately seven years. O'Connell represents that he renders investment advice to the Plan with respect to real estate transactions, serving in a fiduciary capacity with respect to such transactions as defined in section 3(21) of the Act and the regulations thereunder. As such, he supervises the making of real estate investments as part of the Plan's investment portfolio. His recommendations as to a particular real estate investment form the primary basis for a decision by the Trustees. Since he began performing such services, no real estate investment has been made by the Trustees except upon his recommendation.

4. Upon receipt of the condemnation notice, the Trustees contacted O'Connell for assistance in relocation. A primary concern of the Trustees was to keep the Plan's office near the Houston Ship Channel, the area in which the Plan's business is concentrated. The Trustees further desired to maintain their equity status, where the Plan could continue to own the building housing the administrative offices of the employee benefit funds. O'Connell contracted developers, owners and general contractors in the Houston Ship Channel area with a view towards obtaining the best available alternatives for the Plan. He presented the Trustees with five relocation proposals and recommended that the Trustees accept a proposal by Crow and lease space in the Crow-Southpoint property (the Property) and pursue the possibility of taking an equity position therein. The Trustees accepted O'Connell's recommendation. All negotiations with Crow with respect to leasing space in the Property and forming a joint venture were carried out by O'Connell independently of the Trustees, although re reported to the Trustees from time to time on his progress.

5. O'Connell's negotiations resulted in the Plan forming the Venture with Crow. Crow is a Texas limited partnership in which Trammell S. Crow, Thomas A. Bailey, Wolfram Vedder, Gary Shafer, J. McDonald Williams, and Joel Peterson are the general partners and Trammell Crow Partners is the limited partner. All of the partners are affiliated with the Trammell Crow Company. The Trammell Crow Company represents that neither the Trammell Crow Company, Crow, nor any of the partners in Crow have had any relationships with the Plan prior to the formation of the Venture. O'Connell represents that he has no relationships of any kind with any of the Trammell Crow Company operations or entities. O'Connell states that he owns a 5.5% interest in a corporation which has a subsidiary which has leased office warehouse space from a Trammell Crow Company entity in the ordinary course of business. O'Connell represents that he was not involved in the negotiations with respect to that lease.

6. The terms of the Venture,[9] as negotiated and approved by O'Connell acting as an independent fiduciary to the Plan, are as follows: (a) Crow is the managing general partner of the Venture, a general partnership between the Plan and Crow; (b) Crow contributes the Property, a 3.5 acre site improved with a five story office building, to the Venture for a 40% ownership interest; (c) the Plan makes a $3,900,000 capital contribution to the Venture and receives a 60% ownership interest; (d) the Plan makes the $2,000,000 Loan to Crow at 11.25% interest only for a 15 year term with interest payable annually on the anniversary date of the Loan and principal due upon maturity; (e) the Loan is secured by Crow's 40% ownership interest in the Venture and is to be used to clear complete title to the Property and to repay Crow the funds it expended for acquisition of the Property; (f) net cash flow from operations of the Venture are distributed 60% to the Plan and 40% to Crow; (g) Crow is appointed by the Venture as manager of the Property receiving from the Venture both a management fee and leasing commissions pursuant to a Management Agreement (the Management Agreement) between Crow and the Venture; (h) the Plan must approve leases in excess of 10,000 square feet or for terms in excess of five years and any capital expenditure in excess of $50,000 must be submitted to the Plan for approval; and (i) either partner in the Venture may cause a sale of the project subject to a right of first offer to the other partner. At sale, the proceeds are to be distributed in the following sequence: The first $2,000,000 to the Plan as repayment of the Loan; the next $3,900,000 to the Plan as a return of its capital contribution; the next $1,100,000 to Crow as a return of its capital contribution; and any balance will be split with 60% to the Plan and 40% to Crow.

7. On October 11, 1982, the Plan and Crow entered into the Venture. On October 27, 1982, Crow executed a 15 year promissory note in the original principal sum of $2,000,000 at 11.25% interest per annum in favor of the Trustees to secure the Loan, which was funded on the same date. Contemporaneously therewith, Crow executed a pledge and security agreement in favor of the Trustees with respect to Crow's entire interest in the Venture, including Crow's right to all distributions to be made with respect to such interest. A UCC financing statement was filed with respect to the above mentioned interest naming the Trustees as the secured party. The proceeds of the Loan were used, in part, to clear title to the Property. Also on October 27, 1982, Crow transferred title to the Property and the Plan funded its capital contribution to the Venture.

8. In addition, on October 27, 1982, Crow and the Venture entered into the Management Agreement. O'Connell represents that he structured the Venture to include the Management Agreement with its attendant management fees and leasing commissions in order to make certain that Crow's expertise in managing real estate would be available to the Trustees on a mutuality of interest basis. The applicant represents that the payment to Crow of management fees pursuant to the Management Agreement meets the requirements for a statutory exemption under section 408(b)(2) of the Act.[10] In connection with the Management Agreement, Crow occupies 1,114 net rentable square feet for necessary storage, operational use by the building manager and for a

[9] In this exemption, the Department is proposing no exemptive relief for the Venture other than for the Loan and the receipt by Crow of leasing Commissions paid pursuant to the Management Agreement.

[10] In this exemption the Department expresses no opinion as to whether the payment to Crow of management fees pursuant to the Management Agreement meets the requirements for a statutory exemption under section 408(b)(2) of the Act.

management office. That space used as a management office was used by crow without rent while the Property was finished for full occupancy. On June 7, 1984, Crow signed a lease (the Crow Lease) with the Venture effective April 1, 1984, for rental of this space at $14 per square foot, the same basis as that negotiated by Crow with respect to other tenants in the building.[11]

9. The applicant is seeking an exemption effective October 27, 1982, to permit the Loan. O'Connell represents that prior to recommending that the Trustees make the Loan, he determined that there was adequate security for the Loan. O'Connell represents that he made his determination after a thorough review of comparable real estate values within five miles of the Property in all directions. His review included the following: (1) Land values for tracts of land in the one-acre and three-acre size with a possible view to new construction of a multi-tenant building of the size of the Property. In this connection he obtained cost estimates from various responsibile general contractors; (2) prevailing rental rates for buildings in the same area; (3) operating expenses for comparable buildings in the same area; and (4) a proposal from the Yale University Pension Fund to Trammell Crow Company to acquire an interest in the Property. O'Connell represents that he determined that the value established by a willing buyer and a willing seller supported the value he assigned to the Property in support of the Loan. O'Connell further represents that as an independent fiduciary for the Plan, he will monitor the terms and conditions of the promissory note from Crow to the Trustees.

10. In addition, the applicant seeks an exemption to permit the receipt by Crow of lease commissions paid by the Venture pursuant to the Management Agreement. The Management Agreement establishes a schedule of commissions to be paid to Crow by the Venture for both initial leases and leases renewals or expansions. The schedule of commissions was negotiated by O'Connell, acting as independent fiduciary on behalf of the Plan, as one of the terms of the agreement which established the Venture. The applicant represents that the lease commissions are paid to Crow for services rendered in negotiating and preparing specific leases and do not represent a profit participation by Crow as a joint venturer.

Pursuant to the terms of the venture, O'Connell must approve all leases with a term greater than five years or covering more than 10,000 square feet prior to their execution by Crow. The applicant represents that the need to await prior approval by O'Connell of leases with a term of five years or less or covering 10,000 square feet or less would place the Venture in a competitive disadvantage in obtaining short-term and smaller leases. However, Crow will receive no lease commissions with respect to such leases until the commissions are reviewed and approved by O'Connell. In addition, Crow will not receive a renewal lease commission from the Venture with respect to any renewal by the Plan of its lease of office space in the Property. Crow shall be compensated at a fair market value hourly time charge for services actually rendered and expenses incurred in negotiating and preparing a renewal lease for the Plan's space. Such charges are subject to review for overall reasonableness by O'Connell, who will approve the amount appropriate for such payment. The applicant represents that the charges are expressly authorized by section 408(b)(2) of the Act.[12]

11. In summary, the applicant represents that the Loan and the payment of lease commissions meet the statutory criteria for an exemption under section 408(a) of the Act because (a) all of the terms and conditions of the Loan and the payment of lease commissions were negotiated by an independent fiduciary on behalf of the Plan; and (b) the independent fiduciary will continuously monitor all the terms and conditions of the Loan and the payment of the lease commissions.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C. this 12th day of February, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-3971 Filed 2-15-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[85-10]

Intent to Grant an Exclusive Patent License

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 Power Controls International Pty., Limited, of Sydney, Australia, a limited, exclusive, royalty-

[11] In this exemption the Department is proposing no exemptive relief for the Crow Lease beyond that provided by section 408(b)(2) of the Act.

