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Monday
May 6, 1985

Selected Subjects

Administrative Practice and Procedure
Federal Grain Inspection Service

Agricultural Commodities
Commodity Credit Corporation

Agricultural Research
Agricultural Marketing Service

Aviation Safety
Federal Aviation Administration

Census Data
Census Bureau

Flood Insurance
Federal Emergency Management Agency

Grant Programs—Education
Education Department

Handicapped
Environmental Protection Agency

Meat Inspection
Food Safety and Inspection Service

Quarantine
Animal and Plant Health Inspection Service

Reporting and Recordkeeping Requirements
Securities and Exchange Commission

Savings and Loan Associations
Federal Home Loan Bank Board

CONTINUED INSIDE

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Selected Subjects

Contents

Federal Register
Vol. 50, No. 87
Monday, May 6, 1985

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
800 18985
Proposed Rules:
319 19158
1207 19026
1423 19026

9 CFR
Proposed Rules:
327 19029

12 CFR
Proposed Rules:
564 19030

14 CFR
71 18989
Proposed Rules:
23 19108
39 19033
91 19108

15 CFR
90 18989

17 CFR
210 18990
229 18990
230 (2 documents) 18990, 19010
239 (2 documents) 18990, 19010
240 18990
249 18990
Proposed Rules:
210 19035
231 19035
241 19035

28 CFR
Proposed Rules:
51 19122

30 CFR
Proposed Rules:
701 19037
736 19037
740 19037
746 19037
750 19037
772 19037

32 CFR
1903 19154

34 CFR
Proposed Rules:
76 19146
581 19146

40 CFR
60 19022
Proposed Rules:
12 19136
52 19038
81 19038
721 19039

44 CFR
67 (2 documents) 19022, 19024
Proposed Rules:
67 (2 documents) 19039, 19044

47 CFR
69 19025
Proposed Rules:
Ch. I 19050

Rules and Regulations

Federal Register
Vol. 50, No. 87
Monday, May 6, 1985

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Official Records and Forms (General)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: According to the requirements for periodic review of existing regulations, the Federal Grain Inspection Service (FGIS or Service) is publishing with slight modification as a final rule, a proposed rule in which certain changes were proposed to be made to the regulations under the United States Grain Standards Act, as amended (Act), concerning Official Records and Forms (General). The changes involve rewriting, revising, and reorganizing these regulations to simplify, clarify, and condense certain language; and facilitate the use of the regulations.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch (RM), FGIS, USDA, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504(h) of that Act, the information collection and recordkeeping requirements contained in the final rule have been approved by OMB. No comments concerning these requirements have been received.

Final Action

The review of the regulations concerning Official Records and Forms (General) (7 CFR 800.145–800.155) included a determination of continued need for and consequences of the regulations. The objective of the review was to ensure that the regulations are serving their intended purpose, the language is clear, and the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS, policy and authority, and should remain in effect. FGIS, however, is amending §§ 800.145–800.155 by reorganizing the text to combine and consolidate compatible sections and make other miscellaneous changes for clarity.

A proposal to amend the regulations was published in the August 10, 1984, issue of the **Federal Register** (49 FR 32074). Comments were to be submitted by October 9, 1984.

Two trade organizations commented on the proposed changes to the regulations. One commenter suggested defining the term "copies" (of official certificates (§ 800.153)) as meaning facsimile reproduction, microfilm, microfiche, computer-generated copies, or similar duplications. This recommended definition would expand upon the form in which official certificates would be maintained. Presently, the term copy is used and applied in its narrowest and simplest sense in the context in which it appears. Accordingly, copies of official certificates generally include only carbon copies. The recommended definition for such copies takes into account many of the currently available methods of duplication. The applicability of such methods to other records maintained pursuant to the Act also may require consideration. In view of the above, this matter requires a full and complete evaluation and review on an agency, if not Departmental, basis. Therefore, FGIS plans to review this matter separately and will publish rulemaking, as appropriate. Accordingly, no change to the proposed rule appears in this final action based upon this commenter's recommendation.

Another commenter noted that in the list of agency records that must be made available to the public (§ 800.154(b)(1)), the term "employee" was substituted for the term "staffing" records. The commenter stated that the two terms are not necessarily synonymous. As proposed, personnel information previously unavailable to the public could possibly have been requested. FGIS changed the subject term as a matter of editorial preference. It was not FGIS' intention to change the type of records available to the public. However, FGIS recognizes the commenter's concern and, as a result, has changed "employee" to "staffing." This same commenter suggested the requirements that records of approved weighers (§ 800.149(b)) be kept for the tenure of the licensee be eliminated because such personnel are not issued licenses. Approved weighers are not issued licenses but by the nature of their employment are given authority to perform weighing. However, to avoid confusion, the phrase "tenure of the licensee" was changed to "tenure of the weigher's employment" as an approved weigher.

The present sections of the regulations contain provisions concerning official records kept by agencies and contractors (§ 800.145); retention periods for official records (§ 800.146); availability of official records (§ 800.147); records issued by the Service under the Act (§ 800.148). Sections 800.149 through 800.155 contain provisions relating to records on: delegations, designations, contracts, and approval of scale testing organizations;

organization, staffing, and budget; licenses, authorizations, and approvals; fee schedules; space and equipment; official inspection, Class X or Class Y weighing, and equipment testing services; and related official records.

The intent and purpose of these provisions is to require that specified records be prepared and maintained in a manner that would facilitate the daily use of the records as well as the review and audit of the records to determine compliance with the Act, regulations, standards, and instructions. This final rule does not alter the intent and purpose of these sections.

In addition to specifying the intent and purpose of these regulations in § 800.145, this final rule reorganizes the text to combine and consolidate compatible sections. The present §§ 800.146 and 800.154 is reorganized to separate out certain provisions in the present sections. This, in part, results in the addition of four new sections with appropriate renumbering of the present sections. Applicable retention periods are included in each section, as appropriate.

The reorganization includes sections providing for maintenance and retention of records as follows: general requirements, § 800.145; delegations, designation, contracts, and approval of scale testing organization, § 800.147; organization, staffing, and budget, § 800.148; licenses and approvals, § 800.149; fee schedules, § 800.150; space and equipment, § 800.151; file samples, § 800.152; and official inspection, Class X or Class Y weighing, and equipment service, § 800.153. Sections 800.154 through 800.159 include provisions as to the availability of official records; detailed work records; official inspection records; official weighing records; equipment testing work records; and related official records.

While approved scale testing organizations are mentioned in the present regulations, more references are included to clarify that the recordkeeping requirements also apply to these organizations. Other minor changes, including grammatical changes, are made to clarify these provisions of the regulations. Even though a reorganization is made, the substance, including the record and sample retention periods, remain unchanged.

In addition to the revisions referenced above, §§ 800.195, 800.196, and 800.198 are amended to reflect the regulatory references changed by the revision of §§ 800.145–.155 and the addition of §§ 800.156–800.159. These amendments are minor nonsubstantive changes that are made to create accurate cross-references to facilitate the use of the regulations. Further, miscellaneous nonsubstantive grammatical changes are made to §§ 800.152, 800.154, 800.155, and 800.158 for clarity and to facilitate the use of the regulations.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure.

Accordingly, 7 CFR Part 800 of the regulations is amended as follows:

PART 800—GENERAL REGULATIONS; OFFICIAL RECORDS AND FORMS (GENERAL)

1. Section 800.145 is revised to read:

§ 800.145 Maintenance and retention of records—General requirements.

(a) *Preparing and maintaining records.* The records specified in §§ 800.146–.159 shall be prepared and maintained in a manner that will facilitate (1) the daily use of records and (2) the review and audit of the records to determine compliance with the Act, the regulations, the standards, and the instructions.

(b) *Retaining records.* Records shall be retained for a period not less than that specified in §§ 800.146–.159. In specific instances, the Administrator may require that records be retained for a period of not more than 3 years in addition to the specified retention period. In addition, records may be kept for a longer time than the specified retention period at the option of the agency, the contractor, the approved scale testing organization, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

2. Section 800.146 is revised to read:

§ 800.146 Maintenance and retention of records issued by the Service under the Act.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of the Act, regulations, the standards, any instructions issued by the Service, and all amendments and revisions thereto. These records shall be maintained until superseded or revoked.

(Approved by the Office of Management and Budget under control number 0580–0011)

3. Section 800.147 is revised to read:

§ 800.147 Maintenance and retention of records on delegations, designations, contracts, and approval of scale testing organizations.

Agencies, contractors, and approved scale testing organizations shall maintain complete records of their delegation, designation, contract, or approval. These records consist of a copy of the delegation or designation documents, a copy of the current contract, or a copy of the notice of approval, respectively, and all amendments and revisions thereto. These records shall be maintained until superseded, terminated, revoked, or cancelled.

(Approved by the Office of Management and Budget under control number 0580–0011)

4. Section 800.148 is revised to read:

§ 800.148 Maintenance and retention of records on organization, staffing, and budget.

(a) *Organization.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their organization. These records shall consist of the following documents: (1) If it is a business organization, the location of its principal office; (2) if it is a corporation, a copy of the articles of incorporation, the names and addresses of officers and directors, and the names and addresses of shareholders; (3) if it is a partnership or an unincorporated association, the names and addresses of officers and members, and a copy of the partnership agreement or charter; and (4) if it is an individual, the individual's place of residence. These records shall be maintained for 5 years.

(b) *Staffing.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their employees. These records consist of (1) the name of each current employee, (2) each employee's principal duty, (3) each employee's principal duty station, (4) information about the training that each employee has received, and (5) related information required by the Service. These records shall be maintained for 5 years.

(c) *Budget.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of their budget. These records consist of actual income generated and actual expenses incurred during the current year. Complete accounts for receipts from (1) official inspection, weighing, equipment testing, and related services; (2) the sale of grain samples; and (3) disbursements from receipts shall be available for use in establishing or revising fees for services under the Act. Budget records shall also include detailed information on the disposition of grain samples obtained under the Act. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

5. Section 800.149 is revised to read:

§ 800.149 Maintenance and retention of records on licenses and approvals.

(a) *Licenses.* Agencies, contractors, and approved scale testing organizations shall maintain complete records of licenses. These records consist of current information showing (1) the name of each licensee, (2) the scope of each license, (3) the termination date of each license, and (4) related information required by the Service. These records shall be maintained for the tenure of the licensee.

(b) *Approvals.* Agencies shall maintain complete records of approvals of weighers. These records consist of current information showing the name of each approved weigher employed by or at each approved weighing facility in the area of responsibility assigned to an agency or field office. These records shall be maintained for the tenure of the weigher's employment as an approved weigher.

(Approved by the Office of Management and Budget under control number 0580–0011)

6. Section 800.150 is revised to read:

§ 800.150 Maintenance and retention of records on fee schedules.

Agencies, contractors, and approved scale testing organizations shall maintain complete records on fee schedules. These records consist of (a) a copy of the current fee schedule; (b) in the case of an agency, data showing how the fees in the schedule were developed; (c) superseded fee schedules; and (d) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

7. Section 800.151 is revised to read:

§ 800.151 Maintenance and retention of records on space and equipment.

(a) *Space.* Agencies shall maintain complete records on space. These records consist of (1) a description of space that is occupied or used at each location, (2) the name and address of the owner of the space, (3) financial arrangements for the space, and (4) related information required by the Service. These records shall be maintained for 5 years.

(b) *Equipment.* Agencies shall maintain complete records on equipment. These records consist of (1) the description of each piece of equipment used in performing official inspection or Class X or Class Y weighing services under the Act, (2) the location of the equipment, (3) the name and address of the owner of the equipment, (4) the schedules for equipment testing and the results of the testing, and (5) related information required by the Service. These records shall be maintained for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011)

8. Section 800.152 is revised to read:

§ 800.152 Maintenance and retention of file samples.

(a) *General.* The Service and agencies shall maintain complete file samples for their minimum retention period (calendar days) after the official function was completed or the results otherwise reported.

(b) *Minimum retention period.*

(1) Trucks	
In	3
Out	5
(2) Railcars	
In	5
Out	10
(3) Barges (river)	
In	5
Out	25
(4) Ships and barges (lake or ocean)	
In	5
Out	25
Export (sublot samples)	60
(5) Bins and tanks	3
(6) Submitted samples	3

Upon request by an agency and with the approval of the Service, specified file samples or classes of file samples may be retained for shorter periods of time.

(c) *Special retention periods.* In specific instances, the Administrator may require that file samples be retained for a period of not more than 90 calendar days. File samples may be kept for a longer time than the regular retention period at the option of the Service, the agency, or the individual maintaining the records.

(Approved by the Office of Management and Budget under control number 0580–0011)

9. Section 800.153 is revised to read:

§ 800.153 Maintenance and retention of records on official inspection, Class X or Class Y weighing, and equipment testing service.

Agencies and approved scale testing organizations shall maintain complete detailed official inspection work records, copies of official certificates, and equipment testing work records for 5 years.

(Approved by the Office of Management and Budget under control number 0580–0011.)

10. Section 800.154 is revised to read:

§ 800.154 Availability of official records.

(a) *Availability to officials.* Each agency, contractor, and approved scale testing organization shall permit authorized representatives of the Comptroller General, the Secretary, or the Administrator to have access to and to copy, without charge, during customary business hours any records maintained under §§ 800.146–.159.

(b) *Availability to the public.* (1) *Agency, contractor, and approved scale testing organization records.* The following official records will be available, upon request by any person, for public inspection during customary business hours: (i) Copies of the Act, the regulations, the standards, and the instructions; (ii) the delegation, designation, contract, or approval issued by the Service; (iii) organization and staffing records; (iv) a list of licenses and approvals; and (v) the approved fee schedule of the agency, if applicable.

(2) *Service records.* Records of the Service are available in accordance with the Freedom of Information Act (5 U.S.C. 552(a)(3)) and the regulations of the Secretary of Agriculture (7 CFR, Part 1, Subpart A).

(c) *Locations where records may be examined or copied.* (1) *Agency, contractor, and approved scale testing organization records.* Records of agencies, contractors, and approved scale testing organizations available for public inspection shall be retained at the principal place of business of the agency, contractor, or approved scale testing and certification organization.

(2) *Service records.* Records of the Service available for public inspection shall be retained at each field office and at the headquarters of the Service in Washington, D.C.

11. Section 800.155 is revised to read:

§ 800.155 Detailed work records—general requirements.

(a) *Preparation.* Detailed work records shall be prepared for each official inspection, Class X or Class Y weighing, and equipment testing service performed or provided under the Act. The records shall (1) be on standard forms prescribed in the instructions; (2) be typed or legibly written in English; (3) be concise, complete, and accurate; (4) show all information and data that are needed to prepare the corresponding official certificates or official report; (5) show the name or initials of the individual who made each determination; and (6) show other information required by the Service to monitor or supervise the service provided.

(b) *Use.* Detailed work records shall be used as a basis for (1) issuing official certificates or official forms, (2) approving inspection and weighing equipment for the performance of official inspection or Class X or Class Y weighing services, (3) monitoring and supervising activities under the Act, (4) answering inquiries from interested persons, (5) processing complaints, and (6) billing and accounting. These records may be used to report results of official inspection or Class X or Class Y weighing services in advance of issuing an official certificate.

(c) *Standard forms.* The following standard forms shall be furnished by the Service to an agency: Official Export Grain Inspection and Weight Certificates (singly or combined), official inspection logs, official weight loading logs, official scale testing reports, and official volume of work reports. Other forms used by an agency in the performance of official services, including certificates, shall be furnished by the agency.

(Approved by the Office of Management and Budget under control number 0580-0011)

12. Section 800.156 is added to read:

§ 800.156 Official inspection records.

(a) *Pan tickets.* The record for each kind of official inspection service identified in § 800.76 shall, in addition to the official certificate, consist of one or more pan tickets as prescribed in the instructions. Activities that are performed as a series during the course of an inspection service may be recorded on one pan ticket or on separate pan tickets. The original copy of each pan ticket shall be retained by the agency or field office that performed the inspection.

(b) *Inspection logs.* The record of an official inspection service for grain in a combined lot and shiplot shall include the official inspection log as prescribed in the instructions. The original copy of each inspection log shall be retained by the agency or field office that performed the inspection. If the inspection is performed by an agency, one copy of the inspection log shall be promptly sent to the appropriate field office.

(c) *Other forms.* Any detailed test that cannot be completely recorded on a pan ticket or an inspection log shall be recorded on other forms prescribed in the instructions. If the space on a pan ticket or an inspection log does not permit showing the full name for an official factor or an official criteria, an approved abbreviation may be used.

(d) *File samples.* (1) *General.* The record for an official inspection service based, in whole or in part, on an examination of a grain in a sample shall include one or more file samples as prescribed in the instructions.

(2) *Size.* Each file sample shall consist of an unworked portion of the official sample or warehouseman's sample obtained from the lot of grain and shall be large enough to permit a reinspection, appeal inspection, or Board appeal inspection for the kind and scope of inspection for which the sample was obtained. In the case of a submitted sample inspection, if an undersized sample is received, the entire sample shall be retained.

(3) *Method.* Each file sample shall be retained in a manner that will preserve the representativeness of the sample from the time it is obtained or received by the agency or field office until it is discarded. High moisture samples, infested samples, and other problem samples shall be retained according to the instructions.