[12] In this exemption the Department expresses no opinion as to whether such charges meet the requirements for a statutory exemption under section 408(b)(2) of the Act.

bearing license for the Hong Kong equivalents of U.S. Patent Application No. 706,425, "Power Factor Control System for AC Induction Motors"; U.S. Patent Application No. 476,244; "Three Phase Power Factor Controller"; U.S. Patent Application No. 310,714, "Motor Power Factor Controller with a Reduced Voltage Starter"; U.S. Patent Application No. 325,932, "Pulsed Thristor Trigger Control Circuit"; U.S. Patent Application No. 450,319, "Three Phase Power Factor Controller with Induced EMF Sensing"; and U.S. Patent Application No. 450,166, "Phase Detector for Three Phase Power Factor Controller." 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 documentation. 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 (?????Insert 60 days from the date of publication in the **Federal Register**).

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453-2430.

Dated: February 8, 1985.

John E. O'Brien,

Deputy General Counsel.

[FR Doc. 85-3957 Filed 2-15-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum/Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Musem Advisory Panel (Professional Development Section) to the National Council on the Arts will be held on March 4, 1985, from 9:00 am-5:30 pm in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Wasington, D.C. 20506, or call (202) 682-5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

February 11, 1985.

[FR Doc. 85-3968 Filed 2-15-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Long Range Plan; Meeting

The ACRS Subcommittee on Long Range Plan for NRC will hold a meeting on March 1, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The agenda for subject meeting shall be as follows:

Friday, March 1, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will plan subcommittee activities.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

The major portion of the meeting will consist of discussions between Subcommittee members regarding the technical issues related to the regulation of nuclear powerplant safety over the next five to ten years. The Subcommittee may also discuss these matters with senior NRC officials and other interested persons. Portions of this meeting may be closed to discuss internal management, organization, or personnel matters.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 12, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-4048 Filed 2-15-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on March 6, 1985, Room 1046, 1717 H Street, NW, Washignton, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows:

Wednesday, March 6, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue to review the NRC report on the need for an "NTSB-like" board in the NRC.

Oral statements may be presented by member of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings, will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee members will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other invited persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634-3267) between 8:15 a.m., and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedules, etc., which may have occurred.

Dated: February 13, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-4049 Filed 2-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Kansas Gas & Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of General Design Criterion 4 (10 CFR Part 50, Appendix A) to the Kansas Gas & Electric Company (the licensee) for the Wolf Creek Generating Station, Unit 1, located at the licensee's site in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action: The Exemption would permit changing reactor cavity shielding from the water bags presently installed to rigid shielding at the Wolf Creek Generating Station, Unit 1 on the basis of advanced calculational methods for assuring that piping stresses would not result in rapid piping failure; i.e., pipe breaks.

Need for Proposed Action: The proposed Exemption is required because General Design Criterion (GDC) 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects including the effects of discharging fluids that may result from equipment failures, up to and including a double-ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). In recent submittals the applicant has provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas such as the double-ended guillotine break or its equivalent. The NRC staff has reviewed and accepted the applicant's conclusion. Therefore, the NRC staff agrees that the double-ended guillotine break in the primary pressure coolant loop piping need not be required as a design basis accident. Accordingly, the reactor cavity shielding will not be subjected to a rapid pressure increase that could potentially cause rigid shielding to become a missile. Therefore it is acceptable to replace the water bag shielding with rigid shielding.

Environmental Impact of the Proposed Action: The proposed Exemption would not adversely affect the environmental impact of the facility. The rigid shielding is easier to install, maintain and remove than the flexible water bag shielding thereby reducing the radiation exposure to the plant staff.

The Exemption does not otherwise affect radiological plant effluent. Likewise, the relief granted does not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the water bags would tend to lessen the occupational doses to workers inside containment. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with this Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR 20. It does not affect plant non-radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no non-radiological impacts associated with this proposed Exemption.

Since we have concluded that there are no measurable negative environmental impacts associated with this Exemption, any alternatives would not provide any significant additional protection of the environment. The alternative to the compliance would be to require literal compliance with GDC 4.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Wolf Creek Generating Station, Unit 1.

Agencies and Persons Contacted: The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this Exemption for the Wolf Creek Generating Station, Unit 1. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for exemption dated May 31, 1984 and additional information provided by the applicant in letters dated August 31, 1983, February 17, 1984, May 31, 1984, October 22, 1984 and October 26, 1984. These documents, utilized in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., at the William Allen White Library, Emporia State University, 1200 Commercial Street, Emporia, Kansas, and at the Washburn University School of Law Library in Topeka, Kansas.

Dated at Bethesda, Maryland, this 11th day of February 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-4050 Filed 2-15-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

Maine Yankee Atomic Power Co. (Maine Yankee Atomic Power Station); Exemption

I

The Maine Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR-36 which authorizes operation of the Maine Yankee Atomic Power Station. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The facility comprises one pressurized water reactor at the licensee's site located in Lincoln County, Maine.

II

On November 19, 1980, the Commission published a revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section III of

Appendix R contains fifteen subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features at a nuclear power plant. One of these fifteen subsections, III.G, is the subject of this exemption request.

Subsection III.G.2 of Appendix R requires that one train of cables and equipment necessary to achieve and maintain safe shutdown shall be maintained free of fire damage by specific use of fire barriers, separation or enclosures. If these conditions are not met, Section III.G.3 requires an alternative shutdown capability independent of the fire area of concern.

III

By letters dated December 22, 1983 and April 30, 1984, the licensee specifically requested exemptions to Sections III.G.2 and III.G.3 of Appendix R.

The exemption requested to Section III.G.2 concerned the Reactor Containment Incore Instrumentation Area and Lower Pressurizer Cubicle. The licensee requested that the redundant source range flux monitors and related cables not have the required separation of more than 20 feet free of intervening combustibles or separation by a radiant energy shield. The licensee justified the exemption on the basis there is no significant fire hazard or quantity of combustibles in the incore instrumentation area or lower pressurizer cubicle. Our review of the licensee's submittals indicated that these locations within containment did not contain significant in-situ combustibles or ignition sources. Because there areas are inaccessible, transient combustibles were not considered a problem. We conclude that conformance to the requirements of Section III.G.2 would not provide a significant increase in fire safety. Therefore the exemption requested to Section III.G.2 should be granted.

The exemptions requested to Section III.G.3 concerned the Turbine Building, Steam and Feedwater Valve House, and Primary Auxiliary Building. The licensee requested that these areas not be required to have fire detection and fixed fire suppression systems in areas for which an alternate shutdown capability has been provided. The licensee justified the exemptions in these three areas since an alternate shutdown capability, which is physically and electrically independent of the redundant shutdown systems in these areas, has been provided. Also, fire load in these areas was generally low. Our analysis shows that the technical requirements of Section III.G.3 are not met because of the absence of complete automatic fire detection and suppression systems. The widely dispersed nature of combustible materials and the protection afforded by local fire suppression systems would limit the duration and intensity of any fire in these areas. The existing boundary construction should confine the effects of any fires in these areas so as not to threaten shutdown systems in adjoining areas. Consequently, a fixed fire suppression system is not needed to limit the extent of damage. Therefore, the exemptions requested to Section III.G.3 should be granted for the specified areas above.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption from the requirements of Sections III.G.2 and III.G.3 of Appendix R to the extent that they apply to the Reactor Containment Incore Instrumentation Area, Lower Pressurizer Cubicle, Turbine Building, Steam and Feedwater Valve House, and Primary Auxiliary Building.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 2869).

A copy of the Safety Evaluation dated February 8, 1985, related to this action is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document room located at the Wiscasset Public Library, High Street, Wiscasset, Maine. A copy may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, attention: Director, Division of Licensing.

The Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 8th day of February, 1985.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Division of Licensing.

[FR Doc. 85-4051 Filed 2-15-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, March 7, 1985
Thursday, March 14, 1985
Thursday, March 21, 1985
Thursday, March 28, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street NW., Washington, D.C. 20415 (202) 632-9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

February 12, 1985.

[FR Doc. 85-4036 Filed 2-15-85; 8:45 am]

BILLING CODE 6325-01-M

PANAMA CANAL COMMISSION

Agency Information Request Submitted to the Office of Management and Budget for Clearance

AGENCY: Panama Canal Commission.

ACTION: Notice of information collection request; revision.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Panama Canal Commission hereby gives notice that it has submitted to the Office of Management and Budget (OMB) an SF 83, "Request for OMB Review," for revision of a collection of information requirement contained in Subchapter C (Shipping and Navigation) of Chapter I, Title 35, Code of Federal Regulations (CFR).

ADDRESS: Comments may be sent to Carlos Tellez, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the information collection request or related information, Contact Barbara Fuller, telephone 202-724-0104, or OMB Desk Officer Carlos Tellez, telephone 202-395-7340.

SUPPLEMENTARY INFORMATION: On December 24, 1981, OMB approved an information collection proposal submitted by the Panama Canal Commission in conjunction with a revision of its navigation regulations (35 CFR Chapter I, Subchapter C), and assigned it the control number 3207-0001.

In conjunction with a proposal by the Panama Canal Commission to revise its regulations concerning the transportation of dangerous cargoes in the waters of the Panama Canal (50 FR 5781, February 12, 1985), the agency is revising the information required to be provided by ships using the Canal. The information collection changes proposed are the following:

In § 101.10, documents no longer required by the Commission's Boarding Officer are deleted, and other documents are added or modified, as required by the revision of Part 113, Dangerous Cargoes. The documents proposed to be deleted as Panama Canal Commission requirements under this section are: Clearance from Last Port; all certificates of a sanitary nature; Stores List; and National Register. Those proposed to be added are: A Dangerous Cargo Manifest, which is required only if the vessel is carrying packaged dangerous goods, and a Loading Plan, which is required only if the vessel is carrying dangerous cargo in bulk. The Ship's Information and Quarantine Declaration (Panama Canal Form 4398) is proposed to be modified in accordance with the proposed revision of Subchapter C of Chapter I, Title 35, CFR, specifically, the regulations concerning dangerous cargoes. (Panama Canal Form 4398 is also used by authorities of the Republic of Panama, and will still require submission of stores lists, sanitary certificates and National Register of the boarding officer for transmission to Panamanian immigration, customs, and sanitation officials.) In addition, the proposed revision to § 101.10 makes it clear that the Cargo Declaration (Panama Canal Form 4363), the Panama Canal Tonnage Certificate, and the Ship's Plans are required only if the vessel is planning to transit the Canal.

Section 113.4 of the proposed revision to the regulations concerning dangerous cargoes (Part 113, Dangerous Cargoes) would require vessels carrying such cargoes to test safety equipment within 24 hours before arrival in Canal waters and make an appropriate entry in the ship's log. This requirement replaces the requirement to test and notify the Commission by message, contained in existing § 113.1(f)

The U.S. Coast Guard loading certificate (or Declaration of Irradiated Fuel Elements or Special Nuclear Materials Carried), required to certain vessels by existing § 113.23, would no longer be required; it is replaced by proposed new § 113.27, which requires that loading, handling, certification, etc., of dangerous bulk cargoes be in compliance with International Maritime Organization (IMO) standards and regulations, and by proposed new § 113.51, which requires compliance with the applicable provisions of the International Maritime Dangerous Goods Code.

Section 113.28 of the proposed revised regulations requires that vessels carrying dangerous cargoes have ready for examination the following IMO documents:

(1) A valid MARPOL 73/78 Certificate (that is, a certificate issued pursuant to the 1973 International Convention for the Prevention of Pollution from Ships, together with the 1978 protocol thereto).

(2) A valid International Oil Pollution Prevention Certificate.

(3) A valid Certificate of Fitness or Certificate or Compliance with the IMO Bulk Chemical Code or Gas Carrier Codes (required for bulk chemical and liquefied gas carriers only).

• It is also proposed to amend § 123.4 of Part 123, Radio Communication, which details the information that vessels approaching the Panama Canal must communicate to the Commission by radio at least 48 hours in advance of arrrival at the Canal. Specifically, it is proposed to:

• Amend the INDIA portion of the message to delete the requirement to specify the number of smallpox vaccinations required. (Such vaccinations are longer required.)

• Amend the GOLF and HOTEL portions of the message to reflect the changes in the proposed revised Part 113 of 35 CFR, Dangerous Cargoes.

Unchanged sections of Subchapter C, Chapter I of Title 35, Code of Federal Regulations where information collection requirements appear are: § 101.9; 103.6; 103.8; 103.32; 103.42; and 121.45. Unchanged forms which are part of the information collection request of Subchapter C, Chapter I of Title 35, Code of Federal Regulations are: PCC Form No. 4401-16 Admeasurement Data Book (for small yachts and small craft) and Form No. 4401-48 Admeasurement Data Book (for large ships); PCC Form No. 4470, Bilge Information; Unnumbered—List of Electronic Equipment; PCC Form No. 4502, Ship Data Bank—SHIP ADD; Unnumbered—Ammunition and Explosives Report; PCC Form No. 4623, Request for Transit Booking; PCC Form No. 4633, Transit Booking Cancellation. The unnumbered form entitled Use for Small Handline, such as Yachts, Shrimpboats, etc., is being deleted from this information collection. The Tanker Form PCC Form No. 3992 is included in the Admeasurement Data Book Form No. 4401-48.

Dated: February 12, 1985.

Fernando Manfredo, Jr.,

Deputy Administrator, Senior Official for Information Resources Management.

[FR Doc. 85-3947 Filed 2-15-85; 8:45 am]

BILLING CODE 3640-04-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1985, shall be at the rate of 20 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1985, 26.1 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 73.9 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 11, 1985.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-4004 Filed 2-15-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[SR-Amex-84-39; Rel. No. 21734]

Self-Regulatory Organizations; American Stock Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. February 8, 1985. 78s(b)(1) ("Act") and Rule 19b-4 thereunder, notice is hereby given that on December 28, 1984, the American Stock Exchange, Inc. ("Amex") 86 Trinity Place New York, N.Y. 10006, filed with the Securities and Exchange Commission the proposed rule change described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Amex proposes to commence closing rotations in expiring series of individual stock options on the last trading day prior to expiration at, or as soon as practicable after 4:00 p.m., but not until a final price for the underlying stock is established in the primary market. Amex states that the proposed rule change would ensure that closing prices in expiring options series reflect the closing price of the underlying security as accurately as possible.

Under existing rules, closing rotations in expiring series of individual stock options commence at 4:00 p.m., New York time. Amex notes that this rule originally was established so that closing rotations did not begin until trading ceased on the New York Stock Exchange ("NYSE") and a final price for the underlying stock was established. Under the current rule, however, Amex must commence the closing rotation at 4:00 p.m., even if closing prices for the underlying stock are not yet available.[1] As a result, prices established during closing rotations in expiring series of individual stock options may not be priced in relationship to the price of the underlying stock on the primary market. The proposed rule change would remedy this situation by permitting closing rotations to commence only after the final price of the underlying stock has been established on the primary market.

Interested persons are invited to submit written data, views and arguments concerning the Amex submission within 21 days from the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Reference should be made to file No. SR-Amex-84-39.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the propoosed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of Amex.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that insofar as the proposal would alter the existing Amex rule, it is substantially the same as a Chicago Board Options Exchange, Incorporated ("CBOE") rule recently published for comment and approved by the Commission.[2] In light of this fact, and to reduce the potential for investor confusion, accelerated approval is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-3978 Filed 2-15-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 812-5784; Rel. No. 14366]

Peter F. Faletti; Filing of an Application for an Order

February 11, 1985.

Notice is hereby given that Peter F. Faletti, referred to herein as Applicant, has filed an application pursuant to Section 9(c) of the Investment Company Act of 1940. ("the Act") for an order granting him a permanent exemption from the provisions of Section 9(a) of the Act.

All interested parties may review the application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below:

On February 28, 1984, the Applicant was named, together with IntraWest Financial Corporation and another individual, as a defendant in an action,

[1] Amex notes, for example, that, on high volume days, the dissemination of prices for the underlying stocks on the NYSE is occasionally delayed.