(4) *Uniform system.* To facilitate the use of file samples, agencies shall establish and maintain a uniform file sample system according to the instructions.

(5) *Forwarding samples.* Upon request by the supervising field office or the Board of Appeals and Review, each agency shall furnish file samples (i) for field appeal or Board appeal inspection service, or (ii) for monitoring or supervision. If, at the request of the Service, an agency locates and forwards a file sample for an appeal inspection, the agency may, upon request, be reimbursed at the rate prescribed in § 800.71 by the Service.

(Approved by the Office of Management and Budget under control number 0580-0011)

13. Section 800.157 is added to read:

§ 800.157 Official weighing records.

(a) *Scale ticket, scale tape, or other weight records.* In addition to the official certificate, the record for each Class X or Class Y weighing service shall consist of a scale ticket, a scale tape, or any other weight record prescribed in the instructions.

(b) *Weighing logs.* The record of a Class X or Class Y weighing service performed on bulk grain in a combined lot or bulk shiplot grain shall include the official weighing log as prescribed in the instructions. The original copy of each weighing log shall be retained by the field office or agency that performed the weighing.

(Approved by the Office of Management and Budget under control number 0580-0011)

14. Section 800.158 is added to read:

§ 800.158 Equipment testing work records.

The record for each official equipment testing service or activity consists of an official equipment testing report as prescribed in the instructions. Upon completion of each official equipment test, one or more copies of the completed testing report may, upon request, be issued to the owner or operator of the equipment. The testing report shall show the (1) date the test was performed, (2) name of the organization and personnel that performed the test, (3) names of the Service employees who monitored the testing, (4) identification of equipment that was tested, (5) results of the test, (6) names of any interested persons who were informed of the test results, (7) number or other identification of the approval tag or label affixed to the equipment, and (8) other information required by the instructions.

(Approved by the Office of Management and Budget under control number 0580-0011)

15. Section 800.159 is added to read:

§ 800.159 Related official records.

(a) *Volume of work report.* Field offices and agencies shall prepare periodic reports showing the kind and the volume of inspection and weighing services that they performed. The report shall be prepared and copies shall be submitted to the Service according to the instructions.

(b) *Record of withdrawals and dismissals.* Field offices and agencies shall maintain a complete record of requests for official inspection or weighing services that are withdrawn by the applicant or that are conditionally withheld or dismissed. The record shall be prepared and maintained according to the instructions.

(c) *Licensee record.* Licensees, including licensed warehouse samplers, shall (1) keep the license issued to them by the Service and (2) keep or have reasonable access to a complete record of the Act, the standards, the regulations, and the instructions.

(Approved by the Office of Management and Budget under control number 0580-0011)

16. Section 800.195(f)(10) is revised to read:

§ 800.195 Delegations.

* * * * *

(f) *Responsibilities.* * * *

(10) *Records.* Each delegated State shall maintain the records specified in §§ 800.145–.159.

17. Section 800.196(g)(10) is revised to read:

§ 800.196 **Designations.**

* * * * *

(g) *Responsibilities.* * * *

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145–.159.

18. Section 800.198(b)(2) is revised to read:

§ 800.198 **Contracts.**

* * * * *

(b) *Restrictions.* * * *

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.156(d).

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 19, 1985.

K.A. Gillis,

Administrator.

[FR Doc. 85–10891 Filed 5–3–85; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ANM-1]

Alteration of Havre, Montana, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redefines the current geographical boundaries of the Havre, Montana, control zone and 700' transition area. This action is required due to a magnetic variatin change resulting in amendments to the VOR Rwy 7 and VOR Rwy 25 instrument approach procedures. This action provides the revised descriptions.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technical Specialist, ANM–535, Federal Aviation Administration, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The telephone number is (206) 431–2530.

SUPPLEMENTARY INFORMATION:

History

On February 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redefine the current geographical boundaries of the Havre, Montana, control zone and 700' transition area (50 FR 5399).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redefines the geographical boundaries of the Havre, Montana, control zone and 700' transition area. A change in the magnetic variation resulted in amendments to the VOR Rwy 7 and VOR Rwy 25 instrument approach procedures. This action provides the revised descriptions to accommodate these amendments.

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

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, as follows:

Havre, Montana, Control Zone—(Revised)

"Within a 5-mile radius of Havre City-County Airport (lat. 48° 32'39" N.long. 109°45'41"W.); within 3 miles each side of the Havre VOR 060° radial, extending from the 5-mile radius zone to 7 miles east of the VOR; and within 3 miles each side of the Havre VOR 290° radial, extending from the 5-mile radius zone to 7 miles west of the VOR; within 2 miles each side of the Havre VOR 006° radial, extending from the 5-mile radius area to 7.5 miles north of the VOR. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafter will be continuously published in the Airport/Facility Directory".

Havre, Montana, Transition Area—(Revised)

"That airspace extending upward from 700 feet above the surface within a 14-mile radius of Havre VOR within 4.5 miles south and 9.5 miles north of the Havre VOR 080° radial, extending from the 14-mile radius of area to 18.5 miles east of the VOR; and within 4.5 miles north and 9.5 miles South of the Havre VOR 290°radial, extending from the 14-mile radius area to 18.5 miles west of the VOR".

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

Issued in Seattle, Washington, on April 24, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–10897 Filed 5–3–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 90

[Docket No. 50221-5049]

Procedure for Challenging Certain Population and Income Estimates

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending 15 CFR Part 90 to eliminate the need to *electronically* record hearings held under this procedure. The provision will now require that the hearings be recorded, thereby allowing the use of standard services such as those provided by court reporters. The legal authority citation also is being changed from 13 U.S.C. 4 to 13 U.S.C. 4 and 181.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Roger Herriot, Chief, Population Division, Bureau of the Census, Washington, D.C. 20233, (301) 763–7646.

SUPPLEMENTARY INFORMATION: On April 6, 1979, the Bureau of the Census published in the **Federal Register** (44 FR 20647) the administrative procedure available to States and units of local government to challenge current estimates of population and per capita income developed by the Bureau of the

Census. This procedure is described in 15 CFR Part 90.

The Bureau is amending Title 15, Chapter 1, Part 90 to delete "electronically" from § 90.14(f) in order to provide flexibility in the method used to record the hearing and to reduce costs to the hearing participants.

This rule is not a major rule within the meaning of Section 1 of Executive Order 12291. It is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is being issued in final without prior notice because it is a rule of agency procedure and is exempt from notice and comment requirements by 5 U.S.C. 553(b)(A). Since notice and opportunity to comment are not required by the Administrative Procedure Act or any other law, this rule is not a "rule" within the meaning of the Regulatory Flexibility Act and neither an initial nor final regulatory flexibility analysis will be prepared.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the APA and other relevant law.

This rule is not a substantive rule and therefore is exempt from the 30-day delayed effective date under 5 U.S.C. 553(d).

This rule does not impose an information collection requirement for purposes of the Paperwork Reduction Act.

The legal authority for Part 90 is 13 U.S.C. 4 and 181.

List of Subjects in 15 CFR Part 90

Census data, Statistics.

John G. Keane,

Director, Bureau of the Census.

PART 90—[AMENDED]

For the reasons set out in the preamble, 15 CFR Part 90 is amended to read as follows:

1. The legal authority line should be amended to include Section 181 of Title 13 U.S.C. as follows:

Authority: 13 U.S.C. 4 and 181.

§ 90.14 [Amended]

2. Section 90.14 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) The hearing shall be recorded but no written record will be prepared unless the Bureau so orders or unless the challenging locality desires one in whole or part and pays the costs of such a written record, or the apportioned costs should the Bureau also desire a written record.

[FR Doc. 85-10907 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-07-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, and 249

[Release Nos. 33-6578; 34-21982; FR-18; File No. S7-20-84]

Business Combination Transactions; Adoption of Registration Form

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of a new form to be used to register securities under the Securities Act of 1933 in connection with business combination transactions. The form applies the principles of the integrated disclosure system to disclosure in the context of mergers and exchange offers. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a more accessible and meaningful format. In addition, the Commission announces the adoption of corresponding amendments to existing rules and the adoption of an amendment to Form 8-K relating to the time for filing financial statements of acquired businesses and stating the policy implications of delays in filing required information.

DATES: *Effective date:* Form S-4 and these amendments are effective July 1, 1985, for all documents filed on or after that date with respect to transactions begun thereafter.

Compliance date: Registrants are permitted, however, to use Form S-4 immediately and to use the other provisions amended herein in filings made after publication of this release in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, questions relating to this action should be directed to Patricia B. Magee, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; after the effective date, contact Mauri L. Osheroff, (202) 272-2573, Deputy Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. For questions concerning accounting matters, contact Howard P. Hodges, Jr., Chief Accountant, Division of Corporation Finance (202) 272-2553, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Form S-4, as adopted, is available for registration under the Securities Act of 1933 ("Securities Act")[1] of securities issued in: (i) Transactions of the type specified in Rule 145(a);[2] (ii) mergers in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (iii) exchange offers for securities of the issuer or another entity; and (iv) reoffers or resales of securities registered on this Form.[3] Form S-4 employs the principles underlying the integrated disclosure system and, thus, permits incorporation by reference of information from reports filed pursuant to the continuous reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act")[4] to the same extent as is permitted when a company registers securities under the Securities Act in a primary offering not involving a business combination. In addition, the Commission is adopting a number of other amendments in connection with Form S-4, including an amendment to Form 8-K[5] relating to the financial statements of acquired businesses.[6]

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[1] 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), *as amended by* Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982).

[2] 17 CFR 230.145. The transactions specified in Rule 145 include certain reclassifications, mergers, consolidations and transfers of assets.

[3] In a separate release, the Commission also is announcing the adoption of Form F-4 (17 CFR 239.34) to be used by certain foreign private issuers to register securities in the context of the same kind of business combination transactions encompassed by Form S-4. See Release No. 33-6579 (April 23, 1985). Form F-4 is to be used by a foreign private issuer, as that phrase is defined in Rule 405 (17 CFR 230.405) under the Securities Act, eligible to use Form 20-F (17 CFR 249.220f).

[4] 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), *as amended by* Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983).

[5] 17 CFR 249.308.

[6] The Commission today is adopting amendments to: (1) Rule 3-05 of Regulation S-X (17 CFR 210.3-05); (2) Items 502, 512 and 601 of Regulation S-K (17 CFR 229.502, 512, 601); (3) Rules 145, 406, 463, 464

Continued

I. Executive Summary

This rulemaking action is part of the Commission's Proxy Review Program,[7] and represents the culmination of efforts extending over several years to improve disclosure to investors in business combinations.[8] Commentators generally supported the Commission's effort and the Commission is adopting the Form and related amendments substantially as proposed.[9]

This area has been the focus of attention because the documents delivered to security holders in the context of business combinations (mergers and exchange offers) are frequently unwieldy, often 150 or more pages. Improvements to the business combination prospectus in certain limited contexts were made in 1980 with the adoption, on an experimental basis, of Form S–15 [10] as part of the first phase of the Commission's integrated disclosure system. Form S–4, which will replace Forms S–14 [11] and S–15, expands upon the limited scope of Form S–15 in several respects. First, Form S–4 extends the principles underlying the integrated disclosure system to all business combination registration statements, not just those involving relatively small transactions. The Form also extends the principles of integration to the full extent to which they are applied in the context of primary offerings not involving business combinations. Second, Form S–4 builds upon the foundation laid by Form S–15 by applying the same disclosure requirements to exchange offers and mergers.[12] Thus, Form S–4 provides simplified and streamlined disclosure in prospectuses for business combinations whether the transactions are effected by merger or exchange offer.

The integrated disclosure system, on which Form S–4 is based, proceeds from the premise that investors in the primary market need much the same information as investors in the trading market. Integration also specifies the manner in which information should be delivered to investors. Under Forms S–1,[13] S–2 and S–3,[14] transaction oriented information must be presented in the prospectus. Company oriented information, however, may be presented in, delivered with, or incorporated by reference into the prospectus, depending on the extent to which Exchange Act reports containing the information have been disseminated and assimilated in the market.[15] Thus, for registrants qualified to use Form S–3, the most widely followed companies, company specific information that has been included in Exchange Act reports need not be reiterated in the prospectus, but may be incorporated by reference. Registrants qualified to use Form S–2, reporting companies which are less widely followed, must present certain company information, but may do so either by delivering the annual report to security holders or reiterating that level of company information in the prospectus. Finally, S–1 registrants must present all company information in the prospectus.

The prospectus requirements of Form S–4 are divided into four sections. The first section calls for information about the transaction, which will be presented in the prospectus in all cases, and which is designed to make the presentation of the complex transactions that typify business combinations more easily understood by investors. The next two sections specify the information about the businesses involved and prescribe different levels of prospectus presentation and incorporation by reference depending upon which form under the Securities Act the company could use in making a primary offering of its securities not involving a business combination. The last section sets forth the requirements as to voting and management information. All voting information must be presented in the prospectus, while the amount of prospectus presentation for management information, like company information, depends on which form could be used in a primary offering not involving a business combination.

The use of the S–1–2–3 approach in Form S–4 reflects the premise that decisions made in the context of business combination transactions and those made otherwise in the purchase of a security in the primary or trading market are substantially similar. At the same time, the Commission recognizes that there are significant differences. In particular, business combination decisions are not of the same volitional nature as other investment decisions. Moreover, typically mergers may give rise to a change in security ownership as a consequence of inaction.

To address the differences in the nature of the investment decision, special provisions have been included in the Form. First, a specifically tailored item covering risk factors, ratio of

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473, 475a and 477 under the Securities Act (17 CFR 230.145, 406, 463, 464, 473, 475a, 477); (4) Rules 14a–3, 14a–6, 14c–2 and 14c–5 under the Exchange Act (17 CFR 240.14a–3, 14a–6, 14c–2, 14c–5); and (5) Form 8–K under the Exchange Act (17 CFR 249.308).

[7] These amendments are the fifth rulemaking initiative in the Commission's program. The first initiative was the adoption of a new uniform Regulation S–K item relating to the disclosure of certain relationships and transactions involving management (Release No. 33–6441 (December 2, 1982) [47 FR 55601]). The second initiative was the adoption of amendments designed to facilitate shareholder communications (Release No. 34–20021 (July 25, 1983) [48 FR 35082]). The third was the adoption of amendments to the Commission's shareholder proposal rule, Rule 14a–8 (Release No. 34–20091 (August 16, 1983) [48 FR 38218a]). The fourth initiative was the adoption of amendments to the uniform Regulation S–K item governing the disclosure of executive compensation, Item 402 (Release No. 33–6466 (September 23, 1983) [48 FR 44467]).

[8] *See* proposed Form S–14A (Release No. 33–5744 (September 27, 1976) [41 FR 43870]), later withdrawn (Release No. 33–5806 (February 16, 1977) [42 FR 10855]); *See also* Freund and Greene, *Substance Over Form S–14: A Proposal to Reform SEC Regulation of Negotiated Acquisitions*, 36 Bus. Law 1483 (1981), which grew out of work done on a consulting basis with the Division of Corporation Finance.

[9] Release No. 33–6534 (May 9, 1984) [49 FR 20833]. The Commission received 43 comment letters on proposed Form S–4. The comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. *See* File No. S7–20–84.

[10] 17 CFR 239.29. Form S–15 was adopted for the registration of securities in connection with relatively small business combination transactions and requires that the registrant's latest annual report to security holders be delivered to security holders and incorporated by reference into the prospectus (*i.e.*, it provides the same level of disclosure as does Form S–2 under the Securities Act (17 CFR 239.12)). *See* Release No. 33–6232 (September 2, 1980) [45 FR 63647], adopting Form S–15.

[11] 17 CFR 239.23. Form S–14 will be retained for use by registered investment companies and business development companies pending the adoption of Form N–14. *See* Section H.2. *infra*, "New Investment Company Merger Proxy Form."

[12] Prior to the adoption of Form S–15 in 1980, exchange offers could be registered on Forms S–1, S–7 or S–11 (17 CFR 239.18). In 1982, the Commission adopted the final phase of the integrated disclosure system and determined generally that Form S–2, which replaced Form S–7 as the middle-tier form, and Form S–3 would not be available for registration of exchange offers pending this business combinations project. Forms S–1 and F–1 (17 CFR 239.31) currently are, and will continue to be, available for registration of securities in the context of exchange offers. *See* fn. 24, *infra*.

[13] 17 CFR 239.11.

[14] 17 CFR 239.13.

[15] Extending the principles of integration to business combinations is, in part, predicated on the fact that annual reports are disseminated to security holders. These annual reports contain the basic information package (financial statements, management's discussion and analysis, selected financial data and market data) adopted in 1980 as the foundation for the integrated disclosure system. *See* Release No. 33–6321 (September 2, 1980). This company information is the same kind of information that would be required to be included in the prospectus. Because it already has been disseminated to security holders, it need not be repeated in the business combination prospectus involving S–3 companies. The Commission has not sanctioned in this proceeding any revision of the basic information package, such as summary annual reports to security holders.

earnings to fixed charges, certain per share data and other information must be presented in the prospectus regardless of the level of disclosure available to the companies involved. This item, as adopted, has been expanded to reflect commentators' suggestions that the item include: (1) Certain additional financial data; and (2) information about regulatory approvals.

While the item highlights certain information discussed more fully elsewhere in the prospectus, or in documents incorporated by reference therein, it is not intended to be a summary of all material information concerning the transaction and the parties thereto. In the case of S–3 companies, where company and management information, including historical financial statements, is not presented in the prospectus, such information will have been furnished to security holders and widely disseminated in the market by means of the company's annual report to security holders. Therefore, this information need not be reiterated in the business combination prospectus. As to other companies, the historical financial statements and other company information will be presented in the prospectus.

Second, the Form establishes a minimum time period if incorporation by reference is used. The time period is designed to address the need for documents incorporated by reference to be delivered to security holders on a timely basis. The proposed Form would have required that, where incorporation by reference is used to take the place of presentation in the delivered document, the prospectus must either: (1) Be sent at least twenty business days in advance of the date of the meeting of security holders or the date of the final investment decision; or (2) be accompanied by the documents from which information is incorporated. The proposal also would have provided that where a registrant wishes to proceed faster than the twenty day time period, it could do so by delivering to security holders, along with the prospectus, all documents incorporated by reference therein.

Commentators generally supported the concept of the twenty business day period and the adopted Form requires the prospectus to be sent prior to the proposed twenty business day period where incorporation by reference is used. Concern was expressed, however, that the alternative of delivering documents incorporated by reference could result in a cumbersome and unreadable prospectus because of the potential multiplicity of documents delivered. Accordingly, Form S–4 as adopted, provides a different alternative. Registrants still may proceed faster than the twenty business day period,[16] but if they wish to do so, they must furnish the required information to security holders at the S–1 level. The same quantum of information will be delivered as was provided in the proposal's alternative, but the S–1 alternative provides a more readable format.[17] In addition, the Commission has added a legend to encourage security holders to request the incorporated documents promptly and an undertaking[18] to require the registrant to respond within one business day by first class mail or other equally prompt means.

In addition to these disclosure and timing measures, the Commission directed particular commentator attention to whether other possible alternatives, involving greater degrees of delivery of information, would be appropriate in view of the nature of the investment decision involved in business combination transactions. Commentators rejected the alternatives and favored the Form S–4 approach.

The one respect in which some commentators expressed reservations about the full streamlining afforded by the proposed Form was in the area of contested exchange offers. More than half of the commentators who directed specific comments to exchange offers, however, supported the S–4 approach. Moreover, some concerns were directed, at least in part, to the timing aspects of exchange offers which were not addressed in proposed Form S–4.

Form S–4 implements Recommendation Eleven of the Commission's Advisory Committee on Tender Offers ("Advisory Committee"),[19] one of the recommendations intended to: (1) Lessen the regulatory disincentives to using securities as consideration in a tender offer; and (2) promote the equivalency of cash and exchange offers. Recommendation Eleven addresses disclosure in exchange offers, recommending that the approach of the integrated disclosure system be used for exchange offers. As noted in the proposing release, the inclusion of exchange offers in Form S–4 does not affect the timetable for exchange offers. Timing for exchange offers is the subject of Recommendation Twelve which would permit an exchange offer to commence on the date the preliminary registration statement is filed rather than the effective date of the registration statement. If adopted, Recommendation Twelve would put exchange offers on the same timetable as cash offers.[20] The Commission wishes to emphasize that Recommendation Twelve is not being implemented with adoption of Form S–4. Moreover, the Form as adopted contains an instruction and an undertaking that ensure Form S–4 cannot be used for this purpose.[21]

The Commission has adopted as proposed the modification of the current procedures for filing reports on Form 8–K in the context of acquisitions. The proposing release also contained policy statements about the implications under the Securities Act and the Exchange Act of a delay in filing or failure to file required financial statements for acquired businesses. In response to commentator concerns and suggestions, these policy statements have been revised in some respects, and certain of the revised statements have been included in the amended Form 8–K.[22]

II. Synopsis of the Form

The following synopsis is intended to assist interested parties in their understanding of the Form and related amendments. Attention is directed to the text of the Form and amendments for a more complete understanding of this rulemaking action, including certain technical and clarifying changes not described below.

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[16] Of course, Form S–4 makes clear that for exchange offers, there must be compliance with the Williams Act [sections 13(d)–(f) and 14(d)–(g) of the Exchange Act, 15 U.S.C. sections 78m(d)–(f), 78n(d)–(g)], and the regulations thereunder. With respect to mergers, the Commission notes that any accelerated timing must comply with applicable state law. In a recent case, the Delaware Supreme Court stated that ". . . in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate." *Smith* v. *Van Gorkom*, No. 255, 1982, slip op. at 74 (Del. Jan. 29, 1985) *opinion revised*, March 14, 1985. In this regard, the language in the proposed General Instruction A.2. relating to compliance with applicable federal or state law has been deleted as unnecessary.

[17] This approach is consistent with that of Form S–15, which allowed the S–2 level of disclosure, but provided for 20 day prior delivery.

[18] See Item 22(b) of Form S–4.

[19] *Advisory Committee on Tender Offers Report on Recommendations* ("Report") (July, 1983). The Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission legislative and/or regulatory changes the Committee considered appropriate or necessary. *See* Release No. 34–19528 (February 25, 1983) [48 FR 9111].

[20] *See* Release No. 33–6534 (May 9, 1984) [49 FR 20833, 20834].

[21] *See* General Instruction H and Item 22(c) of the Form.

[22] *See* Instructions to revised Item 7(a)(4) of Form 8–K.

A. Availability and Use of Form

Form S–4 is available for the registration of securities in connection with Rule 145 transactions as well as other mergers,[23] exchange offers and reoffers or resales of securities registered on the Form.[24] In addition, registrants that choose to use the incorporation by reference feature of the Form must send the prospectus twenty business days prior to the date of the meeting of security holders or, where no such meeting is held, the date the investment decision would become final.[25] For example, in a consent solicitation the prospectus would have to be disseminated at least twenty business days before the consents could be used to effect the proposal.

B. Business Combinations Involving Entities Required To Use Form S–11

Consistent with specific requirements in Form S–11 and administrative practice under Form S–14, special disclosure provisions apply to business combination transactions involving certain real estate entities, described in Instruction A of Form S–11.[26] Form S–4 is available to register securities in connection with busines combinations involving such entities and the special disclosure provisions that apply have been adopted as proposed.[27]

C. Relationship with Exchange Act Rules

The Form S–4 prospectus may serve as the proxy or information statement used in connection with the transaction. It would be deemed to meet the informational and filing requirements of the proxy or information statement rules under section 14 of the Exchange Act and Regulations 14A [28] and 14C [29] thereunder, where applicable to the transaction. All other provisions of those regulations also apply.

In addition, General Instruction E.3. of the Form provides that if the transaction in which the securities being registered are to be issued is subject to sections 13(e), 14(d) or 14(e) of the Exchange Act, the disclosure and other provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of Form S–4. Thus, the provision calling for the more extensive disclosure will prevail, as will the time periods and other substantive provisions of the Williams Act and the Commission's going private and tender offer rules and schedules thereunder.[30]

D. Transactions Involving Foreign Companies

As noted above, the Commission also has adopted new Form F–4,[31] which may be used by foreign private companies when they are involved in business combination transactions. General Instruction F of Form S–4 describes which of the new Forms may be used when a foreign private issuer is one of the businesses involved. Form F–4 contains a similar instruction.

E. Automatic Effectiveness of Certain Registration Statements

General Instruction G provides for automatic effectiveness of registration statements filed for the sole purpose[32] of the formation of a bank or savings and loan holding company [33] where the provisions of Staff Accounting Bulletin 50 ("SAB 50") are satisfied.[34] Under this provision, original registration statements will become effective automatically on the twentieth day after filing, and post-effective amendments will become effective on filing.[35] In response to commentators' suggestions that the Instruction specify the conditions and provisions of SAB 50, rather than include a reference to the SAB, the Instruction has been adopted with these provisions set forth specifically therein for clarity and ease of reference. The Instruction only refers

[23] Merger transactions to which General Instruction A.1.(2) of Form S–4 would apply include short form mergers pursuant to state corporation laws similar to Section 253 of the Delaware General Corporation Law (the "DGCL") and merger by consent provisions like those found in section 228 of the DGCL. The former provision authorizes a parent corporation owning at least 90 percent of a subsidiary to merge that subsidiary into the parent pursuant to the unilateral action of the board of directors of the parent with the minority holders not entitled to vote or give an authorization or consent. The latter provision authorizes the taking of corporate action without a meeting, without prior notice and without a vote, if consent in writing setting forth the action is signed by the holders of outstanding stock having not less than the minimum number of votes necessary to authorize or take such action at a meeting. A clarifying amendment has been made to General Instruction A.1.(2) of the Form S–4.

[24] Form S–1 will remain available for mergers and exchange offers. For example, registrants may choose to use Form S–1 and to have the company being acquired prepare its own proxy statement so that the company being acquired will assume liability for the information in its own proxy statement. Of course, Forms S–2 and S–3, which are not available for business combination transactions, will remain unavailable for such tranactions because registrants qualifying for use of those forms may use the respective forms' disclosure approaches through the use of Form S–4. Form S–4 also will be availabel for registration of securities in connection with issuer exchange offers.

[25] Form S–4 also contains two related provisions: (1) The requirement in Item 2 of a legend in the prospectus to inform investors that they need to make prompt requests for documents incorporated by reference; and

(2) A requirement in Item 22 for an undertaking by registrants to respond to requests for documents within one business day and to furnish the requested documents by first class mail or other equally prompt means. Where the registration statement incorporates by reference documents at the S–3 level, a request for such documents would include documents filed subsequent to the effective date of the registration statement up to the date of the response to the request. The undertaking would not require delivery of incorporated documents filed subsequent to such request.

[26] General Instruction A of Form S–11 provides that the Form shall be used to register securities issued by: (i) A real estate investment trust, as defined in section 856 of the Internal Revenue Code; or (ii) other issuers whose businesses are primarily that of acquiring and holding for investment real estate or interests in real estate or interests in other issuers whose businesses are primarily that of acquiring and holding real estate or interests in real estate for investment.

[27] *See* General Instruction B.2. with respect to the acquiring entity and General Instruction C.2. concerning the entity being acquired. *See also* Release No. 33–6534 (May 9, 1984) [49 FR 20833, 20835].

[28] 17 CFR 240.14a–1 to 14b–1.

[29] 17 CFR 240.14c–1 to 14c–101.

[30] For example, if the transaction is an exchange offer subject to Regulation 14D, the registrant is required to disseminate material changes pursuant to Rule 14d–4(c) (17 CFR 240.14d–4(c)). The relationship between the undertaking to deliver incorporated documents (including those filed subsequent to effectiveness if the S–3 level is elected) and Rule 14d–4(c) is that, if a registrant has delivered requested documents to security holders and those documents reflect the material change, this would constitute compliance with Rule 14d–4(c). If, however, the documents do not reflect the material change or have not been sent to security holders, then the registrant still must comply with Rule 14d–4(c). Similarly, if the transaction is an exchange offer where the vote passes with the tender of shares, then the proxy regulations also will apply to the transaction. The Form S–4 filing may be used to satisfy the Schedule 14D–1 (Tender Offer Statement, 17 CFR 240.14d–100) and, if the parties so choose, the subject company's Schedule 14D–9 (Tender Offer Solicitation/Recommendation Statement, 17 CFR 240.14d–101) filing obligation.

[31] SEC Release No. 33–6579 (April 23, 1985) [—— FR ——].

[32] This Instruction will not apply if there are any other proposals, e.g., antitakeover amendments to a corporate charter.

[33] To date, securities issued in connection with the conversion of banks to bank holding companies and savings and loan associations to savings and loan holding companies have been registered on Form S–1 or S–14, depending upon the nature of the transaction. Legislation that would have exempted such transactions from registration under the Securities Act where only a change in form is contemplated and certain other conditions are satisfied passed the Senate in the 98th Congress as S.2851, 98th Cong., 2d Sess. (1984). No such legislation passed the House of Representatives, however, and the exemptive provision, along with other features of the Senate bill, has not been reintroduced in the 99th Congress.

[34] SAB 50 reflects the staff's position regarding the financial statement requirements in filings involving the formation of one-bank holding companies, Release SAB–50 (March 3, 1983) [48 FR 10043].

[35] As noted in the proposing release, this provision is similar to the automatic effectiveness provisions of Form S–8 (17 CFR 239.16b) and for certain filings on Form S–3 and F–3. In addition, to assist the proper processing of such filings, the Form includes a box on the cover page indicating the registration in connection with the formation of a holding company and compliance with General Instruction G.

to those provisions in SAB 50 which are conditions to the use of automatic effectiveness. Registrants are directed to SAB 50 for further guidance concerning financial statement provisions.[36] The Commission believes that the automatic effectiveness of these registration statements will reduce administrative burdens and provide time and cost savings to registrants. In addition, the Commission, in this release, is adopting corresponding amendments to Rules 406, 464, 473, 475a, and 477 to reflect the automatic effectiveness of such registration statements.

F. Rule 415

Registration statements on Form S–4, because they relate to offerings which are continuous over a period of time, are subject to Rule 415(a)(1)(viii) (business combination transactions) and, if they are to be used for reoffers or resales, to Rule 415(a)(1)(i) (secondary offerings).[37]

General Instruction H has been added to address situations where the registrant uses Form S–4 for an offering of securities in connection with a business combination transaction which will be effected on a delayed basis. In that case, the registrant must furnish information concerning the type of contemplated transaction(s) and the company(ies) being acquired as of the date of initial effectiveness only to the extent practicable. The required information about the specific transaction(s) and the particular company(ies) being acquired generally must be provided by post-effective amendment. For example, where an acquisition will be effected in a multi-step transaction in which there is an exchange offer followed by a merger, the initial registration statement would contain a prospectus that includes information about the exchange offer.[38] A post-effective amendment would have to be filed to provide information with respect to the second step merger.

In order to implement the content of General Instruction H, an undertaking has been added to Item 22 of the Form. This undertaking, to file post-effective amendments with respect to transactions contemplated after effectiveness, is required in addition to the undertakings required by Item 512(a) of Regulation S–K.[39] The new undertaking will ensure that Rule 415 cannot be used to implement Recommendation Twelve of the Advisory Committee's recommendations,[40] by using a prospectus supplement to provide for the immediate commencement of an exchange offer.

On the other hand, if the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act would itself qualify for an exemption from section 5 of the Act, but for the existence of other similar (prior or subsequent) transactions, then a prospectus supplement may be used to provide information necessary in connection with such transaction.[41] General Instruction H codifies this administrative practice with respect to transactions the securities for which currently are registered on Form S–1 or S–14.

G. Structure of the Form

See, e.g., (Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351 (available January 17, 1973).

The two part structure of Form S–4, separating the information which must be included in the prospectus (Part I) and that which need not (Part II), is the same as other Securities Act forms. Part I of the Form is divided into four separate sections in order to set forth clearly the requirements relating to the transaction, the companies involved, voting and management information.

1. Information Required in the Prospectus—Part I

a. *Information about the Transaction—Section A.* Section A calls for information about the transaction. This information must be presented in the prospectus instead of being incorporated by reference. The items in section A include: Items 1 and 2, information called for by Items 501 [42] and 502 [43] of Regulation S–K; Item 3, risk factors, ratio of earnings to fixed charges and other information; Item 4, terms of the transaction; Item 5, pro forma financial information; Item 6, material contacts between the companies; Item 7, additional information related to resales; and Items 8 and 9, information called for by Items 509 [44] and 510 [45] of Regulation S–K. These items are adopted substantially as proposed; there follows a discussion of areas where changes have been made from the proposal, or that otherwise are highlighted.

(1) *Risk Factors, Ratio of Earnings to Fixed Charges and Other Information—Item 3.*—Item 3 is adopted with modifications and additional items that reflect commentators' suggestions. First, the Item has been redesignated "Risk Factors, Ratio of Earnings to Fixed Charges and Other Information," to clarify that the information set forth in this part of the prospectus is not a summary of all material information concerning the transaction. The Item requires the registrant to furnish information required by Item 503 of Regulation S–K; [46] the name and address of the subject entities; a brief description of business and properties; a brief description of the transaction; certain comparative per share data; a statement concerning dissenters' appraisal rights; a statement comparing the percentage of outstanding voting shares held by directors, officers and their affiliates; the vote required for approval; and a brief statement regarding the tax consequences of the proposed transaction.[47]

Based upon commentators' suggestions, Item 3 has been revised further to require (1) a statement as to whether any federal or state regulatory requirements must be complied with or approvals must be obtained in connection with the transaction, and if so, the status of such compliance or

[36] Of course, the references to Form S–14 in SAB 50 should be construed to be references to Form S–4 after its adoption.

[37] 17 CFR 230.415(a)(1) (i) and (viii). In view of this position, it was not necessary to include a Rule 415 cover page box in Form S–4 as adopted.

[38] Where such a second step in a multi-step transaction becomes probable, however, pro forma financial information is required at this point as to the effects of both the exchange offer and the second step merger. *See* Financial Reporting Release 2, Release No. 33–6413 (June 24, 1982) [47 FR 29832].