[2] *See* CBOE Rule 6.2 The Commission approved the proposed rule change in File No. SR-CBOE-84-29, Securities Exchange Act Release No. 21597, December 24, 1984; 49 FR 50850, December 31, 1984.

styled *SEC v. IntraWest Financial Corporation, et al.*, brought by the Commission alleging violations of Section 13(a) of the Securities Exchange Act of 1934 and Section 17(a)(2) of the Securities Act of 1933, relating to allegedly false and misleading reports filed pursuant to the Securities Exchange Act of 1934, and incorporated by reference in registration statements filed in connection with the sale of securities pursuant to the Securities Act of 1933. The Applicant consented to entry of a Final Order by the United States District Court for the District of Columbia, neither admitting or denying the allegations of the Complaint.

At the time of the alleged violations, the Applicant was the Chief Financial Officer of InterWest Bank of Denver, N.A., which was then the largest subsidiary of IntraWest Financial Corporation, a registrant under the Securities Exchange Act of 1934. The allegations leading to the Complaint and the Final Order related to the method of determining the allowance for possible loan losses at IntraWest of Denver, N.A. and the amount of such Allowance actually determined as of March 31, June 30, and September 30, 1982. It was alleged that the method of determining the allowance was described in a false and misleading manner in the 10-K Report of IntraWest Financial Corporation for 1981, and that the allowance was set at an insufficient level as of March 31, June 30 and September 30, 1982, which resulted in material overstatements of the earnings of the bank (and accordingly of the registrant, IntraWest Financial Corporation).

The Applicant is now employed by a savings and loan association which has no connection with IntraWest Financial Corporation.

The Applicant represents that it is foreseeable that in performance of his duties as the Chief Financial officer of a major financial institution, the Applicant will be requested or required in the future to commence acting in the capacity of an employee, officer, director, member of an advisory board, investment advisor, or depositor for a registered investment company.

Section 9(a) of the Act provides, *inter alia*, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of employee, officer, or director of any registered investment company, if such person is by reason of any misconduct enjoined by a court of competent jurisdiction from engaging in or continuing any practice in connection with the purchase or sale of any security. Section 9(c) of the Act provides that upon application the Commission shall by order grant an exemption from the provisions of Section 9(a) of the Act if it is established that the prohibitions of Section 9(a), as applied to the Applicant, are unduly or disproportionately severe or that the conduct of the Applicant has been such as not to make it against the public interest or protection of investors to grant such application.

The Applicant has submitted an application pursuant to Section 9(c) of the Act. The Applicant contends that disqualification under Section 9(a) of the Investment Company Act would be unduly and disproportionately severe in his case and that his conduct has been such that it would not be contrary to the public interest or the protection of investors to grant his application. The Applicant asserts that: the Commission's allegations in *SEC* v. *IntraWest Financial Corporation et al.* were based upon accounting questions; the Complaint's allegations concerning the Applicant's intent were of a limited nature; the Applicant neither admitted nor denied the Complaint's allegations; a disqualification under Section 9(a) would unfairly burden the Applicant's present employer; the Applicant has never before been the subject of proceedings under the securities laws or applied for an exemption from Section 9(a); and the Applicant consented to the entry of the Final Order in *SEC* v. *IntraWest Financial Corporation et al.* on the express understanding that his application under Section 9(c) would not be opposed based solely on the entry of the Final Order or the facts underlying the Commission's Complaint.

Notice is further given that any interested person may, no later than March 8, 1985, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed to: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon David Butler, Esq., Holland & Hart, P.O. Box 8749, Denver, Colorado 80201. Proof of such service (by affidavit, or in the case of attorney-at-law by certificate) shall be filed simultaneoulsy with the request. At any time after said date, as provided by Rule 0-5 of the Commission's Rules and Regulations under the Act, an order disposing of the application herein will be issued as a matter of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notices and orders issued in this matter, including the date of the hearing (if ordered), and any postponements thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-3979 Filed 2-15-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 812-5785; Rel. No. 14367]

Robert E. Lee; Filing of an Application for an Order

February 11, 1985.

Notice is hereby given that Robert E. Lee, referred to herein as Applicant, has filed an application pursuant to Section 9(c) of the Investment Company Act of 1940 ("the Act"), for an order granting him a permanent exemption from the provisions of Section 9(a) of the Act.

All interested parties may review the application on file with the Commission for a statement of the representations therein, pertinent parts of which are summarized below:

On February 28, 1984, the Applicant was named, together with IntraWest Financial Corporation and another individual, as a defendant in an action, styled *SEC* v. *IntraWest Financial Corporation, et al.*, brought by the Commission alleging violations of Section 13(a) of the Securities Exchange Act of 1934 and Section 17(a)(2) of the Securities Act of 1933, relating to allegedly false and misleading reports filed pursuant to the Securities Exchange Act of 1934, and incorporated by reference in registration statements filed in connection with the sale of securities pursuant to the Securities Act of 1933. The Applicant consented to entry of a Final Order by the United States District Court for the District of Columbia, neither admitting or denying the allegations of the Complaint.

At the time of the alleged violations, the Applicant was the Chief Financial Officer of IntraWest Bank of Denver, N.A., which was then the largest subsidiary of IntraWest Financial Corporation, a registrant under the Securities Exchange Act of 1934. The allegations leading to the Complaint and the Final Order related to the method of determining the allowance for possible loan losses at IntraWest Bank of Denver, N.A. and the amount of such Allowance actually determined as of March 31, June 30, and September 30, 1982. It was alleged that the method of determining the allowance was described in a false and misleading manner in the 10-K Report of IntraWest Financial Corporation for 1981, and that the allowance was set at an insufficient level as of March 31, June 30, and September 30, 1982, which resulted in material overstatements of the earnings of the bank (and accordingly of the registrant, IntraWest Financial Corporation).

The Applicant is now employed by a savings and loan association which has no connection with IntraWest Financial Corporation.

The Applicant represents that it is foreseeable that in performance of his duties as the Chief Financial officer of a major financial institution, the Applicant will be requested or required in the future to commence acting in the capacity of an employee, officer, director, member of an advisory board, investment advisor, or depositor for a registered investment company.

Section 9(a) of the Act provides, *inter alia*, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of employee, officer, or director of any registered investment company, if such person is by reason of any misconduct enjoined by a court of competent jurisdiction from engaging in or continuing any practice in connection with the purchase or sale of any security. Section 9(c) of the Act provides that upon application the Commission shall by order grant an exemption from the provisions of Section 9(a) of the Act if it is established that the prohibitions of Section 9(a), as applied to the Applicant, are unduly or disproportionately severe or that the conduct of the Applicant has been such as not to make it against the public interest or protection of investors to grant such application.

The Applicant has submitted an application pursuant to Section 9(c) of the Act. The Applicant contends that disqualification under Section 9(a) of the Investment Company Act would be unduly and disproportionately severe in his case and that his conduct has been such that it would not be contrary to the public interest or the protection of investors to grant his application. The Applicant asserts that: the Commission's allegations in *SEC v. IntraWest Financial Corporation et al.* were based upon accounting questions; the Complaint's allegations concerning the Applicant's intent were of a limited nature; the Applicant neither admitted nor denied the Complaint's allegations; a disqualification under Section 9(a) would unfairly burden the Applicant's present employer; the Applicant has never before been the subject of proceedings under the securities laws or applied for an exemption from Section 9(a); and the Applicant consented to the entry of the Final Order in *SEC v. IntraWest Financial Corporation et al.* on the express understanding that his application under Section 9(c) would not be opposed based solely on the entry of the Final Order or the facts underlying the Commission's Complaint.

Notice is further given that any interested person may, no later than March 8, 1985, at 5:30 P.M., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, or fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing theron. Any such communication should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon David Butler, Esq., Holland & Hart, P.O. Box 8749, Denver, Colorado, 80201. Proof of such service (by affidavit, or in the case of attorney-at-law by certificate) shall be filed simultaneously with the request. At any time after said date, as provided by Rule 0-5 of the Commission's Rules and Regulations under the Act, an order disposing of the application herein will be issued as a matter of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notices and orders issued in this matter, including the date of the hearing (if ordered), and any postponements thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-3980 Filed 2-15-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/815]

Secretary of State's Advisory Committee on Private International Law—Study Group on International Child Abduction; Meeting

There will be a meeting of the Study Group on International Child Abduction, a Study Group of the subject Advisory Committee, at 10 a.m. on Saturday, March 2, 1985 in Room 362 of the Hastings College of Law, University of California, 200 McAllister Street, San Francisco, California. Members of the general public may attend up to the capacity of the meeting room and participate in the discussion subject to instructions of the Chairman.