[39] 17 CFR 229.512(a). Item 512(a) requires the registrant, in an offering of securities pursuant to Rule 415 to undertake to update the prospectus by post-effective amendment to reflect: (1) Any prospectus required by section 10(a)(3) of the Securities Act; (2) facts or events arising after the effective date of the registration statement which constitute a fundamental change; and (3) any material information with respect to the plan of distribution not disclosed previously in the registration statement or any material change to such information in the registration statement. The Item also requires an undertaking to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

[40] *See* discussion at page 13, *infra*.

[41] *See, e.g.*, (Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351 (available January 17, 1973).

[42] 17 CFR 229.501 (forepart of registration statement and outside front cover page of prospectus).

[43] 17 CFR 229.502 (inside front and outside back cover page of prospectus).

[44] 17 CFR 229.509 (interests of named experts and counsel).

[45] 17 CFR 229.510 (disclosure of Commission position on indemnification).

[46] 17 CFR 229.503 (summary information, risk factors and ratio of earnings to fixed charges).

[47] In view of the complexity of the tax consequences of certain business combination transactions, revised Item 3(j) permits registrants to provide, where appropriate, only a cross reference to the information furnished pursuant to Item 4 of the Form.

approvals; and (2) a requirement to furnish the information required by Item 301 of Regulation S–K [48] (condensed financial data for five year trend information) for (1) the registrant; (2) the company being acquired; and (3) if material with respect to the registrant, pro forma data giving effect to the transaction.[49] As a result of this change, the time period requirements for the comparative per share data and equivalent per share data have been revised to reflect that the Item 301 time periods provide the basis for such comparative data.

(2) *Terms of the Transaction—Item 4.*—Item 4 calls for a description of the terms of the transaction, including information about the acquisition agreement, reasons for and consequences of the transaction, description of securities and differences in the rights of security holders. This Item, as adopted, reflects several changes from the proposal in response to commentator suggestions.

Proposed Form S–4 allowed registrants eligible to use Form S–3 to incorporate by reference the description of the securities being issued in the transaction if the same securities are registered under the Exchange Act. The adopted Item has changed the conditions under which the description of securities may be incorporated by reference to require not only that securities of the same class as those being offered must be registered under section 12 of the Exchange Act, but also that these securities must be listed for trading or admitted to unlisted trading privileges on a national exchange, or be securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association. This change responds to commentators' concerns by ensuring that security holders receive the description of any class of securities that previously has not been trading.

The proposed Form would have required disclosure of the effect of the transaction on the registrant, the company being acquired and the existing security holders of both. This requirement has been deleted because commentators believed disclosure of the effect of the transaction would be duplicative of the requirement in Item 4(a)(2) for disclosure of the reasons for the transaction. For example, if the registrant plans to dispose of substantial components or assets of the company being acquired, disclosure of such plans would be called for pursuant to Item 4(a)(2).

Item 4 also has been revised to codify existing administrative practice in the area of investment banking and other opinions. The Item requires that if the registrant or the company being acquired has obtained a report, opinion or appraisal from an outside party as to the transaction and refers to such opinion in the prospectus, then the information called for by Item 9(b)(1) of Schedule 13E–3 [50] must be furnished. The Item does not require that such a report be obtained or that there be an affirmative statement as to whether one was obtained. The Item applies only where a report has been obtained and reference to it is made in the prospectus.

In addition, pursuant to commentators' suggestions, a requirement to furnish a brief statement as to the accounting treatment of the transaction has been added. This item will elicit disclosure as to whether the proposed acquisition will be accounted for as a purchase transaction or as a pooling of interests transaction.

Finally, Item 4(b) of the proposed Form would have required incorporation by reference of the acquisition agreement into the prospectus and an undertaking that the agreement be furnished, without charge, by first class mail or other equally prompt means, to security holders that request it. In this regard, the Commission solicited comment as to whether it should: (1) Give guidance as to which of the provisions of the acquisition agreement registrants should discuss pursuant to Item 4(a) (1); and (2) in keeping with its goal of streamlining disclosure, take further steps to discourage delivery of the acquisition agreement. Commentators generally supported the incorporation by reference requirement, but indicated that timely delivery of the acquisition agreement to security holders that request it would be essential to the adequacy of the requirement. Commentators did not believe any further steps would be appropriate in this area. The Commission agrees and has adopted Item 4(b) with the one modification that the undertaking to furnish the agreement has been deleted because it is duplicative of the new undertaking added as Item 22(b).[51]

(3) *Pro Forma Financial Information—Item 5.*—This Item has been adopted as proposed. The pro forma financial information relating to the transaction pursuant to which a Form S–4 is filed, like other transaction information, must be presented in the prospectus and may not be incorporated by reference. However, pro forma information relating to other business combinations besides the transaction pursuant to which this registration statement is filed, is treated like company information and, therefore, may be presented in the prospectus or incorporated by reference therein.

(4) *Material Contacts Between Companies—Item 6.*—Item 6 of Form S–4, which has been adopted as proposed, calls for information relating to any past, present or proposed material contracts, negotiations, transactions or similar contacts between the registrant and the company being acquired. The Item is designed to elicit information about: (1) Possible conflicts of interest and (2) facts relating to transactions such as pre-takeover transactions or purchases by the registrant of significant blocks of the securities of the company being acquired.

b. *Information About the Registrant—Section B.* (1) *Reporting Companies.*—If a registrant is subject to either section 13(a) or 15(d) of the Exchange Act, the information it would have to present in the prospectus about itself is the same as that required by Form S–1, S–2 or S–3 [52] if it were making a primary offering

[48] 17 CFR 229.301 (selected financial data).

[49] Where S–2 or S–1 companies are involved, this information already is required to be presented pursuant to other items of the Form.

[50] 17 CFR 240.13e–100. Of course, the person rendering such opinion would be an expert within the meaning of section 7 of the Securities Act and, accordingly, would be required to furnish the required consent. Moreover, a requirement to furnish the report, opinion or appraisal as an exhibit to the registration statement, if it has been referenced in the prospectus, has been added in Item 21(c) of Form S–4.

[51] *See* fn. 25, *infra.*

[52] Application of the Form S–3 level includes the forward incorporation feature of that Form, *i.e.*, the incorporation by reference of subsequently filed Exchange Act reports, including all reports filed subsequent to the effectiveness of the registration statement and prior to the termination of the offering. As the Commission noted in proposing Form S–3, however:

Despite the fact that subsequently filed periodic reports under the Exchange Act are incorporated by reference into a Form S–3 prospectus, registrants should be aware that they may be required to amend the prospectus if the information actually presented therein has become materially false and misleading by reason of subsequent events that are reported in the incorporated Exchange Act documents.

See Release No. 33–6331 (August 6, 1981) [46 FR 41902] at fn. 64. Form S–4 registrants who elect the S–3 level for either entity similarly should be mindful with respect to information actually presented in the prospectus delivered in connection with the transaction. *See also* Rule 14a–9 (17 CFR 240.14a–9) if applicable.

of securities not involving a business combination.[53] Registrants eligible to use Form S-2 or S-3 are not required to present information at the most streamlined level available, but may elect instead to comply with provisions of the Form calling for greater prospectus presentation. General Instruction B explains the operation of the three-tier system in the context of registration on Form S-4 and, as adopted, reflects certain clarifying language changes.

(2) *Non-Reporting Companies.*—For registrants that are not subject to the reporting requirements of the Exchange Act, Form S-4 requires disclosure of company information at the level prescribed by Form S-1. The majority of the commentators supported this approach and these requirements have been adopted as proposed.

In the proposing release, the Commission also sought comment as to whether the disclosure level of Form S-18 [54] should be made available where the company(ies) involved could use that Form for an initial public offering, *i.e.*, where the company is non-public and the value of the securities being registered does not exceed $7.5 million. While the commentators who addressed this point supported the concept, they also questioned its utility in the business combination context in light of the dollar amount limitation. Moreover, the Form S-4 financial disclosure requirements discussed below with respect to non-reporting companies being acquired are less burdersome for non-reporting companies being acquired than are those of Form S-18, which requires a two year audit. Based upon the questionable utility of the S-18 approach and the complexity its implementation would add to Form S-4, with little concomitant benefit, the Commission has determined not to pursue this approach.

c. *Information About the Company Being Acquired—Section C.* (1) *Reporting Companies.*—Form S-4 generally provides for the same prospectus presentation about a reporting company being acquired that would be required by Form S-1, S-2 or S-3 were such company making a primary offering of securities not involving a business combination. Thus, Form S-4 for the most part requires registrants to provide information about the company being acquired as if that company were the registrant.

(2) *Non-Reporting Companies.*—Form S-4 allows registrants to elect to provide information about non-reporting companies being acquired either at the S-1 level or at a level that is the same as that required under Form S-15 for non-reporting companies being acquired. With respect to financial statement requirements, this approach reflects a change from the proposal, which is discussed below. The Commission believes that these revised requirements strike a more appropriate balance between the cost of collecting and processing information not previously developed, and the investor's need for information. In addition, the definition of a non-reporting company being acquired has been modified, in Item 17(b), to include, in addition to companies not subject to the reporting requirements of either sections 13(a) or 15(d) of the Exchange Act, a public company which, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 [55] or Rule 14c-3 [56] for its latest fiscal year.

Proposed Form S-4 would have required non-reporting companies being acquired to provide audited financial statements for the periods required to be presented by Rule 3-05 of Regulation S-X.[57] In addition, the proposed Form carried over the provisions of Item 15 of Schedule 14A [58] that such financial statements need be certified [59] only to the extent practicable, but that reoffers to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) would be prohibited until the required certified statements are provided.

Pursuant to commentator suggestion that some minimum level of disclosure should be required in the Form as to both entities, the financial statement requirements of Form S-4 with respect to non-reporting companies being acquired have been changed to incorporate the current requirements of Form S-15. Thus, Item 17(b)(7) provides that a non-reporting company being acquired must provide three-year financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a-3 (b)(1) and (b)(2) or Rule 14c-3 (b)(1) or (b)(2), had the company being acquired been required to prepare such report. The balance sheet for the year preceding the latest full fiscal year and the income statements for the two preceding years, however, need not be audited if they have previously not been audited. In addition, the quarterly financial and other information that would have been furnished had the company being acquired been required to file Part I of Form 10-Q [60] for the most recent quarter prior to the time of effectiveness of the registration statement must be furnished.

d. *Voting and Management Information—Section D.* (1) *Voting Information.*—If a proxy, consent [61] or authorization is to be solicited, Form S-4 requires registrants to present in the prospectus information concerning (1) the vote needed for approval, (2) dissenters' rights of appraisal, (3) revocability of proxies, (4) interest of certain persons in the transaction, (5) persons making the solicitation and (6) the registrant's relationship with independent public accountants. In the absence of a solicitation, the Form requires prospectus presentation of information about (1) the date of the shareholder meeting, (2) the vote required for approval, (3) dissenters' rights of appraisal, (4) the registrant's relationship with independent public accountants and (5) a statement that proxies, consents or authorizations are not being solicited. These requirements have been adopted as proposed, except that Item 19 has been revised to make clear which provisions thereof are not applicable in the case of exchange offers.

(2) *Management Information.*—Whether or not proxies are to be solicited, Form S-4 requires information concerning voting securities and the principal holders of such shares[62] with

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[53] The language in the introduction to Item 11 of Form S-2 and Item 12(a)(3) of Form S-4, which calls for information prescribed by Article 11 [17 CFR 210.11-01 *et seq.*] and Rule 3-05 of Regulation S-X "if not reflected in the registrant's latest annual report to security holders . . ." is not intended to suggest that the annual report to security holders prescribes the inclusion of such information.

[54] 17 CFR 239.28.

[55] 17 CFR 240.14a-3(b) sets forth the information required to be included in the annual report to security holders which must accompany or precede the annual proxy materials.

[56] 17 CFR 240.14c-3(a) sets forth the information to be included in the annual report to security holders which must accompany or precede the annual information statement.

[57] Generally, Rule 3-05 requires audited financial statements for one, two or three years regarding a business that is being acquired depending upon the relative size of the acquisition.

[58] 17 CFR 240.14a-101.

[59] In the revised Form S-4 requirements, the word "certified" has been changed to "audited" for consistency.

[60] 17 CFR 249.308a.

[61] In a consent solicitation, the 20 business day period discussed, *infra*, operates to require the registrant to send the prospectus to security holders 20 business days in advance of the date on which such consents may be used to effect the transaction, rather than 20 days in advance of the date on which the requisite consents may be received by the soliciting party. This procedure considers the possibility of revocation of consents and establishes a fixed date for calculation of the 20 business day period in this context.

[62] Item 5 of Schedule 14A [17 CFR 240.14a-101].

respect to all directors and executive officers of both entities and, with regard to the directors and executive officers of the surviving or acquiring company, information about directors and executive officers,[63] certain relationships and related transactions,[64] and executive compensation.[65] The Form permits incorporation by reference of management information to the same extent as would be permitted in a primary offering not involving a business combination under Forms S-1, S-2, and S-3.

2. Information Not Required in the Prospectus—Part II

Part II of Form S-4 prescribes information called for by: (1) Item 702 of Regulation S-K[66] indemnification of directors and officers; (2) Item 601 of Regulation S-K, exhibits; and (3) Item 512 of Regulation S-K, undertakings.

This information would be included in the registration statement, but could be omitted from the prospectus. These requirements have been adopted as proposed, with the addition of the two new undertakings (compliance with requests for information incorporated by reference and post-effective amendments for delayed business combinations) and the new exhibit requirement for reports, opinions or appraisals materially related to the transaction that are referenced in the prospectus.

H. Other Amendments

1. Corresponding Amendments

a. The Commission also has adopted corresponding amendments to Rule 3-05 of Regulation S-X, Items 502,[67] 512 and 601 of Regulation S-K, Rules 406, 463, 464, 473, 475a and 477 under the Securities Act and Rules 14a-3, 14a-6, 14c-2 and 14c-5 under the Exchange Act. These amendments are necessitated by rescission of Form S-15 and its replacement with Forms S-4 and F-4. The changes delete references to Form S-15 and, where appropriate, replace them with references to Form S-4 or F-4. The Commission notes that although Form F-4 is not being published in this release, the technical amendments necessitated by its adoption are included in this release to avoid unnecessary duplication. The amendment to Rule 145(a)(2) to codify the staff position that the Rule's change in domicile exception does not apply to a change in national jurisdiction is included in the F-4 release, however, because it applies in the foreign context.

2. New Investment Company Merger Proxy Form

The Commission notes that registered investment companies and business development companies, as defined in section 2(a)(48) of the Investment Company Act of 1940[68] currently may register securities issued in connection with business combinations on Form S-14. Form S-4 is not available for the registration of securities in connection with a business combination where the registrant is a registered investment company or a business development company. The Commission has proposed a new merger proxy form, Form N-14,[69] that, if adopted, will be available for use by such companies and will replace Form S-14 for these companies. Form S-14 will be retained only for these companies and business development companies on a temporary basis until the new form is adopted, at which time Form S-14 will be rescinded.

3. Item 502 of Regulation S-K

In addition to the corresponding amendments noted above, a clarifying amendment to Item 502 of Regulation S-K also has been adopted. The amendment clarifies that the undertaking required of registrants to send documents that are incorporated and not delivered extends to beneficial owners.

4. Rule 145—Preliminary Note

The Commission has eliminated from the preliminary note to Rule 145 under the Securities Act certain details concerning the history and application of Rule 133. Rule 133, which contained the Commission's previously existing "no-sale" theory, was rescinded effective January 1, 1973 following the adoption of Rule 145.[70] The portions of the preliminary note the Commission has deleted pertain to the applicability of Rule 133 and are no longer relevant.

5. Form 8-K Reports of Acquisitions

The Commission has adopted as proposed a modification of the current procedures for filing reports on Form 8-K in the context of acquisitions. Currently, a reporting registrant must file a report on Form 8-K within fifteen days after it has made an acquisition. In that report, the registrant must provide a description of the acquisition pursuant to Item 2, and the financial statements and pro forma financial information prescribed by Rule 3-05 and Article 11 of Regulation S-X pursuant to Item 7. As amended, Item 7 of Form 8-K provides an extension of up to 60 days, from the date the filing initially is due, for filing the financial statements and pro forma financial information regarding an acquired business. The extension is available where: (1) The provision of such information within fifteen days is impracticable; (2) the registrant so states in its filing on Form 8-K and states the date such financial statements are expected to be filed by an amendment; and (3) the registrant provides such financial information as soon as practicable within the 60 day period. Commentators generally supported the proposed amendment.

Under the amended procedure, registrants, upon notice in the initial Form 8-K report filed in connection with the acquisition, would have up to 60 additional days[71] in which to provide Item 7 financial information where the provision of the required audited financial statements and pro forma financial information within fifteen days would be impracticable. In such an instance, the registrant would have to provide within the regular fifteen day deadline as much of the required financial statements as then were available, including where appropriate, unaudited financial statements.

The proposing release also contained policy statements concerning the implications under the Securities Act and the Exchange Act of a delay in filing or failure to file required financial statements for acquired businesses. In response to commentator concerns and suggestions, these policy statements have been revised in some respects. In addition, new instructions have been added to revised Item 7(a)(4) in order to set forth certain of the revised policies in the Form itself.

During the pendency of the extension, registrants would be deemed current for purposes of their reporting requirements under the Exchange Act. With respect to filings under the Securities Act, registration statements and post-effective amendments to effective registration statements would not be declared effective. In addition, offers

[63] Item 401 of Regulation S-K (17 CFR 229.401).
[64] Item 404 of Regulation S-K (17 CFR 229.404).
[65] Item 402 of Regulation S-K (17 CFR 229.402).
[66] 17 CFR 229.702.
[67] The Commission also has made clarifying technical changes to the Item 502 references to incorporated material.

[68] 15 U.S.C. 80a-2(a)(48), *as amended by*, Pub. L. 96-477 1980.
[69] Release No. 33-6570 (March 18, 1985) [50 FR 11725].
[70] *See* Release No. 33-5316 [October 6, 1972] [37 FR 23631].

[71] Because the number of days (60) available under the extension runs from the date the filing on Form 8-K is due (fifteen days subsequent to the acquisition), rather than the date of the acquisition, the extension provides a maximum of 75 days from the acquisition date for the registrant to furnish the required information.

and sales should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D [72] where any purchaser is not an accredited investor under Rule 501(a) of that Regulation, until the required audited financial statements are furnished. This prohibition, however, does not affect offerings or sales, made: (1) Upon the conversion of outstanding convertible securities, or the exercise of outstanding warrants or rights; (2) pursuant to dividend or interest reinvestment plans on Form S–3; (3) pursuant to employee benefit plans on Form S–8; (4) in transactions involving secondary offerings; or (5) in reofferings or resales of securities pursuant to Rule 144. [73] These positions respecting the pendency of the 60 day extension are described in new Instruction 1 to Item 7(a)(4) and reflect changes made: (1) To clarify the status of effective shelf registration statements; (2) to rescind the previous position that affiliates of the registrant would not be permitted to resell securities in reliance on Rule 144; [74] and (3) to explain the implications of an extension under Regulation D.

As noted in the proposing release, no further extensions of the filing period will be available. A few commentators indicated that this policy should be modified to allow requests for further extensions of time in the most unusual circumstances, such as in the event that unforeseeable delays are encountered during the course of an audit.

The Commission believes, however, that the purposes of the Exchange Act, "to insure the maintenance of fair and honest markets in securities transactions * * *", [75] may be better served without a further extension procedure. [76] Moreover, it should be noted that the notification procedure and the availability of the 60 day extension should not be an invitation to non-timely filing of the required financial information.

Finally, the proposing release stated that in certain rare instances the Division would consider requests for waiver of some or all of the required financial information. The Commission wishes to emphasize that a waiver of the financial statement requirements will be considered only where the circumstances are so rare as to constitute a unique occurrence in the life of the registrant. The waiver process will be administered for the Commission by the Division of Corporation Finance, on a case by case basis.

As was stated in the proposing release, in determining whether to grant a waiver, the Division will consider: (1) The size of the acquisition relative to the registrant; [77] (2) the reasons why the statements cannot be obtained; [78] and (3) the financial information the registrant can provide. [79] All three factors will be considered together. The larger the acquisition, the more compelling the reasons must be, and the more important that information which can be provided becomes. While certain commentators suggested the need for explicit guidelines as to the standards to be applied to requests for waiver, the unique facts and circumstances under which such requests would be considered make guidelines impracticable.

Where a waiver is not granted and the required financial statements are not supplied in the time prescribed, registrant are notified that the deficiency may affect the registrant for both Exchange Act and Securities Act purposes. Depending on the circumstances and the relevancy of the information, the registrant may not be considered timely or current in its Exchange Act reporting obligations and, where appropriate, enforcement action would be taken. Once the registrant has furnished audited financial statements of the new combined entity for an appropriate period, [80] it could, in some cases, be considered current for Exchange Act purposes, and also may be able to register securities under the Securities Act.

Statutory Authority

The Commission is adopting Form S–4 and the related amendments pursuant to sections 5, 6, 7, 10 and 19(a) of the Securities Act and sections 14(a), 14(c) and 23(a) of the Exchange Act.

As required by section 23(a) of the Exchange Act, the Commission has considered specifically the impact that the rulemaking actions revising 17 CFR Parts 210, 229, 230, 239, 240 and 249 taken pursuant to the various provisions of the Exchange Act would have on competition, and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to Form S–4, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposed release (Release No. 33–6534, May 9, 1984 [49 FR 20833]).

The Need for and Objectives of Form S–4

The Form is designed to improve the effectiveness of the business combinations prospectus by requiring that information be presented in a more accessible and meaningful format, and to simplify the registration of securities issued in such transactions. The Commission is implementing these objectives by applying to business combination transactions the principles of the integrated disclosure system

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[72] 17 CFR 230.501 to 230.506. With respect to sales made only to accredited investors, however, there are no informational requirements under Regulation D.

[73] 17 CFR 230.144. Rule 144 provides a safe-harbor rule by means of which affiliates and nonaffiliates of the registrant can resell their restricted securities without the need for registration under the Securities Act. Availability of the Rule is conditioned, *inter alia*, on there being adequate current public information concerning the registrant. *See* Rule 144(c).

[74] This position is rescinded because the dangers posed by allowing affiliates, who may have non-public information about the registrant, to continue to sell securities during the pendency of the extension are adequately addressed by: (1) Exchange Act section 10(b) and Rule 10b–5 thereunder (17 CFR 240.10b–5); and (2) the representation made by affiliates in filings on Form 144. Form 144 requires the selling affiliate to represent that he does not know any material adverse information about the current or prospective operations of the issuer of the securities which has not been disclosed publicly.

[75] Section 2 of the Exchange Act of 1934, 15 U.S.C. 78b.

[76] This position is consistent with that embodied in Rule 12b–25 (17 CFR 240.12b–25), which provides the procedures for extensions of time for filing all or part of reports on Form 10–K and Form 10–Q. For reports on these Forms, no further extensions beyond that provided under Rule 12b–25 are available.

[77] *See* Article 3–05 of Regulation S–X, which establishes the time periods for which financial statements must be furnished based upon the relative size of the acquisition. The sliding scale of Article 3–05 for the evaluation of the significance of a business acquisition was adopted in Securities Act Release No. 33–6413 (June 24, 1982) [47 FR 29832]. It revised and codified the principles applicable to requests for waiver of certain audited financial statement requirements set forth in Securities Act Release No. 4950 (February 20, 1969) [34 FR 4886], "General Requirements for Certified Financial Statements of Companies Acquired or to be Acquired."

[78] For example, impossibility would be considered relevant. However, cost of an audit alone generally would not be deemed a sufficient basis for a waiver.

[79] For example, an audit of the most relevant portions of the required financial statements, or an audit of two of the three required years' financial statements, may provide an adequate basis for a waiver of the remaining requirements where the other factors (size and reasons) also support such action.

[80] In this regard, what constitutes an appropriate time period will be determined by the staff, based upon the particular facts and circumstances of each case.

developed in the context of primary offerings of securities. Thus, information about the companies involved is presented in, delivered with, or incorporated by reference into, the prospectus to the same extent as provided when such companies are making primary offerings. Form S–4 together with Form F–4 replaces Form S–15 under the Securities Act of 1933 ("Securities Act") and is available for the registration of all business combination transactions, including exchange offers previously registered on Form S–1 under the Securities Act.

Issues Raised by Public Comment

No commentators referred to the Initial Regulatory Flexibility Analysis in Commenting on proposed Form S–4.

Significant Alternatives

Form S–4 is modeled on the disclosure requirements contained in Forms S–1, S–2 and S–3, the basic forms under the Commission's integrated disclosure system. In developing those Forms, the Commission carefully analyzed whether they should be adapted specially for use by small entities. The Commission concluded that the better approach was to address the needs of small entities separately in the context of Regulation D and Form S–18. The Commission in connection with Form S–4, considered whether the disclosure level of Form S–18 should be made available where a company involved could use that Form for an initial public offering. Although some commentators supported the concept, they questioned its utility in the business combination context in light of the $7.5 million limit on the value of securities registered on Form S–18. Moreover, the fact that the financial disclosure requirements of Form S–4 are less burdensome for non-reporting companies being acquired than those of Form S–18, indicates that the Form S–18 approach would increase the complexity of Form S–4, with little concommitant benefit for small entities. Accordingly, the Commission has determined not to implement this alternative. Form S–4 thus requires disclosure according to the levels represented by Forms S–1, S–2 and S–3 in the primary offering context. The Commission does not believe that other alternatives, including use of a performance rather than a design standard, or exempting small entities from all or part of the requirements of the Form would accomplish the Commission's statutory mandate to protect investors.

List of Subjects

17 CFR Part 210

Securities, Reporting and recordkeeping requirements, Holding companies, Insurance companies, Investment companies.

17 CFR Part 229

Securities, Reporting and recordkeeping requirements.

17 CFR Part 230

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. By revising paragraph (b)(1) introductory text of § 210.3–05 to read as follows:

§ 210.3–05 Financial statements of business acquired or to be acquired.

* * * * *

(b) Periods to be presented. (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3–01 and 210.3–02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form S–14. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.14a–101 of this chapter) with respect to certain proxy statements or in a registration statement filed on Form S–14, S–4 or F–4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in Rule 1–02 of Regulation S–X (§ 210.1–02 of this chapter). The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGES ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

2. By revising paragraph (c) of § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

* * * * *

(c) *Incorporation by reference.* Where any document or part thereof is incorporated by reference in the prospectus but not delivered therewith, include an undertaking to provide without charge to each person, including any beneficial owner, to whom a prospectus is delivered, upon written or oral request of such person, a copy of any and all of the information that has been incorporated by reference in the prospectus (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically uncorporated by reference into the information that the prospectus incorporates), and the address (including title or department) and telephone number to which such a request is to be directed.

* * * * *

3. By revising paragraph (h) introductory text of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(h) *Registration on Form S–14, S–4 or F–4 of securities offered for resale.* Include the following if the securities are being registered on Form S–14, S–4 or F–4 (§ 239.25, or 34 of this chapter) in connection with a transaction specified

in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

* * * * *

4. By revising the Exhibit Table and revising paragraph (b)(4)(ii) of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

EXHIBIT TABLE

	Securities Act forms												Exchange Act forms			
	F-1	F-2	F-3	F-4[3]	S-1	S-2	S-3	S-4[3]	S-8	S-11	S-14	S-18	S-10	8-K	10-Q	10-K
(1) Underwriting agreement	X	X	X	X	X	X	X	X		X	X	X		X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
(3) Articles of incorporation and by-laws	X			X	X			X		X	X	X	X			X
(4) Instruments defining the rights of security holders including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X		X	X	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares	X	X		X	X	X		X	X	X	X	X	X			
(7) Opinion re liquidation preference	X	X		X	X	X		X		X	X	X	X			
(8) Opinion re tax matters	X	X	X	X	X	X	X	X		X	X	X				
(9) Voting trust agreement	X	X		X	X			X		X	X	X	X			X
(10) Material contracts	X	X		X	X	X		X		X	X	X	X			X
(11) Statement re computation of per share earnings	X	X		X	X	X		X		X	X		X		X	X
(12) Statements re computation of ratios[1]	X	X		X	X	X	X	X		X	X		X			X
(13) Annual report[2] computation to security holders, Form 10-Q or quarterly report to security holders							X	X	X							X
(14) Material foreign patents	X			X	X			X			X	X	X			
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant														X		
(17) Letter re director resignation														X		
(18) Letter re change in accounting principles															X	X
(19) Previously unfiled documents															X	X
(20) Report furnished to security holders															X	
(21) Other documents or statements to security holders														X		
(22) Subsidiaries of the registrant	X			X	X			X		X			X			X
(23) Published report regarding matters submitted to vote of security holders															X	X
(24) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	X	X		X[4]	X[4]	X[4]
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X	X	X	X	X		X	X	X				
(27) Invitations for competitive bids	X	X	X	X	X	X	X	X				X				
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(29) Information from reports furnished to state insurance regulatory authorities					X	X	X	X	X		X		X			X

[1] Where incorporated by reference into the text of prospectus as permitted by the registration statement.
[2] Where incorporated by reference into a previously filed Securities Act registration statement.
[3] An exhibit need not be provided about a company if (1) with respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

* * * * * * * *

(b) * * *

(4) * * *

(ii) Except as set forth in paragraph (b)(4) of this section (iii) for filings on Forms S-1, S-4, S-11, S-14 and F-4 under the Securities Act (§§ 239.1, and 25, 18, 23 and 34 of this chapter) and Forms 10 and 10-K (§§ 249.210 and 310 of this chapter) under the Exchange Act all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

5. By revising the Preliminary Note to § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note

Rule 145 (§ 230.145 of this chapter) is designed to make available the protection provided by registration under the Securities Act of 1933, as amended (Act), to persons who are offered securities in a business combination of the type described in paragraphs (a) (1), (2) and (3) of the rule. The thrust of the rule is that an "offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no-sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. *See* Release No. 33-5316 (October 6, 1972) [37 FR 23631]. Securities issued in transactions described in paragraph (a) of Rule 145 may be registered on Form S-4 or F-4 (§ 239.25 or 34 of this chapter) under the Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a) (9), (10), (11) and 4(2), are otherwise available are not affected by Rule 145.

Note 1.—Reference is made to Rule 153a (§ 230.153a of this chapter) describing the prospectus delivery required in a transaction of the type referred to in Rule 145.

Note 2.—A reclassification of securities covered by Rule 145 would be exempt from registration pursuant to section 3(a) (9) or (11) of the Act if the conditions of either of these sections are satisfied.

* * * * *

6. By revising the section heading and paragraph (a) of § 230.406 to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

* * * * *

(a) Any person submitting any information in a document required to

be filed under the Act may make written objection to its public disclosure by following the procedure in paragraph (b) of this section, which shall be the exclusive means of requesting confidential treatment of information included in any document (hereinafter referred to as the "material filed") required to be filed under the Act, *except* that if the material filed is a registration statement on Form S–8 (§ 239.16b of this chapter) or on Form S–3, F–2, F–3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form, or if the material filed is a registration statement that does not contain a delaying amendment pursuant to Rule 473 (§ 230.473 of this chapter), the person shall comply with the procedure in paragraph (b) *prior* to the filing of a registration statement.

* * * * *

7. By amending § 230.463 to include new paragraphs (d) (8) and (9) as follows:

§ 230.463 Report of offering of securities and use of proceeds therefrom.

* * * * *

(d) * * *

(8) In a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; or

(9) In an exchange offer for the securities of the issuer or another entity.

8. By revising the section heading, the introductory paragraph and paragraph (b) of § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S–8 and on certain Forms S–3, S–4, F–2, F–3, and F–4.

Provided, That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S–8 (§ 239.16b of this chapter); or on Form S–3, F–2 or F–3 (§ 239.13, 32 or 33 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or in the case of a registration statement on Form S–4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

* * * * *

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S–8 registration statement; or a Form S–3, F–2, or F–3 registration statement relating to a dividend or interest reinvestment plan; or a Form S–4 registration statement complying with General Instruction G of that Form or a Form F–4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statments or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

9. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

* * * * *

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S–8 (§ 239.16b of this chapter); on Form S–3, F–2, or F–3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

10. By revising § 230.475a to read as follows:

§ 230.475a Pre-effective amendments on Form S–8 and certain pre-effective amendments on Forms S–3, S–4, F–2, F–3 and F–4 deemed filed with the consent of Commission.

Amendments to a registration statement on Form S–8 (§ 239.16b of this chapter); on Form S–3, F–2, or F–3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 complying with General instruction F of that Form filed prior to the effectiveness of such registration statement shall be deemed to have been filed with a consent of the Commission and shall accordingly be treated as part of the registration statement.

11. By revising paragraph (b) of § 230.477 to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of a registration statement filed on Form S–8 (§ 239.16b of this chapter); or on Form S–3, F–2, or F–3 (§ 239.13, 32 or 33 of this chapter), relating to a dividend or interest reinvestment plan; or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F–4 (§ 239.34 of this chapter) complying with General Instruction F of that Form and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

12. By removing § 239.29.

§ 239.29 [Removed]

13. By revising the section heading and § 239.23 to read as follows:

§ 239.23 Form S–14, for simplified registration of securities issued in certain transactions under Rules 133 and 145 [17 CFR 230.133, 230.145] by registered investment companies and business development companies.

This form and Form S–1 [17 CFR 239.11] may be used for registration under the Securities Act of 1933 of securities to be issued in a transaction specified in paragraph (a) of § 230.145: *Provided, however,* That Form S–14 shall not be so used unless the registrant is a registered investment company or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940, the prospectus is delivered to security holders whose vote or consent is solicited at least 20 days prior to the date on which the meeting of such security holders is held or the date on which the transaction is effectuated if no such meeting is held: *Provided further,* That if applicable law of the jurisdiction permits the furnishing of a notice of the meeting or other actions within less than the 20-day period specified herein, then compliance with such provisions of such law shall be deemed to satisfy this requirement. Form S–14 may also be used by persons and parties who may be deemed underwriters, for the registration of a public reoffering of securities issued in a transaction specified in paragraph (a) of § 230.145 of this chapter or in a transaction specified in paragraph (a) of § 230.133 of this chapter exempted by the latter section prior to its rescission effective on and after January 1, 1973.