The Study Group will primarily review draft federal implementing legislation for the 1980 Hague Convention on the Civil Aspects of International Child Abduction that was signed by the United States on December 23, 1981 and is subject to ratification. The Convention is designed to serve as a deterrent to international abduction of children in connection with parental custody disputes and to provide, as a matter of treaty law, for the prompt return of abducted children. It also makes provision for the establishment in each country party to the Convention of a Central Authority to receive and process return requests made pursuant to the Convention. It is hoped that the Convention will be ready some time in Spring, 1985 for transmission to the U.S. Senate for advice and consent to U.S. ratification. Federal implementing legislation will be introduced in the Senate and House of Representatives about the same time. In reviewing the draft implementing legislation, the Study Group will seek to ensure that all foreseeable problems associated with implementation of the Convention in the United States that are capable of resolution through such legislation are appropriately addressed.

The Study Group will also discuss the role of the States and other jurisdictions in assisting in the implementation of the Convention in the United States, particularly with regard to applications for the return of children abducted to the United States, as well as possible role of the United States family law bar in seeking to ensure that legal advice is available to applicants for the return of children from the United States pursuant to the Convention, even if they should not qualify for legal aid.

Entry to the Hastings College of Law building is controlled and members of the general public planning to attend should, prior to February 28, 1985, notify the Office of the Assistant Legal Adviser for Private International Law, Department of State, (telephone (202) 632-8134) of their name, affiliation, address, and phone number.

February 13, 1985.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice Chairman, Advisory Committee on Private International Law.

[FR Doc. 85-4110 Filed 2-15-85; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Order Establishing Standard Foreign Fare Level

The International Air Transportation Competition (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. The SFFL thus computed becomes the benchmark for measuring the statutory nonsuspend zone similar to the zone of reasonableness established by the Airline Deregulation Act and set forth in sec. 1002(d) of the Federal Aviation Act of 1958, as amended. Order 80-2-69 established the first interim SFFL and subsequent Order 84-11-117 established the currently effective two-month SFFL applicable through January 31, 1985.

In establishing the SFFL for the two-month period starting February 1, 1985, we have projected nonfuel costs based on the year ended September 1984, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Board.

By Order 85-1-36 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic	1.1328
Western Hemisphere	1.2412
Pacific	1.2635
Canada	1.2038

FOR FURTHER INFORMATION CONTACT: John D. Coakley, (202) 472-5492.

By the Department of Transportation.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-4001 Filed 2-15-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 42813]

Emerald Tours, Ltd. Violations of 14 CFR Part 380; Assignment of Enforcement Proceedings

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated Washington, D.C., February 1, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-4000 Filed 2-15-85; 8:45am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85-014]

Houston/Galveston Navigation Safety Advisory Committee 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 the ninth meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, March 28, 1985 in the Student Conference Room of the Northern Student Center located at Texas A & M University at Galveston, Pelican Island, Galveston, Texas. The meeting is scheduled to begin at 9:00 a.m. and end at approximately 5:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the Committee
3. Reports of Subcommittees
   A. Inshore Waterway Management
   B. Offshore Waterway Management
4. Discussion of Subcommittee Reports
5. Presentation of any additional new items for consideration to the Committee
6. Adjournment

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance at all subcommittee and full committee meetings is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide their name, address, and, if applicable, the organization they are representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander, R.A. BRUNELL, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, Telephone number (504) 589-6901.

Dated: February 13, 1985.

W.H. Stewart,

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

[FR Doc. 85-4054 Filed 2-15-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Flight Standards District Office at Las Vegas, NV; Civil Aviation Security Field Office at Las Vegas, NV; Address Change

Notice is hereby given that on or about February 10, 1985, the Flight Standards District Office and Civil Aviation Security Field Office at Las Vegas, Nevada will move to 241 East Reno Avenue, Suite 200, Las Vegas, Nevada 89119. Services to the general public will continue to be provided by these offices without interruption. 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 Hawthorne, CA, on February 6, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-3960 Filed 2-15-85; 8:45 am]

BILLING CODE 4910-13-M

Extension of Time for Airport Sponsors To Submit Airport Noise Compatibility Programs for Grant Funds Under the Airport Improvement Program

Section 104(c)(2) of the Aviation Safety and Noise Abatement Act of 1979 (ASNA) authorizes the Secretary to make grants to operators of airports and to units of local government for any project to carry out a noise compatibility program developed prior to the enactment of that Act or the promulgation of its implementing regulations. Such grants can be made if the Secretary determines that such prior program is substantially consistent with the purposes of reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and that the purposes of the Act would be furthered by prompt implementation of such program.

Since the passage of ASNA, the FAA has issued grants for projects to carry out airport noise compatibility programs which meet the criteria established by section 104(c)(2). However, the FAA has regarded section 104(c)(2) as a transition provision in ASNA, established by Congress to allow the FAA to fund noise projects while the implementing regulations for ASNA were being developed and until such time as airport operators could reasonably be expected to have noise programs in compliance with the new implementing regulations.

The FAA's interim regulations contained in Federal Regulations (FAR) Part 150, Airport Noise Compatibility Planning, were issued in January 1981 and became effective February 28, 1981. Subsequently, the FAA established the end of Fiscal Year 1985 as the cutoff date for the funding of projects under section 104(c)(2) of ASNA. The FAA believed that this timeframe would allow adequate time for airport operators to modify previously developed noise programs to meet the full requirements of ASNA as detailed in FAR Part 150, and that beyond this timeframe, the FAA should only support those noise programs complying with the full scope of ASNA.

The FAA has recently reexamined the section 104(c)(2) administraive cutoff date because there has been a longer lead time required to transition into FAR Part 150 than originally anticipated. Delays in issuing the FAR Part 150 final rule may have caused a number of airport operators to delay entering into the Part 150 program. The modification of previously developed noise programs to comply with Part 150 has involved substantial effort in some cases. The FAA is concerned that there may not be a significant number of airports covered by FAR Part 150 by the end of Fiscal Year 1985, and that most airports, therefore, would be excluded from noise funding under the airport grant program.

After careful consideration of the above factors, the FAA has made a determination to extend the timeframe for its funding of noise projects submitted under section 104(c)(2) of ASNA until the end of Fiscal Year 1986. This new cutoff date was selected in consideration of the FAA's issuance of the FAR Part 150 final rule on December 13, 1984, and of a survey of the number of airports presently developing Part 150 submissions. The end of Fiscal Year 1986 should provide ample time for a substantial number of airport operators to convert noise programs from 104(c)(2) to Part 150 under the final rule.

There are two exceptions to the cutoff date, (1) reimbursement for land acquired for noise compatibility and, (2) multi-year project commitments. These exceptions will continue to be funded under the section 104(c)(2) provision through the life of the current airport grant program (i.e., Fiscal Year 1987).

This notice submitted by Mrs. Lynne S. Pickard, APP-600, on (202) 426-3263.

Issued in Washington, D.C., January 28, 1985.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 85-3961 Filed 2-15-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Debt Managment Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a meeting will be held at the Federal Reserve Bank of New York on March 5, 1985, of the following debt management advisory committee:

Public Securities Association, U.S. Government and Federal Agencies, Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on March 5 and the preparation of a written report to the Secretary of the Treasury by March 15, 1985.

Pursuant to the authority placed in Heads of Departments by seciton 10(d) of Pub. L. 92-463, and vested in me by Treasury Deparment Order 101-5, I hereby determined that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice form representatives of the financial community prior to making its final decision on major financing operations. Historicially, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which all within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matter which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaing records of debt management advisory committee hearings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: February 14, 1985.

Thomas J. Healey,

Assistant Secretary (Domestic Finance).

[FR Doc. 85-4187 Filed 2-15-85; 8:45 am]

BILLING CODE 4810-25-M

[Supplement to Department Circular; Public Debt Series—No. 2-85]

Notes; Series R-1988

The Secretary announced on February 5, 1985, that the interest rate on the notes designated Series R-1988 described in Department Circular—Public Debt Series—No. 2-85 dated January 30, 1985, will be 10⅜ percent. Interest on the notes will be payable at the rate of 10⅜ percent annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

February 6, 1985.