14. By adding § 239.25 to read as follows:

§ 239.25 Form S–4, for the registration of securities issued in business combination transactions.

This Form may be used for registration under the Securities Act of 1933 of securities to be issued (a) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (b) in a merger in which the applicable state law would not require the solicitation of the votes or

consents of all of the security holders of the company being acquired; (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; Secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), (90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n (a), (c), 78w(a))

Note.—The text of Form S–4 does not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Washington, D.C. 20549

Form S–4

Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification No.)

(Address, including ZIP Code, and telephone number, including area code, of registrant's principal executive officers)

(Name, address, include ZIP Code, and telephone number including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public * * *.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box ☐

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

General Instructions

A. Rule as to Use of Form S–4

1. This Form may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued (1) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (2) in a merger in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (3) in an exchange offer for securities of the issuer or another equity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

2. If the registrant meets the requirements of and elects to comply with the provisions in any item of this Form or Form F–4 (§ 239.34 of this chapter) that provides for incorporation by reference of information about the registrant or the company being acquired, the prospectus must be sent to the security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorizations may be used to effect the transaction. Attention is directed to sections 13(e), 14(d) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder regarding other time periods in connection with exchange offers and going private transactions.

3. This Form shall not be used if the registrant is a registered investment company or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940.

B. Information With Respect to the Registrant

1. Information with respect to the registrant shall be provided in accordance with the items referenced in one of the following subparagraphs:

a. Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements of Form S–3 (§ 239.13 of this chapter) (hereinafter, with respect to the registrant, "meets the requirements for use of Form S–3") for this offering of securities:

(i) the registrant meets the requirements of General Instruction I.A. of Form S–3; and

(ii) one of the following is met:

A. The registrant meets the aggregate market value requirement of General Instruction I.B.1. of Form S–3; or

B. Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and are "investment grade securities" as defined in General Instruction I.B.2. of Form S–3; or

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S–3 is met.

b. Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form S–2 (§ 239.12 of this chapter) or Form S–3 and elects this alternative; or

c. Item 14 of this Form, if the registrant does not meet the requirements for use of Form S–2 or S–3, or if it otherwise elects this alternative.

2. If the registrant is a real estate entity of the type described in General Instruction A to Form S–11 (§ 239.18 of this chapter), the information prescribed by Items 12, 13, 14, 15 and 16 of Form S–11 shall be furnished about the registrant in addition to the information provided pursuant to Items 10 through 14 of this Form. The information prescribed by such Items of Form S–11 may be incorporated by reference into the prospectus if (a) a registrant qualifies for and elects to provide information pursuant to alternative 1.a. or 1.b. of this instruction and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

C. Information With Respect to the Company Being Acquired

1. Information with respect to the company whose securities are being acquired (hereinafter including, where securities of the registrant are being offered in exchange for securities of another company, such other company) shall be provided in accordance with the items referenced in one of the following subparagraphs:

a. Item 15 of this Form, if the company being acquired meets the requirements of General Instructions I.A. and I.B.1. of Form S–3 (hereinafter, with respect to the company being acquired, "meets the requirements for use of Form S–3") of Form S–3 and this alternative is elected;

b. Item 16 of this Form, if the company being acquired meets the requirements for use of Form S–2 or S–3 and this alternative is elected; or

c. Item 17 of this Form, if the company being acquired does not meet the requirements for use of Form S–2 or S–3 or if this alternative is otherwise elected.

2. If the company being acquired is a real estate entity of the type described in General Instruction A to Form S–11, the information that would be required by Items 13, 14, 15 and 16(a) of Form S–

11 if securities of such company were being registered shall be furnished about such company being acquired in addition to the information provided pursuant to this Form. The information prescribe by such Items of Form S–11 may be incorporated by reference into the prospectus if (a) the company being acquired would qualify for use of the level of disclosure prescribed by alternative 1.a. or 1.b. of this instruction and such alternative is elected and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

D. Application of General Rules and Regulations.

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (§ 230.400 et seq. of this chapter). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed to Regulation S–K (Part 229 of this chapter) for the requirements applicable to the content of non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate.

E. Compliance With Exchange Act Rules

1. If a corporation or other person submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a–1 through 14b–1 of this chapter) or 14C (§§ 240.14c–1 through 14c–101 of this chapter) under the Exchange Act, then the provisions of such Regulations shall apply in all respects to such person's submission, except that (a) the prospectus may be in the form of a proxy or information statement and may contain the information required by this Form in lieu of that required by Schedule 14A (§ 240.14a–101) or 14C (§ 240.14c–101) of Regulation 14A or 14C under the Exchange Act; and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to such person's obligations under such Regulations.

2. If the proxy or information material sent to security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction in which the securities being registered are to be issued is subject to Section 139(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

F. Transactions Involving Foreign Private Issuers

If a U.S. registrant is acquiring a foreign private issuer, as defined by Rule 405 (§ 230.405 of this chapter), eligible to use Form 20–F (§ 249.220f of this chapter), such registrant may use this Form and may present information about the foreign private issuer pursuant to Form F–4. If the registrant is a foreign private issuer, such registrant may use Form F–4 and (1) if the company being acquired is a foreign private issuer eligible to use Form 20–F, may present information about such foreign company pursuant to Form F–4 or (2) if the company being acquired is a U.S. company or a foreign private issuer not eligible to use Form 20–F, may present information about such company pursuant to this Form.

G. Filing and Effectiveness of Registration Statement Involving Formation of Holding Companies; Requests for Confidential Treatment; Number of Copies

Original registration statements on this Form S–4 will become effective automatically on the twentieth day after the date of filing (Rule 456, § 230.456 of this chapter), pursuant to the provisions of Section 8(a) of the Act (Rule 459, § 230.459 of this chapter) provided:

1. The transaction in connection with which securities are being registered involves the organization of a bank or savings and loan holding company for the sole purpose of issuing common stock to acquire all of the common stock of the company that is organizing the holding company; and

2. the following conditions are met:

a. The financial institution furnishes its security holders with an annual report that includes financial statements prepared on the basis of generally accepted accounting principles;

b. There are no anticipated changes in the security holders' relative equity ownership interest in the underlying company's assets except for redemption of no more than a nominal number of shares of unaffiliated persons who dissent;

c. In the aggregate, only nominal borrowings are to be incurred for such purposes as organizing the holding company to pay non-affiliated persons who dissent, or to meet minimum capital requirements;

d. There are no new classes of stock authorized other than those corresponding to the stock of the company being acquired immediately prior to the reorganization;

e. There are no plans or arrangements to issue any additional shares to acquire any business other than the company being acquired; and

f. There has been no material adverse change in the financial condition of the company being acquired since the latest fiscal year end included in the annual report to security holders.

Pre-effective amendments with respect to such a registration statement may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, § 230.475a of this chapter). Accordingly, the filing of a pre-effective amendment to such a registration statement will not commence a new twenty-day period. Post-effective amendments to such a registration statement on this Form shall become effective upon the date of filing (Rule 464, § 230.464 of this chapter). Delaying amendments are not permitted in connection with either original filings or amendments on such a registration statement (Rule 473(d) § 230.473(d) of this chapter), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this Form pursuant to this instruction become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 406 (§ 230.406 of this chapter) must be processed by the Commission's staff prior to the filing of such a registration statement. The number of copies of such a registration statement and of each amendment required by Rules 402 and 472 (§§ 230.402, 472 of this chapter) shall be filed with the Commission; *Provided, however,* That the number of additional copies referrred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

H. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of this chapter)

If the registration statement relates to offerings of securities pursuant to Rule

415(a)(1)(viii), required information about the type of contemplated transaction or the company to be acquired only need be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired, however, must be included in the prospectus by means of a post-effective amendment; *Provided, however,* that where the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act of 1933 would itself qualify for an exemption from Section 5 of the Act, absent the existence of other similar (prior or subsequent) transactions, a prospectus supplement could be used to furnish the information necessary in connection with such transaction.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus. Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (§ 229.501 of this chapter).

Item 2. Inside Front and Outside Back Cover Page of Prospectus. Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page include the following statement in bold face type, where applicable:

This prospectus incorporates documents by reference which are not presented herein or delivered herewith. These documents are available upon request from (name, address and telephone number to which a request is to be directed). In order to ensure timely delivery of the documents, any request should be made by (date five business days prior to the date on which the final investment decision must be made).

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information. Provide in the forepart of the prospectus a summary containing the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter) and the following:

(a) The name, complete mailing address (including the Zip Code), and telephone number (including the area code) of the principal executive offices of the registrant and the company being acquired;

(b) A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(c) A brief description of the transaction in which the securities being registered are to be offered;

(d) The information required by Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data) for (i) the registrant; (ii) the company being acquired; and (iii) if material, the registrant, on a pro forma basis, giving effect to the transaction. To the extent the information is required to be presented in the prospectus pursuant to Items 12, 14, 16 or 17, it need not be repeated pursuant to this Item;

(e) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data);

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data);

(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§ 229.301 of this chapter) (selected financial data).

Instructions to paragraph (e)

For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends delcared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

(f) In comparative columnar form, the market value of securites of the company being acquired (on an historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into;

(g) With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates and the vote required for approval of the proposed transaction;

(h) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(i) A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 18 or 19 of this Form; and

(j) A brief statement about the tax consequences of the transaction, or if appropriate, consisting of a, cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the transaction.

(a) Furnish a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) A brief summary of the terms of the acquisition agreement;

(2) The reasons of the registrant and of the company being acquired for engaging in the transaction;

(3) The information required by Item 202 of Regulation S–K (§ 229.202 of this chapter), description of registrant's securities, unless: (i) the registrant would meet the requirements for use of Form S–3, (ii) capital stock is to be registered and (iii) securities of the same class are registered under Section 12 of the Exchange Act, and (i) listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association;

(4) An explanation of any material differences between the rights of security holders of the company being acquired and the rights of holders of the securities being offered;

(5) A brief statement as to the accounting treatment of the transaction; and

(6) The federal income tax consequences of the transaction.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is

referred to in the prospectus, furnish the same information as would be required by Item 9 (b)(1) through (6) of Schedule 13E–3 (§ 240.13e–100 of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus by means of a statement to that effect.

Item 5. Pro Forma Financial Information. Furnish financial information required by Article 11 of Regulation S–X (§ 210.11–01 et seq. of this chapter) with respect to this transaction.

Instruction

1. Any other Article 11 information that is presented (rather than incorporated by reference) pursuant to other items of this Form shall be presented together with the information provided pursuant to Item 5, but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to Item 11 or 15 of this Form only the pro forma results need be presented as part of the pro forma financial information required by this Item.

Item 6. Material Contacts with the Company Being Acquired. Describe any past, present or proposed material contacts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to Part I.B. or C of this Form between the company being acquired or its affiliates and the registrant or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 7. Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters. If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof, furnish the following information in the prospectus, at the time it is being used for the reoffer of the securities to the extent it is not already furnished therein:

(a) The information required by Item 507 of Regulation S–K (§ 229.507 of this chapter), selling security holders; and

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material change in the registrant's affairs subsequent to the transaction.

Item 8. Interests of Named Experts and Counsel. Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities. Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

B. Information About the Registrant

Item 10. Information With Respect to S–3 Registrants. If the registrant meets the requirements for use of Form S–3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act.

(b) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, a proxy or information statement filed pursuant to Section 14 of the Exchange Act, a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter), or a Form 8–K filed during either of the two preceding fiscal years:

(1) Financial information required by Rule 3–05 (§ 210.3–05 of this chapter) and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(2) Restated financial statements prepared in accordance with Regulation S–X (Part 210 of this chapter), if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11–01(b) of this chapter); or

(4) Any financial information required because of a material disposition of assets outside the normal course of business.

Item 11. Incorporation of Certain Information by Reference. If the registrant meets the requirements of Form S–3 and elects to furnish information in accordance with the provisions of Item 10 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect listing all documents so incorporated, the documents listed in paragraphs (1), (2) and, if applicable, (3) below.

(1) The registrant's latest annual report on Form 10–K (§ 249.310 of this chapter) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed;

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in Item 11(a)(1) of this Form; and

(3) If capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act and: (i) Listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

(b) The prospectus also shall state that all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of security holders is to be held, the date on which such meeting is held;

(2) If a meeting of security holders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the date the offering is terminated; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the date the reoffering is terminated.

Instruction

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding

consent to the use of material incorporated by reference.

Item 12. Information With Respect to S–2 or S–3 Registrants. If the registrant meets the requirements for use of Form S–2 or S–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. *However,* the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item, if the financial statements in the registrant's latest annual report to security holders do not reflect: (1) restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interests method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulations S–X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a–3 (§ 240.14a–3 of this chapter) or 14c–3 (§ 240.14c–3 of this chapter), or a complete and legible facsimile of its latest annual report to security holders:

(1) Indicate that the prospectus is accompanied by the registrant's latest annual report to security holders.

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which audited financial statements were included in the latest report to security holders and more than 45 days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10–Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report that was delivered to its security holders and that included the required financial information.

(3) If not reflected in the registrant's latest annual report to security holders, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to tranactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that were not described in a Form 10–Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2) (ii) or (iii) of this Item.

(b) If the registrant does not elect to deliver its latest annual report to security holders:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a–3 to be included in an annual report to security holders. The description also should take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1) of this chapter) to be included in an annual report to security holders. In addition, provide:

(i) The interim financial information required by Rule 10–01 of Regulation S–X (§ 210.10–01 of this chapter) for a filing on Form 10–Q;

(ii) Financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

(v) Any financial information required because of a material disposition of assets outside of the normal course of business.

(3) Furnish the information required by the following:

(i) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K (§ 229.101 of this chapter), industry segments, classes of similar products or services, foreign and domestic operations and export sales;

(ii) Where common equity securities are being offered, Item 201 of Regulation S–K (§ 229.201 of the chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(iii) Item 301 of Regulation S–K (§ 229.301 of this chapter), selected financial data;

(iv) Item 302 of Regulation S–K (§ 229.302 of the chapter), supplementary financial information;

(v) Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations; and

(vi) Item 304 of Regulation S–K (§ 229.304 of this chapter), disagreements with accountants on accounting and financial disclosure.

Item 13. Incorporation of Certain Information by Reference. If the registrant meets the requirements of Form S–2 or S–3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, the documents listed in paragraphs (1) and (2) of this Item and, if applicable, the portions of the documents listed in paragraphs (3) and (4) thereof.

(1) The registrant's latest annual report on Form 10–K filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed.

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

(3) If the registrant elects to deliver its latest annual report to security holders pursuant to Item 12 of this Form, the information furnished in accordance with the following:

(i) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K, segments, classes of similar products or services, foreign and domestic operations and export sales;

(ii) Where common equity securities are being issued, Item 201 of Regulation S–K, market price of and dividends on

the registrant's common equity and related stockholder matters;

(iii) Item 301 of Regulation S–K, selected financial data;

(iv) Item 302 of Regulation S–K, supplementary financial information;

(v) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations; and

(vi) Item 304 of Regulation S–K, disagreements with accountants on accounting and financial disclosure.

(4) If the registrant elects, pursuant to Item 12(a)(2)(iii) of this Form, to provide a copy of its latest quarterly report which was delivered to security holders, financial information equivalent to that required to be presented in Part I of Form 10–Q.

Instruction

Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual or quarterly report to security holders, other than those portions required to be incorporated by reference pursuant to paragraphs (a) (3) and (4) of this Item, are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

Item 14. Information With Respect to Registrants Other Than S–3 or S–2 Registrants. If the registrant does not meet the requirements for use of Form S–2 or S–3, or otherwise elects to comply with this Item in lieu of Item 10 or 12, furnish the information required by:

(a) Item 101 of Regulation S–K, description of business;

(b) Item 102 of Regulation S–K, description of property;

(c) Item 103 of Regulation S–K, legal proceedings;

(d) Where common equity securities are being issued, Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters;

(e) Financial statements meeting the requirements of Regulation S–X, (schedules required by Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form), as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(f) Item 301 of Regulation S–K, selected financial data;

(g) Item 302 of Regulation S–K, supplementary financial information;

(h) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations; and

(i) Item 304 of Regulation S–K, disagreements with accountants on accounting and financial disclosure.

C. Information About the Company Being Acquired

Item 15. Information With Respect to S–3 Companies. If the company being acquired meets the requirements for use of Form S–3 and compliance with this Item is elected, furnish the information that would be required by Items 10 and 11 of this Form if securities of such company were being registered.

Item 16. Information With Respect to S–2 or S–3 Companies. If the company being acquired meets the requirements for use of Form S–2 or S–3 and compliance with this Item is elected, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

Item 17. Information With Respect to Companies Other Than S–3 or S–2 Companies. If the company being acquired does not meet the requirements for use of Form S–2 or S–3, or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information required by paragraph (a) or (b) of this Item, whichever is applicable.