[FR Doc. 85-4033 Filed 2-15-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series—No. 3-85]

Notes; Series A-1995

The Secretary announced on February 6, 1985, that the interest rate on the notes designated Series A-1995 described in Department Circular—Public Debt Series—No. 3-85 dated January 30, 1985, will be 11¼ percent. Interest on the notes will be payable at the rate of 11¼ percent per annum.

Carole Jones Dineen,
Fiscal Assistant Secretary.

February 7, 1985.

[FR Doc. 85-4034 Filed 2-15-85; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series—No. 4-85]

Bonds of 2015

The Secretary announced on February 7, 1985, that the interest rate on the bonds designted Bonds of 2015, described in Department Circular—Public Debt Series—No. 4-85, dated January 30, 1985, will be 11¼ percent. Interest on the bonds will be payable at the rate of 11¼ percent per annum.

Carole Jones Dineen,
Fiscal Assistant Secretary.

February 11, 1985.

[FR Doc. 85-4035 Filed 2-15-85; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

[T.D. 85-23]

Petitioners' Desire To Contest Decision Denying Domestic Interested Party Petition Requesting Reclassification of Certain Color Television Picture Tubes Contained in Assemblies of Color Television Receivers

AGENCY: Customs Service, Treasury.

ACTION: Notice of petitioners' desire to contest decision on domestic interested party petition.

SUMMARY: This document advises the public of the desire of several interested parties to contest Customs decision denying their petition requesting reclassification of color television picture tubes contained in assemblies of color television receivers as television picture tubes, color. The petitioners have advised Customs of their intention to file an action in the U.S. Court of International Trade.

DATE: February 19, 1985.

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

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1983, a petition was filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of labor organizations representing American workers engaged in the manufacture and production of color television picture tubes directly comparable to the imported color television picture tubes which are the subject of the petition.

The petitioners contended that an imported color television picture tube, included in each assembly of color television receivers, which is currently classified by Customs as an unfinished article under the provision for television receivers and parts thereof, having a picture tube, assemblies (including kits containing all parts necessary for assembly into complete receivers), color, in item 685.14, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is more appropriately classified under the provision for television picture tubes, color, in item 687.35, TSUS. At the time the petition was filed, the rate of duty for merchandise classified under item 685.14, TSUS, was 5 percent ad valorem and the rate of duty for merchandise classified under item 687.35, TSUS, was 15 percent ad valorem.

A notice of receipt of the petition was published in the **Federal Register** on January 26, 1984 (49 FR 3201), advising the public of petitioners' contention and requesting comments on the petition. A notice of extension of time for comment was published in the **Federal Register** on April 19, 1984 (49 FR 15568). Of the 28 comments received in response to the notice, 21 expressed general approval of the petition and requested its adoption and 7 stated their belief in the correctness of the current classification.

Decision on Petition and Notice of Petitioners' Desire To Contest

After careful analysis of the comments received in response to the notice and further review of the matter, by letter dated November 15, 1984 (CLA-2 CO:RCV:V, 553020 BNS), the petitioners were informed through their counsel that Customs is of the opinion that the current classification is correct, and their petition was therefore denied. In a summation of that letter, Customs stated: (1) In performing its classification function it must rely on whatever language is currently contained in the TSUS; (2) the merchandise in issue is properly classifiable under the *eo nomine* provision for television receivers and parts thereof, having a picture tube, assemblies, color, in item 685.14, TSUS; (3) the merchandise in issue is an unfinished article classifiable under the superior heading to item 685.14, TSUS, pursuant to General Headnote 10(h), TSUS; and (4), the ruling is consistent with and reaffirms a line of Customs rulings issued under item 685.20, TSUS, the predecessor provision to current item 685.14, TSUS.

In response to Customs decision to deny the petition, on December 13, 1984, the petitioners filed notice of their desire to contest the decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.23, Customs Regulations (19 CFR 175.23).

Customs has reconsidered the matter in light of petitioners' letter, but remains of the opinion that its November 15, 1984, decision is correct. That decision will stand in the absence of a contrary judgment rendered by the U.S. Court of International Trade or the U.S. Court of Appeals for the Federal Circuit.

Authority

This notice is published under the authority of section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and § 175.24, Customs Regulations (19 CFR 175.24).

Drafting Information

The principal author of this document was John E. Doyle, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: February 12, 1985.

William von Raab,
Commissioner of Customs.

[FR Doc. 85-4011 Filed 2-15-85; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 85-24]

Recordation of Trade Name: "The Union Fork and Hoe Company"

AGENCY: Customs Service, Treasury.

ACTION: Notice of Recordation.

SUMMARY: On November 15, 1984, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "THE UNION FORK AND HOE COMPANY, " was published in the **Federal Register** (49 FR 45288-45289). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in opposition to the

recordation and received not later than January 14, 1985. No responses were received in opposition to the notice. Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "THE UNION FORK AND HOE COMPANY" is recorded as the trade name used by the Union Fork and Hoe Company, a corporation organized under the laws of the State of Ohio, located at 500 Dublin Avenue, Columbus, Ohio 43216. The trade name is used in connection with hand-operated farm, garden and lawn tools manufactured in the United States.

DATE: February 19, 1985.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: February 13, 1985.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 85-4012 Filed 2-15-85; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308 Title 31 of the United States Code. An underwriting limitation of $85,000 has been established for the company.

Name of Company:

Bond Safeguard Insurance Company

Business Address:

1010 Lake Street, Oak Park, IL 60301

State of Incorporation:

Illinois

Certificates of authority expire on June 30 each year, unless renewed prior to that date or sooner revoked. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1984 Revision, at page 27250 to reflect this addition. Copies of the circular, when issued, may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20226.

Dated: February 8, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-3975 Filed 2-15-85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

State Homes Program, State of California Veterans Home, Yountville, CA; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a hospital addition to house a 50-bed acute nursing unit, intensive care unit, surgical service and domiciliary clinic at the Veterans Home at Yountville, California. This project is being considered for federal assistance under the grants to State Homes Program. The estimated project cost is approximately $8,622,700. This is a magnitude estimate and is subject to revisions.

A beneficial impact will be achieved through correction of numerous code violations in the present surgery facility that have been cited by the Joint Commission of Accreditation of Hospitals, VA and State inspectors. Also the two present acute care units of 66 patients are in wards of from 8 to 23 patients with only a few two patient rooms; the present clinic is too small for adequate treatment, and services are located in various overcrowded places rather than in one efficient location with required spaces. The subject project will correct all these deficiencies.

Construction related traffic may effect the flow of nearby traffic, and construction noise associated with the new addition may cause annoyance to workers and patients in adjacent buildings. The impact of dust and fumes that will exist during construction will be of short duration lasting only during that phase of project development.

In relation to both construction and operation the new facility will be built in accordance with applicable Federal, State, and local air quality standards.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity as defined by the Council on Environmental Quality 40, CFR 1508.27.

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of "No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for a 30-day public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs, Room 601, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. (202/389-3544). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: February 12, 1985.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85-3974 Filed 2-15-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 33
Tuesday, February 19, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1, 2

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, February 25, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C, 2nd Floor Columbia Plaza Office Building, 2401 "(E)" Street, N.W., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED: Closed:

Proposed ORA Decision
Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748.

Dated: February 13, 1985.

Cynthia C. Mathews,

Executive Officer.

[FR Doc. 85-4122 Filed 2-14-85; 1:36 pm]

BILLING CODE 6570-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 3:00 p.m. (eastern time), Tuesday, February 26, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C, 2nd Floor, Columbia Plaza Office Building, 2401 "E" Street, N.W., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations.
3. Semi-Annual Regulatory Agenda.
4. Management Directive: Office of Review and Appeals Automated Data System.
5. Request for Opinion Letter: Private Interpretation under the ADEA.
6. Opinion Letter: Use of Polygraphs Relative to the Uniform Guidelines on Employee Selection Procedures.
7. Rule Related to Notice Concerning Inclusion of the Department of Education in "Procedures for Complaints of Employment Discrimination Filed Against Recipients of Federal Financial Fund Granting Agencies.
8. Proposed Contracts for Expert Services Needed in Connection With Two Court Cases.
9. Accural of Pension Benefits Beyond Normal Retirement Age.