(a) If the company being acquired is subject to the reporting requirements of Section 13(a) of 15(d) of the Exchange Act, or compliance with this subparagraph in lieu of subparagraph (b) of this Item is elected, furnish the information that would be required by Item 14 of this Form if the securities of such company were being registered; *however*, only those schedules required by Rules 12–15, 28 and 29 of Regulation S–X (§ 210.12–15, 28, 29 of this chapter) need be provided with respect to the company being acquired.

(b) If the company being acquired is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act; or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 (§ 240.14a–3 of this chapter) or Rule 14c–3 (§ 240.14c–3 of this chapter) for its latest fiscal year; furnish the information that would be required by the following if securities of such company were being registered:

(1) A brief description of the business done by the company which indicates the general nature and scope of the business;

(2) Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters;

(3) Item 301 of Regulation S–K, selected financial data;

(4) Item 302 of Regulation S–K, supplementary financial information;

(5) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations;

(6) Item 304 of Regulation S–K, disagreements with accountants on accounting and financial disclosure;

(7) Financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a–3(b)(1) and (b)(2) (§ 240.14a–3 of this chapter) or Rules 14c–3(a)(1) and (a)(2) (§ 240.14c–3 of this chapter), had the company being acquired been required to prepare such a report; *Provided, however*, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c), the financial statements of such companies must be audited for the periods required to be presented pursuant to Rule 3–05.

(8) The quarterly financial and other information as would have been required had the company being acquired been required to file Part I of Form 10–Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

(9) Schedules required by Rules 12–15, 28 and 29 of Regulation S–X.

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, revocability of proxy;

(2) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(3) The information required by Item 3 of Schedule 14A, persons making the solicitation;

(4) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 4 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 5 of Schedule 14A, voting securities and principal holders thereof;

(5) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(6) The information required by Item 22 of Schedule 14A, vote required for approval; and

(7) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 401 of Regulation S–K, (§ 229.401 of this chapter), directors and executive officers;

(ii) Item 402 of Regulation S–K, (§ 229.402 of this chapter), executive compensation; and

(iii) Item 404 of Regulation S–K, (§ 229.404 of this chapter), certain relationships and related transactions.

(b) If the registrant or the company being acquired meets the requirements for use of Form S–2 or S–3, any information required by paragraphs (a)(4)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K.

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (c) of this Item;

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The information required by Item 3 of Schedule 14C, date, time and place of meeting;

(3) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(4) With respect to both the registrant and the company being acquired, a brief description of any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the registrant and of the company being acquired, in the proposed transaction;

Instruction

This subparagraph shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(5) With respect to both the registrant and the company being acquired, the information required by Item 5 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(7) The information required by Item 22 of Schedule 14A, vote required for approval; and

(8) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 401 of Regulation S–K, directors and executive officers;

(ii) Item 402 of Regulation S–K, executive compensation; and

(iii) Item 404 of Regulation S–K, certain relationships and related transactions.

(b) If the transaction is an exchange offer, furnish the information required by paragraphs (a)(4), (a)(5), (a)(6) and (a)(8) of this Item, except as provided by paragraph (c) of this Item.

(c) If the registrant or the company being acquired meets the requirements for use of Form S–2 or S–3, any information required by paragraphs (a)(5) and (8) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10–K.

Part II—Information Not Required in Prospectus

Item 20. Indemnification of Directors and Officers. Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 21. Exhibits and Financial Statement Schedules.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (§ 229.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S–X and Item 14(e), Item 17(a) or Item 17(b)(9) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of this Item.

(c) If information is provided pursuant to Item 4(b) of this Form, furnish the report, opinion or appraisal as an exhibit hereto, unless it is furnished as part of the prospectus.

Item 22. Undertakings.

(a) Furnish the undertakings required by Item 512 of Regulation S–K (§ 229.512 of this chapter).

(b) Furnish the following undertaking: The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) Furnish the following undertaking: The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

Signatures

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ———, State of ———, on ———, 19—.

(Registrant) ———

By (Signature and Title) ———

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) ———

(Title) ———

(Date) ———

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate

each capacity in which he signs the registration statement. Attention is directed to Rule 402 (§ 230.402 of this chapter) concerning manual signatures and Item 601 of Regulation S–K (§ 229.601 of this chapter) concerning signatures pursuant to powers of attorney.

3. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

15. By revising paragraph (a) of § 240.14a–3 to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101 of this chapter) or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or 34 of this chapter) and containing the information specified in such Form.

* * * * *

16. By revising paragraph (j) of § 240.14a–6 to read as follows:

§ 240.14a–6 Material required to be filed.

* * * * *

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S–14, S–4 or F–4 (§ 239.23 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S–14, S–4 or F–4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

17. By revising paragraph (a) of § 240.14c–2 to read as follows:

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101 of this chapter) or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 § 239.25 or 34 of this chapter) and containing the information specified in such Form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided, however,* That in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

* * * * *

18. By revising paragraph (e) of § 240.14c–5 to read as follows:

§ 240.14c–5 Filing of information statement.

* * * * *

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S–14, S–4, or F–4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S–14, S–4 or F–4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

19. By revising paragraph (a)(4) of Item 7 and adding Instructions to Item 7 of Form 8–K described in § 249.308 to read as follows:

§ 249.308 Form 8–K, for current reports.

* * * * *

Item 7. Financial Statements and Exhibits.

* * * * *

(a) * * *

(4) If it is impracticable to provide the required financial statements for an acquired business at the time the report on Form 8–K is filed, the registrant should (i) so indicate in the Form 8–K report; (ii) file such of the required financial statements as are available; (iii) state when the required financial statements will be filed; and (iv) file the required financial statements for an acquired business under cover of Form 8 as soon as practicable, but not later than 60 days after the report on Form 8–K must be filed. In such circumstances, the registrant may, at its option, include unaudited financial statements in the initial report on Form 8–K.

Instructions

1. Requests for further extensions of time for filing the required financial statements will not be considered.

2. During the pendency of an extension pursuant to this paragraph, registrants will be deemed current for purposes of their reporting obligations under section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registration statements will not be declared effective. In addition, offerings should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; *Provided, however,* that the following offerings or sales of securities shall not be affected by this restriction:

(a) Offerings or sales of securities or upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

* * * * *

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), (c), 78w(a))

Dated: April 23, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-10577 Filed 5-3-85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 230 and 239

[Release Nos. 33-6579; 34-21983; FR-19; File No. S7-21-84]

Business Combination Transactions; Adoption of Registration Form; Foreign Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of a new form to be used to register securities under the Securities Act of 1933 in connection with business combination transactions involving foreign private registrants. The form applies the principles of the integrated disclosure system to disclosure in the context of mergers and exchange offers. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a more accessible and meaningful format.

DATES: Effective Date: The Form F-4 and the amendments to Rule 145 are effective July 1, 1985, for all documents filed on or after that date with respect to transactions begun thereafter. *Compliance Date*: Registrants are permitted, however, to use Form F-4 immediately upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202) 272-3246, or Martin L. Meyrowitz (202) 272-3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Form F-4, as adopted, is available for registration under the Securities Act of 1933 ("Securities Act") [1] of securities issued by certain foreign private issuers [2] in: (i) Transactions of the type specified in Rule 145(a); [3] (ii) mergers in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (iii) exchange offers for securities of the issuer or another entity; and (iv) reoffers and resales of securities registered on this Form. Form F-4 employs the principles underlying the integrated disclosure system developed for foreign private issuers. Thus, the Form permits incorporation by reference of information from reports filed pursuant to the continuous reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act") [4] generally to the same extent as is permitted when a foreign private registrant registers securities under the Securities Act in a primary offering not involving a business combination. In addition, the Commission is adopting an amendment to Rule 145(a)(2) under the Securities Act [5] to codify a prior staff interpretation. In a separate release published today, the Commission is further adopting a parallel form for use by domestic registrants, Form S-4, together with a number of other amendments to certain rules which also have application to Form F-4 (the "Form S-4 Release"). [6]

I. Executive Summary

The Form S-4 Release contains an extensive discussion of Form S-4, as adopted, including the changes from the Form as proposed. Since Form F-4 is the counterpart for foreign private issuers to Form S-4, the discussion in Form S-4 Release may be helpful in understanding the operation of Form F-4. Commentators generally supported the Commission's effort, and the Commission is adopting Form F-4 substantially as proposed. [7]

Form F-4 extends the principles of integrated disclosure to all business combination registration statements. The integrated disclosure system, on which Forms F-4 and S-4 are both based, proceeds from the premise that investors in the primary market need much the same information as investors in the trading market. Integration also specifies the manner in which information should be delivered to investors. The Commission implemented the integrated disclosure system by adopting the three tiered registration system of Forms S-1, S-2, [8] and S-3 [9] for domestic and certain foreign issuers, and by adopting a separate system, Forms F-1, [10] F-2, [11] and F-3, [12] for certain foreign private issuers eligible to use Form 20-F. [13] The integrated disclosure system for foreign private issuers was adopted primarily because the registration and reporting requirements for foreign private issuers under the Exchange Act are significantly different from those for domestic issuers. [14] Another reason for the separate system was the desire of foreign registrants and other public commentators to ensure that future amendments intended primarily for domestic registrants are considered in the light of the different circumstances of foreign registrants. [15]

Like Form S-4, the prospectus requirements of Form F-4 are divided into four sections. The first section calls for information about the transaction, which will be presented in the prospectus in all cases, and which is designed to make the complex transactions that typify business combinations more easily understood by investors. The next two sections specify the information about the entities involved and prescribe different levels of prospectus presentation and incorporation by reference depending upon which form under the Securities Act the companies could use in making a primary offering of their securities.

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[1] 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), *as amended by* Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982).

[2] As defined in Rule 405 [17 CFR 230.405].

[3] 17 CFR 230.145. The transactions specified in Rule 145 include certain reclassifications, mergers, consolidations and transfers of assets.

[4] 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), *as amended by* Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983).

[5] 17 CFR 230.145(a)(2).

[6] Release No. 33-6578 (April 23, 1985). The Commission also adopted amendments to: (1) Rule 3-05 of Regulation S-X [17 CFR 210.3-05]; (2) Items 502, 512 and 601 of Regulation S-K [17 CFR 229.502, 512, 601]; (3) Rules 145, 406, 463, 464, 473, 475a and 477 under the Securities Act [17 CFR 230.145, 406, 463, 464, 473, 475a, 477]; (4) Rules 14a-3, 14a-6, 14c-2 and 14c-5 under the Exchange Act [17 CFR 240.14a-3, 14a-6, 14c-2, 14c-5]; and (5) Form 8-K under the Exchange Act [17 CFR 249.308]. To the extent that these rules have specific application to Form F-4, the rule amendments in Release No. 33-6578 so reflect.

[7] Release No. 33-6535 (May 9, 1984) [49 FR 20852]. The Commission received 5 comment letters addressing solely proposed Form F-4. Forty-three comment letters concerning proposed Form S-4 were also received. As was indicated in the Form F-4 proposing release, the comments received on the proposals in the Form S-4 proposing release were considered in connection with the actions taken today with respect to Form F-4. All the comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549 (*see* File No. S7-21-84).

[8] 17 CFR 239.11 and 12, respectively.

[9] 17 CFR 239.13.

[10] 17 CFR 239.31.

[11] 17 CFR 239.32.

[12] 17 CFR 239.33.

[13] 17 CFR 249.220.

[14] For a discussion of these rules and forms and their development, including the Commission's rationale and objectives regarding various aspects of the integrated disclosure system for foreign private issuers, *see* Release Nos. 33-6360 (November 20, 1981 [46 FR 58511], 33-6361 (November 20, 1981) [46 FR 58505], and 33-6362 (November 20, 1981) [46 FR 58507].

[15] *Id.*

The last section sets forth the requirements as to voting and management information. All voting information must be presented in the prospectus, while the amount of prospectus presentation for management information, like company information, depends on which form can be used in a primary offering, other than a business combination transaction.

The F-1-2-3 approach in Form F-4 reflects the premise that decisions made in the context of business combination transactions and those made otherwise in the purchase of a security in the primary or trading markets are substantially similar. At the same time, the Commission recognizes that there are significant differences. In particular, business combination decisions are not of the same volitional nature as other investment decisions. Moreover, mergers typically may result in a change in security ownership as a consequence of inaction.

To address the differences in the nature of the investment decision, special provisions were included in the Form. First, a specifically tailored item covering risk factors, ratio of earnings to fixed charges, certain per share data and other information must be presented in the prospectus regardless of the level of disclosure available to the companies involved. This item, as adopted, has been expanded to reflect commentators' suggestions that the item should include: (1) Certain additional financial data; and (2) information about regulatory approvals.

While the item highlights certain information discussed more fully elsewhere in the prospectus, or in documents incorporated by reference therein, it is not intended to be a summary of all material information concerning the transactions and the parties thereto. In the case of F-3 companies, where company and management information, including historical financial statements, is not presented in the prospectus, such information will have been widely disseminated in the market by means of the company's Form 20-F. Therefore, this information need not be reiterated in the business combination prospectus and, as discussed below, need be furnished only upon request. As to other companies, the historical financial statements and other company information will be presented in the prospectus.

Second, the Form establishes a minimum time period if incorporation by reference is used. The time period is designed to allow for dissemination of documents incorporated by reference to requesting security holders on a timely basis. The proposed Form would have required that, where incorporation by reference is relied upon to take the place of presentation in the delivered document, the prospectus either: (1) Be sent at least twenty business days in advance of the date of the meeting of security holders or the date of the final investment decision, or (2) be accompanied by the documents from which information is incorporated.

Commentators generally supported the concept of the twenty business day period and the adopted Form requires the prospectus to be sent prior to the proposed twenty business day period where incorporation by reference is used. In commenting on Form S-4, however, concern was expressed that the alternative of delivering documents incorporated by reference could result in a cumbersome and unreadable prospectus because of the potential multiplicity of documents delivered. Accordingly, Form S-4 as adopted provides a compromise and, in order to be consistent, Form F-4 includes the same revision. Registrants may still proceed faster than the twenty day period if allowable under applicable law, but if they wish to do so, they must furnish the required information to security holders at the F-1 level. The same quantum of information will be delivered as was provided in the proposal's alternative, but the F-1 alternative provides a more readable format.

If, the registrant files in a timely manner, it may incorporate information by reference, and the information so incorporated need only be furnished upon request. The Commission has added a legend to encourage security holders to request the incorporated documents promptly and an undertaking [16] to require the registrant to respond within one business day by first class mail or other equally prompt means. The Commission recognizes that such an undertaking, while identical to that in Form S-4, may not provide security holders with as much time to obtain the information incorporated by reference as it would if the registrant were a domestic issure. The principal reason for this is the potential delay caused by international mails. To reduce potential time delays and to ensure the availability of documents incorporated by reference, the Commission is requiring an additional undertaking that foreign registrants arrange or provide for a facility in the United States solely for the purpose of receiving and responding to security holder requests for documents incorporated by reference. By doing this, foreign registrants will be as accessible as, and able to respond in a similar manner to, domestic registrants.

In addition to these disclosure and timing measures, the Commission directed particular commentator attention to whether other possible alternatives, involving greater degrees of delivery of information, would be appropriate in view of the nature of the investment decision involved in business combination transactions. Commentators rejected the alternatives and favored the Form F-4 approach.

The one respect in which some commentators expressed reservations about the full streamlining afforded by the proposed Form was in the area of contested exchange offers. More than half of the commentators who directed specific comments to exchange offers, however, supported the F-4 approach.[17] Moreover, some concerns were directed, at least in part, to the timing aspects of exchange offers which were not addressed in the proposed Form F-4.

Form F-4 implements Recommendation Eleven of the Commission's Advisory Committee on Tender Offers ("Advisory Committee"),[18] one of the recommendations intended to: (1) Lessen the regulatory disincentives to using securities as consideration in a tender offer; and (2) promote the equivalency of cash and exchange offers. Recommendation Eleven addresses disclosure in exchange offers, recommending that the approach of the integrated disclosure system be used for exchange offers. As noted in the proposing release, the inclusion of exchange offerings in Form F-4 does not

[16] See Item 22(b) of Form F-4.

[17] Of course, Form F-4 makes clear that transactions subject to the Williams Act [sections 13(d)-(f) and 14(d)-(f) of the Exchange Act, 15 U.S.C. 78m(d)-(f), 78n(d)-(f) (1982)], must comply with that statute and the regulations thereunder. With respect to mergers, the Commission notes that any accelerated timing must comply with applicable law. In a recent case, the Delaware Supreme Court stated that ". . . in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate." *Smith v. Van Gorkum*, No. 255, 1982, slip op. at 74 (Del. Jan. 27, 1985) *opinion revised*, March 14, 1985. In this regard, the language in the proposed General Instruction A.2. relating to compliance with applicable law has been deleted as unnecessary.