Closed:

Proposed ORA Decision.
Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: February 13, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc 85-4123 Filed 2-14-85; 1:36 pm]

BILLING CODE 6570-06-M

Reader Aids

Federal Register

Vol. 50, No. 33

Tuesday, February 19, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
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Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4621-4846	1
4847-4956	4
4957-5058	5
5059-5224	6
5225-5362	7
5363-5546	8
5547-5732	11
5733-5968	12
5969-6146	13
6147-6328	14
6329-6890	15
6891-7028	19

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 85-4 of February 4, 1985 6329
No. 85-5 of February 5, 1985 6331
No. 85-6 of February 11, 1985 6333
No. 85-7 of February 11, 1985 6335

Executive Orders:

12504 4849
12505 6151

Proclamations

5295 4621
5296 4623
5297 4847
5298 5059
5299 5363
5300 6147
5301 6149

5 CFR

317 6153

7 CFR

Ch. XXXII 5498
Ch. XXXIV 5498
246 6108
301 4851
354 4625
443 4625
449 4629
504 5365
701 4634
800 5969
810 5733
907 ..... 4853, 4957, 5733
908 5733
910 ..... 4634, 5365, 6890
920 4854
1136 5061
1434 4635
1711 5366
1980 6880

Proposed Rules:

Ch. IV 4693
210 5950
226 6183
271 6970
273 6970
978 5593
982 5995
1004 4694
1789 5395
1940 6351

8 CFR

100 5063
238 5369

Proposed Rules:

103 4957
212 ..... 4865, 5396

9 CFR

78 5547
81 5225
92 5969
113 5063
318 5226

Proposed Rules:

92 5999

10 CFR

1 5548
50 5567
53 5548
210 4957

Proposed Rules:

30 5600
40 5600
50 5600
51 5600
70 5600
71 4866
72 5600

12 CFR

5 5567
210 5734
561 ..... 5232, 6891
563 ..... 6891, 6912
563b 5232, 5741
570 6891
571 6891
701 4636
584 6891

Proposed Rules:

220 5766
611 6000
701 4698

13 CFR

121 6337
314 6338

14 CFR

21 5369
39 ..... 4857, 5374, 5375, 5376, 5568, 5569, 5570, 6154, 6155, 6339, 6930
71 ..... 4857, 4966, 5377, 5378, 5379, 6156, 6157, 6931
73 ..... 4966, 6156, 6932
97 4639
103 4968
150 5063

Proposed Rules:

Ch. I 6185
33 6186

39 ... 4867-4870, 5396, 5397, 5625, 5626, 5627, 6188-6191
65 ... 5046
71 ... 5046, 5398, 5399, 6192-6197
75 ... 6198
91 ... 5046, 5054
93 ... 5046
103 ... 5046, 6312
105 ... 5046
251 ... 5214
261 ... 5214
287 ... 5214
291 ... 5214
296 ... 5214
298 ... 5214
299 ... 5214
303 ... 5214
380 ... 5214

15 CFR

373 ... 5970, 5971

16 CFR

13 ... 6932
1115 ... 6157

Proposed Rules:

13 ... 4980, 4983, 4987, 4990, 6005.

17 CFR

1 ... 5380
143 ... 5383
200 ... 5064
249 ... 5234
270 ... 5234

Proposed Rules:

240 ... 5766

18 CFR

35 ... 4970
101 ... 5743
104 ... 5743
141 ... 5743
154 ... 5743
157 ... 5743
159 ... 5743
201 ... 5743
204 ... 5743
216 ... 5743
260 ... 5743
271 ... 4640, 5384
410 ... 5972
430 ... 5972

Proposed Rules:

157 ... 4871
271 ... 5400, 6198
284 ... 4871

19 CFR

101 ... 4973
353 ... 5746
355 ... 5746

Proposed Rules:

101 ... 5628
134 ... 5629

20 CFR

345 ... 5234
416 ... 5571, 5573

Proposed Rules:

404 ... 4948, 5264, 6358

21 CFR

5 ... 4858
81 ... 4641, 4642
175 ... 4643
176 ... 4643
178 ... 4859
182 ... 6339
184 ... 6339
436 ... 5748
510 ... 5385, 6158
520 ... 5385
522 ... 6158, 6159
526 ... 5749
540 ... 5749
544 ... 5385
556 ... 5749
558 ... 6158
610 ... 5574
660 ... 5574
864 ... 5352, 5358

Proposed Rules:

334 ... 6358
341 ... 4872, 6199
357 ... 6359

22 CFR

514 ... 6160

24 CFR

44 ... 6937
205 ... 4646, 6937
207 ... 4646, 6937
213 ... 4646, 6937
220 ... 4646, 6937
221 ... 4646, 6937
232 ... 4646, 6937
234 ... 4646
238 ... 6937
242 ... 4646
244 ... 4646
250 ... 4646, 6937
251 ... 4646
255 ... 4646
570 ... 5750, 5751
880 ... 6341
881 ... 6341
965 ... 6937

Proposed Rules:

200 ... 6359

26 CFR

1 ... 6937

Proposed Rules:

1 ... 4701, 4702, 6200
51 ... 5770

27 CFR

9 ... 6161

Proposed Rules:

9 ... 5775
19 ... 6200
250 ... 6203

28 CFR

Proposed Rules:

31 ... 6098

29 CFR

20 ... 5202, 5204, 5209
56 ... 6164
1601 ... 4648
1910 ... 4648, 5752
2619 ... 6342

Proposed Rules:

1952 ... 6956
2510 ... 6361
2676 ... 6956

30 CFR

935 ... 5236

Proposed Rules:

Ch. II ... 6362
104 ... 5470
250 ... 6969
914 ... 6363
916 ... 6364
936 ... 5080
942 ... 4704

31 CFR

103 ... 5064, 5065
391 ... 6343
500 ... 5753
515 ... 5753

32 CFR

152 ... 6166
706 ... 5973, 5974

33 CFR

100 ... 4860
110 ... 5580
117 ... 6168
165 ... 4860, 6169

Proposed Rules:

117 ... 6208
118 ... 6208

34 CFR

222 ... 4862
682 ... 5506

Proposed Rules:

327 ... 5080
682 ... 5539

35 CFR

51 ... 6170
201 ... 6170

Proposed Rules:

101 ... 5781
107 ... 5781
111 ... 5781
113 ... 5781
123 ... 5781

36 CFR

Proposed Rules:

223 ... 4992

37 CFR

1 ... 5158
2 ... 5158
10 ... 5158

Proposed Rules:

202 ... 6208

38 CFR

17 ... 4974
36 ... 5754, 5975
14 ... 4708

39 CFR

111 ... 5580, 5581

Proposed Rules:

111 ... 4709, 6007

40 CFR

52 ... 5236, 5237, 5246
57 ... 6434
60 ... 4975, 6316
61 ... 5190
65 ... 5251, 5252, 5582
81 ... 5069
122 ... 6939
123 ... 6939
124 ... 6939
125 ... 6939
145 ... 5253
180 ... 4975, 5070
228 ... 6942
271 ... 5259, 5260
300 ... 6320

Proposed Rules:

30 ... 5544
52 ... 5265, 5630, 6217
65 ... 5267
81 ... 5632, 6365
155 ... 5084
180 ... 6011, 6012
261 ... 5637
264 ... 5268
300 ... 5862
464 ... 6572
468 ... 4872
471 ... 4872
720 ... 5787
721 ... 5787
761 ... 5401
799 ... 5084

41 CFR

Ch. 101 ... 5386

Proposed Rules:

201-22 ... 6970
201-45 ... 3970

42 CFR

110 ... 3171

Proposed Rules:

4 ... 5638
59a ... 5638
63 ... 5638
64 ... 5638
405 ... 5787

43 CFR

12 ... 6176

Public Land Orders:

2634 (Revoked in part by 6587) ... 5262
6586 ... 5262
6587 ... 5262

Proposed Rules:

2720 ... 5269

44 CFR

64 ... 6345, 6346
65 ... 5071, 5072

Proposed Rules:

67 ... 5084, 5105, 5270

45 CFR

224 ... 6164

Proposed Rules:

206 ... 6970
232 ... 6970
233 ... 6970
234 ... 6970
238 ... 6970
240 ... 6970

46 CFR

572 ... 6943, 6944

Proposed Rules:

12 ... 4875
67 ... 4877

572....................5401

47 CFR

1....................4649, 5983
2....................4650–4658
15....................4664, 5755
21....................5983
22....................5583, 6177
73....................4658–4685, 5073, 5391, 5392, 5393, 5394, 5583, 6179, 6944
74....................4655
76....................4658, 6947
81....................5073, 5590
83....................5590
87....................5590, 6952
90....................6179
95....................5074
97....................4686, 4976, 5079
Proposed Rules:
Ch. I....................4711, 5644
73....................4712, 4713, 5402, 5404, 5792
97....................5644, 5797, 6219
100....................6971

48 CFR

Ch. 5....................4862

49 CFR

229....................6952
1051....................6182
1181....................6348
1186....................6348
1312....................4863
1320....................6182
1321....................6182
1322....................6182
1323....................6182
1324....................6182
Proposed Rules:
172....................5270
173....................5270
175....................6013
531....................4993, 5405
533....................4993
571....................5646

50 CFR

12....................6349
17....................4938, 5755
20....................5759
611....................6953
655....................6953
661....................4977
671....................5764, 6954
Proposed Rules:
17....................5647
20....................4994, 6017, 6366
21....................4877
23....................5279

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List February 14, 1985

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1983 Compilation and Parts 100 and 101)	7.00	Jan. 1, 1984
***4**	12.00	Jan. 1, 1985
5 Parts:		
1-1199	13.00	Jan. 1, 1984
1-1199 (Special Supplement)	None	Jan. 1, 1984
1200-End, 6 (6 Reserved)	6.00	Jan. 1, 1984
7 Parts:		
0-45	13.00	Jan. 1, 1984
*46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1984
53-209	13.00	Jan. 1, 1984
210-299	13.00	Jan. 1, 1984
300-399	7.50	Jan. 1, 1984
400-699	13.00	Jan. 1, 1984
700-899	13.00	Jan. 1, 1984
900-999	14.00	Jan. 1, 1984
1000-1059	12.00	Jan. 1, 1984
1060-1119	9.50	Jan. 1, 1984
1120-1199	7.50	Jan. 1, 1984
1200-1499	13.00	Jan. 1, 1984
1500-1899	6.00	Jan. 1, 1984
1900-1944	14.00	Jan. 1, 1984
1945-End	13.00	Jan. 1, 1984
8	7.00	Jan. 1, 1984
9 Parts:		
1-199	13.00	Jan. 1, 1984
200-End	9.50	Jan. 1, 1984
10 Parts:		
0-199	14.00	Jan. 1, 1984
200-399	12.00	Jan. 1, 1984
400-499	12.00	Jan. 1, 1984
500-End	13.00	Jan. 1, 1984
11	7.50	Apr. 1, 1984
12 Parts:		
1-199	9.00	Jan. 1, 1984
200-299	14.00	Jan. 1, 1984
300-499	9.50	Jan. 1, 1984
500-End	14.00	Jan. 1, 1984
13	13.00	Jan. 1, 1984
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1984
140-199	7.00	Jan. 1, 1984
200-1199	13.00	Jan. 1, 1984
1200-End	7.50	Jan. 1, 1984
15 Parts:		
0-299	7.00	Jan. 1, 1984
300-399	13.00	Jan. 1, 1984
400-End	12.00	Jan. 1, 1984
16 Parts:		
*0-149	9.00	Jan. 1, 1985
150-999	9.50	Jan. 1, 1984
1000-End	13.00	Jan. 1, 1984
17 Parts:		
1-239	14.00	Apr. 1, 1984
240-End	13.00	Apr. 1, 1984
18 Parts:		
1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	6.50	Apr. 1, 1984
19	17.00	Apr. 1, 1984
20 Parts:		
1-399	7.50	Apr. 1, 1984
400-499	13.00	Apr. 1, 1984
500-End	14.00	Apr. 1, 1984
21 Parts:		
1-99	9.00	Apr. 1, 1984
100-169	12.00	Apr. 1, 1984
170-199	12.00	Apr. 1, 1984
200-299	4.25	Apr. 1, 1984
300-499	14.00	Apr. 1, 1984
500-599	13.00	Apr. 1, 1984
600-799	6.00	Apr. 1, 1984
800-1299	9.50	Apr. 1, 1984
1300-End	6.00	Apr. 1, 1984
22	17.00	Apr. 1, 1984
23	13.00	Apr. 1, 1984
24 Parts:		
0-199	8.00	Apr. 1, 1984
200-499	14.00	Apr. 1, 1984
500-699	6.00	Apr. 1, 1984
700-1699	12.00	Apr. 1, 1984
1700-End	9.50	Apr. 1, 1984
25	14.00	Apr. 1, 1984
26 Parts:		
§§ 1.0-1.169	14.50	Apr. 1, 1984
§§ 1.170-1.300	10.00	Apr. 1, 1984
§§ 1.301-1.400	7.50	Apr. 1, 1984
§§ 1.401-1.500	13.00	Apr. 1, 1984
§§ 1.501-1.640	12.00	Apr. 1, 1984
§§ 1.641-1.850	12.00	Apr. 1, 1984
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	13.00	Apr. 1, 1984
30-39	9.00	Apr. 1, 1984
40-299	14.00	Apr. 1, 1984
300-499	9.50	Apr. 1, 1984
500-599	8.00	[1] Apr. 1, 1980
600-End	5.50	Apr. 1, 1984
27 Parts:		
1-199	13.00	Apr. 1, 1984
200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1-39, Vol. I	15.00	July 1, 1984
1-39, Vol. II	19.00	July 1, 1984
1-39, Vol. III	18.00	July 1, 1984
40-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-629	13.00	July 1, 1984
630-699	12.00	July 1, 1984
700-799	13.00	July 1, 1984
800-999	9.50	July 1, 1984
1000-End	6.00	July 1, 1984
33 Parts:		
1-199	14.00	July 1, 1984
200-End	13.00	July 1, 1984
34 Parts:		
1-299	14.00	July 1, 1984
300-399	8.50	July 1, 1984
400-End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1-199	9.00	July 1, 1984
200-End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0-17	14.00	July 1, 1984
18-End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1-51	13.00	July 1, 1984
52	14.00	July 1, 1984
53-80	18.00	July 1, 1984
81-99	14.00	July 1, 1984
100-149	9.50	July 1, 1984
150-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-424	13.00	July 1, 1984
425-End	14.00	July 1, 1984
41 Chapters:		
1, 1-1 to 1-10	13.00	July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3-6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10-17	9.50	July 1, 1984
18, Vol. I, Parts 1-5	13.00	July 1, 1984
18, Vol. II, Parts 6-19	13.00	July 1, 1984
18, Vol. III, Parts 20-52	13.00	July 1, 1984
19-100	13.00	July 1, 1984
101	15.00	July 1, 1984
102-End	9.50	July 1, 1984
42 Parts:		
1-60	12.00	Oct. 1, 1984
61-399	8.00	Oct. 1, 1984
400-End	18.00	Oct. 1, 1984
43 Parts:		
1-999	9.50	Oct. 1, 1984
*1000-3999	14.00	Oct. 1, 1984
4000-End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1-199	9.50	Oct. 1, 1984
200-499	6.50	Oct. 1, 1984
500-1199	13.00	Oct. 1, 1984
1200-End	9.50	Oct. 1, 1984
46 Parts:		
1-40	9.50	Oct. 1, 1984
41-69	9.50	Oct. 1, 1984
70-89	6.00	Oct. 1, 1984
90-139	9.00	Oct. 1, 1984
140-155	9.50	Oct. 1, 1984
156-165	10.00	Oct. 1, 1984
166-199	9.00	Oct. 1, 1984
200-499	13.00	Oct. 1, 1984
400-End	7.00	Oct. 1, 1983
47 Parts:		
0-19	13.00	Oct. 1, 1984
*20-69	14.00	Oct. 1, 1984
70-79	13.00	Oct. 1, 1984
80-End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1-51)	13.00	Oct. 1, 1984
1 (Parts 52-99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3-6	12.00	Oct. 1, 1984
7-14	14.00	Oct. 1, 1984
15-End	12.00	Oct. 1, 1984
49 Parts:		
1-99	7.50	Oct. 1, 1984
100-177	14.00	Nov. 1, 1983
*178-199	13.00	Nov. 1, 1984
200-399	13.00	Oct. 1, 1984
400-999	13.00	Oct. 1, 1984
1000-1199	13.00	Oct. 1, 1984
1200-1299	13.00	Oct. 1, 1984
1300-End	3.75	Oct. 1, 1984
50 Parts:		
*1-199	9.50	Oct. 1, 1984
200-End	13.00	Oct. 1, 1983
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1984. The CFR volume issued as of Apr. 1, 1980, should be retained.