[18] *Advisory Committee on Tender Offers Report on Recommendations* ("Report") (July, 1983). The Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission legislative and/or regulatory changes the Committee considered appropriate or necessary. *See* Release No. 34-19528 (February 25, 1983) [48 FR 9111].

affect the timetable for exchange offers. Timing for exchange offers is the subject of Recommendation Twelve which would permit an exchange offer to commence on the date the preliminary registration statement is filed, rather than the effective date of the registration statement. If adopted, Recommendation Twelve would put exchange offers on the same timetable as cash offers.[19] The Commission wishes to emphasize that Recommendation Twelve is not being implemented with adoption of Form F–4. Moreover, the Form as adopted contains an instruction and an undertaking which ensure that Form F–4 cannot be used for this purpose.[20]

The principal differences between proposed Forms F–4 and S–4 are in the sections specifying the information required with respect to the registrant and the company to be acquired. Since proposed Form S–4 is based on the integrated disclosure system for domestic issuers, the basic Exchange Act filings relied upon are Forms 10–K,[21] 10–Q[22] and 8–K,[23] proxy statements and annual reports to shareholders. The basic documents in the integrated disclosure system for foreign private issuers are Forms 20–F and 6–K.[24] Those foreign private issuers eligible to use Form 20–F are exempt from the proxy solicitation provisions of Section 14 and from all of the provisions of section 16 of the Exchange Act by Rule 3a12–3 thereunder.[25] Except for information required with respect to or as a result of the transaction in which the securities are to be issued, the proposed Form F–4 generally would not require information about foreign companies beyond that now required by Form 20–F as used in the separate integrated disclosure system for foreign private issuers.

In recognition of the fact that business combinations are not restricted by national borders, proposed Forms F–4 and S–4 both contain mutual transitional provisions with respect to the information to be furnished about the company to be acquired when multi-national business combination transactions are involved. Thus, the respective integrated disclosure systems will remain substantially intact as to target companies. The registrant's status would continue to control whether Form F–4 or S–4 is to be used.

[19] *See* Release No. 33–6535 (May 9, 1984) [49 FR 20852, 20853].

[20] *See* General Instruction F and Item 22(c) of the Form.

[21] 17 CFR 249.310.

[22] 17 CFR 249.308a.

[23] 17 CFR 249.308.

[24] 17 CFR 249.306.

[25] 17 CFR 240.3a12–3.

II. Synopsis of the Form

The following synopsis is intended to assist interested parties in their understanding of the Form, the amendment to Rule 145 and the related rule amendments in Release No. 33–6578. Attention is directed to the text of the Form and amendments for a more complete understanding of this rulemaking action, including certain technical and clarifying changes not described below.

A. Availability and Use of Form

Form F–4 is available for the registration of securities in connection with Rule 145 transactions as well as other mergers, exchange offers and reoffers or resales of securities registered on the Form.[26] In addition, registrants that choose to use the incorporation by reference feature of the Form must send the prospectus twenty business days prior to the date of the meeting of security holders or, where no such meeting is held, the date the investment decision becomes final.[27]

B. Business Combinations Involving Entities Required to Use Form S–11

Consistent with specific requirements in Form S–11 and administrative practices under Form S–14, special disclosure provisions apply to business combination transactions involving certain real estate entities, described in Instruction A of Form S–11.[28] Form F–4 is available to register securities in connection with business combinations involving such entities and special disclosure provisions that apply have been adopted as proposed.[29]

C. Relationship with Exchange Act Rules

The Form F–4 prospectus may serve as the proxy or information statement used in connection with the transaction.

It would be deemed to meet the informational and filing requirements of the proxy or information statement rules under Section 14 of the Exchange Act and Regulations 14A [30] and 14C [31] thereunder, where applicable to the transaction. All other provisions of those regulations also apply.

In addition, General Instruction E.3. of the Form provides that if the transaction in which the securities being registered are to be issued is subject to sections 13(e), 14(d) or 14(e) of the Exchange Act, the disclosure and other provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of Form F–4. Thus, the provision calling for the more extensive disclosure will prevail, as will the time period and other substantive provisions of the Williams Act and the Commission's going private and tender offer rules and schedules thereunder.[32]

[26] Form F–1 will remain available for mergers and exchange offers. For example, registrants may choose to use Form F–1 and to have the company being acquired prepare its own proxy statement so that the company being acquired will assume liability for the information in its own proxy statement. Of course, Forms F–2 and F–3, which are not available for business combination transactions, will remain unavailable for such transactions because registrants qualifying for use of those forms may use the respective Form's disclosure approaches through the use of Form F–4. Form F–4 also will be available for registration of securities in connection with issuer exchange offers.

[27] Form F–4 also contains two related provisions:

(a) The requirement in Item 2 of a legend in the prospectus to inform investors that they need to make prompt requests for documents incorporated by reference; and

(b) A requirement in Item 22 for undertaking by registrants to (1) respond to requests for documents within one business day and furnish the requested documents by first class mail or other equally prompt means and (2) arrange or provide for a facility in the U.S. for the purpose of responding to such requests. Where the registration statement incorporates by reference documents at the F–3 level, a request for such documents would include documents filed subsequent to the effective date of the registration statement up to the date of responding to the request. The undertaking would not require delivery of incorporated documents filed subsequent to such request.

[28] General Instruction A of Form S–11 provides that the Form shall be used to register securities issued by: (i) A real estate investment trust as defined in section 856 of the Internal Revenue Code; or (ii) other issuers whose businesses are primarily that of acquiring and holding for investment real estate or interests in real estate or interests in other issuers whose businesses are primarily that of acquiring and holding real estate or interests in real estate for investment.

[29] See General Instruction B.2. with respect to the acquiring entity and General Instruction C.2 concerning the entity being acquired. See also Release No. 33–6535 (May 9, 1984) [49 FR 20852, 20854].

[30] 17 CFR 204.14a–1 to 14a–101.

[31] 17 CFR 204.14c–1 to 14c–101.

[32] For example, if the transaction is an exchange offer subject to Regulation 14D, the registrant is required to disseminate material changes pursuant to Rule 14d–4(c) [17 CFR 340.14d–4(c)]. The relationship between the undertaking to deliver incorporated documents (including those filed subsequent to effectiveness if the F–3 level is elected) and Rule 14d–4(c) is that, if a registrant has delivered requested documents to security holders and those documents reflect the material change, this would constitute compliance with Rule 14d–4(c). If, however, the documents do not reflect the material change or have not been sent to security holders, then the registrant must still comply with Rule 14d–4(c). Similarly, if the transaction is an exchange offer where the vote passes with the tender of shares, then the proxy regulations also shall apply to the transaction. The Form F–4 filing may be used to satisfy the Schedule 14D–1 (Tender Offer Statement, 17 CFR 240.14d–100) and, if the parties so choose, the subject company's Schedule 14D–9 (Tender Offer Soliciation/Recommendation Statement, 17 CFR 240.14d–101) filing obligation.

D. Transactions Involving U.S. and Foreign Registrants Ineligible to Use Form 20–F

New Form S–4 also may be used by U.S. and foreign private registrants which are not eligible to use Form 20–F when they are involved in business combination transactions. General Instruction C.1(d) of Form F–4 directs the registrant to Form S–4 for the information to be provided when such a company is being acquired. Form S–4 contains a similar cross-over provision.

E. Rule 415

Registration statements of Form F–4, because they relate to offerings which are continuous over a period of time, are subject to Rule 415(a)(1)(viii) (business combination transactions) and, if they are to be used for reoffers or resales, to Rule 415(a)(1)(i) (secondary offerings).[33]

General Instruction F has been added to address situations where the registrant uses Form F–4 for an offering of securities in connection with business combination transactions which will be effected on a delayed basis. In the case, the registrant must furnish information concerning the contemplated transaction(s) and the company(ies) being acquired as of the date of initial effectiveness only to the extent practicable. The required information about the specific transaction(s) and the particular company(ies) being acquired generally must be provided by post-effective amendment. For example, where an acquisition will be effected in a multi-step transaction in which there is an exchange offer followed by a merger, the initial registration statement would contain a prospectus that includes information about the exchange offer.[34] A post-effective amendment would have to be filed to provide information with respect to the second step merger.

In order to implement the content of General Instruction F, an undertaking has been added to Item 22 of the Form. This undertaking, to file post-effective amendments with respect to transactions contemplated after effectiveness, is required in addition to the undertakings required by Item 512(a) of Regulation S–K.[35] The new undertaking will ensure that the use of Rule 415 cannot be used to implement Recommendation Twelve of the Advisory Committee's recommendations,[36] by allowing the use of a prospectus supplement to provide for the immediate commencement of an exchange offer.

F. Structure of the Form

The two part structure of Form F–4, separating the information which must be included in the prospectus (Part I) and that which need not (Part II), is the same as other Securities Act forms. Part I of Forms F–4 and S–4 is divided into four separate sections in order to set forth clearly the requirements relating to the transaction, the companies involved, voting and management information.

1. Information Required in the Prospectus—Part I

a. *Information about the Transaction—Section A.* Section A calls for information about the transaction. This information must be presented in the prospectus instead of incorporated by reference. The items in section A include: Items 1 and 2, information called for by Items 501[37] and 502[38] of Regulation S–K; Item 3, risk factors, ratio of earnings to fixed charges and other information; Item 4, terms of the transaction; Item 5, pro forma financial information; Item 6, material contacts between the companies; Item 7, additional information related to resales; and Items 8 and 9, information called for by Items 509[39] and 510[40] of Regulation S–K.

(1) *Risk Factors, Ratio of Earnings to Fixed Charges and Other Information—Item 3.*—Item 3 is adopted with modifications and additional items that reflect commentators' suggestions. First, the item has been redesignated "Risk Factors, Ratio of Earnings to Fixed Charges and Other Information," to clarify that the information set forth in this part of the prospectus is not a summary of all material information concerning the transaction. The item requires the registrant to furnish information required by Item 503 of Regulation S–K;[41] the name and address of the subject entities; a brief description of business and properties; a brief description of the transaction; certain comparative per share data; exchange rate information; a statement concerning dissenters' appraisal rights; a statement comparing the percentage of outstanding voting shares held by directors, officers and their affiliates; the vote required for approval; and a brief statement regarding the tax consequences of the proposed transaction.[42]

In addition, Item 3 requires a statement as to whether any regulatory requirements other than the U.S. federal securities laws, must be complied with or approvals must be obtained in connection with the transaction, and if so, the status of such compliance or approvals. Finally, a requirement has been added in Item 3(d) to furnish the information required by Item 8 of Form 20–F (condensed financial data for five year trend information) for (1) the registrant; (2) the company being acquired; and (3) if material with respect to the registrant, pro forma data giving effect to the transaction.[43] As a result of this change, the time period requirements for the comparative per share data and equivalent per share data have been revised to reflect that the Item 8 time periods provide the basis for such comparative data.

(2) *Terms of the Transaction—Item 4.*—Item 4 calls for a description of the terms of the transaction, including information about the acquisition agreement, reasons for the transaction, description of securities and differences in the rights of security holders. This item as adopted reflects several changes from the proposal in response to commentator suggestions.

Proposed Form F–4 would have allowed registrants eligible to use Form F–3 to incorporate by reference the description of the securities being issued in the transaction if the same securities

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[33] 17 CFR 230.415(a)(1)(i) and (viii). In view of this position, it was not necessary to include a Rule 415 cover page box in Form F–4 as adopted.

[34] Where such a second step in a multi-step transaction becomes probable, however, pro forma financial information is required at this point as to the effects of both the exchange offer and the second step merger.

[35] 17 CFR 229.512(a). Item 512(a) requires the registrant, in an offering of securities pursuant to Rule 415 to undertake to update the prospectus by post-effective amendments to reflect: (1) Any prospectus required by section 10(a)(3) of the Securities Act; (2) facts or events arising after the effective date of the registration statement which constitute a fundamental change; and (3) any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to information in the registration statement. The item also requires an undertaking to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

[36] *See* discussion at page 11, *infra.*

[37] 17 CFR 229.501 (forepart of registration statement and outside front cover page of prospectus).

[38] 17 CFR 229.502 (inside front and outside back cover page of prospectus).

[39] 17 CFR 229.509 (interests of named experts and counsel).

[40] 17 CFR 229.510 (disclosure of Commission position on indemnification).

[41] 17 CFR 229.503 (summary information, risk factors and ratio of earnings to fixed charges).

[42] In view of the complexity of the tax consequences of certain business combination transactions, revised Item 3(j) permits registrants to provide, where appropriate, only a cross reference to the information furnished pursuant to Item 4 of the Form.

[43] Where F–2 or F–1 companies are involved, this information is required to be presented pursuant to other items of the Form.

are registered under the Exchange Act. The adopted item changed the conditions under which the description of securities may be incorporated by reference to require not only that securities of the same class as those being offered must be registered under section 12 of the Exchange Act, but also that these securities must be listed for trading or admitted to unlisted trading privileges on a national exchange, or be securities for which bid and offer quotations are reported on an automated quotations system operated by a national securities association. This change responds to commentators' concerns by ensuring that security holders receive the description of any class of securities that previously has not been trading.

The proposed Form would have required disclosure of the effect of the transaction on the registrant, the company being acquired and the existing security holders of both. This requirement has been deleted because commentators believed disclosure of the effect of the transaction would be duplicative of the requirement in Item 4(a)(2) for disclosure of the reasons for the transaction. For example, if the registrant plans to dispose of substantial components or assets of the company being acquired, disclosure of such plans would be called for pursuant to Item 4(a)(2).

Item 4 also was revised to codify existing administrative practice in the area of investment banking and other opinions. The Item requires that if the registrant or the company being acquired has obtained a report, opinion or appraisal from an outside party as to the transaction and refers to such opinion in the prospectus, then the information called for by Item 9(b)(1) of Schedule 13E-3[44] must be furnished. The Item does not require that such a report be obtained or that there be an affirmative statement as to whether one was obtained. The Item applies only where a report has been obtained and reference to it is made in the prospectus.

In addition, pursuant to commentators' suggestions, a requirement to furnish a brief statement as to the accounting treatment of the transaction has been added. This item will elicit disclosure as to whether the proposed acquisition will be accounted for as a purchase transaction or a pooling of interests transaction.

Finally, Item 4(b) of the proposed Form would have required incorporation by reference of the acquisition agreement into the prospectus and an undertaking that the agreement be furnished, without charge, by first class mail or other equally prompt means, to security holders that request it. In this regard, the Commission solicited comment as to whether it should: (1) Give guidance as to which of the provisions of the acquisition agreement registrants should discuss pursuant to Item 4(a)(1); and (2) in keeping with its goal of streamlining disclosure, take further steps to discourage delivery of the acquisition agreement. Commentators generally supported the incorporation by reference requirement, but indicated that timely delivery of the acquisition agreement to requesting security holders would be essential to the adequacy of the requirement. Commentators did not believe any further steps are appropriate in this area. The Commission agrees and has adopted Item 4(b) with the one modification that the undertaking to furnish the agreement has been deleted because it is duplicative of the new undertaking added as Item 22(b).[45]

(3) *Pro Forma Information—Item 5.*—This Item has been adopted as proposed. The pro forma financial information relating to the transaction pursuant to which a Form F-4 is filed, like other transaction information, must be presented in the prospectus and may not be incorporated by reference. However, pro forma information relating to other business combinations besides the transaction pursuant to which this registration statement is filed is treated like company information and, therefore, may be presented in the prospectus or, if already filed, incorporated by reference therein. This Item has been adopted as proposed.

(4) *Material Contacts Between Companies—Item 6.*—Item 6 of Form F-4, which has been adopted as proposed, calls for information relating to any past, present or proposed material contracts, negotiations, transactions or similar contacts between the registrant and the company being acquired. The Item is designed to elicit information about (1) possible conflicts of interest and (2) facts relating to transactions such as pre-takeover transactions or purchases by the registrant of significant blocks of the securities of the company being acquired.

(b) *Information About the Registrant—Section B.* (1) *Reporting Companies.*—As indicated previously, the principal differences between Forms F-4 and S-4 are in the sections specifying the information to be disclosed concerning the companies involved, each relying on the respective integrated disclosure systems adopted for foreign and domestic issuers.

If a registrant is subject to either sections 13 or 15(d) of the Exchange Act, the information it would have to present in the prospectus about itself is the same as required by Form F-1, F-2 or F-3[46] if it were making a primary offering of securities not involving a business combination. Registrants eligible to use Form F-2 or F-3 are not required to present information at the most stream lined level available, but may elect instead to comply with provisions of the Form calling for greater prospectus presentations.

General Instruction B explains the operation of the three-tier system in the context of the registrant on Form F-4 and, as adopted, reflects certain clarifying changes.

(2) *Non-Reporting Companies.*—For registrants that are not subject to the reporting requirements of the Exchange Act, Form F-4 requires disclosure of company information at the level prescribed by Form F-1. The majority of the commentators supported this approach and these requirements have been adopted as proposed. In the proposing release, the Commission also sought comments as to whether non-reporting foreign registrants should be provided a different level of disclosure, *e.g.*, Item 17 of Form 20-F financial statements. Those commentators specifically addressing this point favored the Item 17 approach. Non-reporting foreign registrants making a primary offering other than a business

[44] 17 CFR 240.13e-100. Of course, the person rendering such opinion would be an expert within the meaning of section 7 of the Securities Act and, accordingly, would be required to furnish the required consent. Moreover, a requirement to furnish the report, opinion or appraisal as an exhibit to the registration statement, if it has been referenced in the prospectus, has been added in Item 21(c) of Form F-4.

[45] See discussion at fn. 16, *infra*.

[46] Application of the Form S-3 level includes the forward incorporation feature of that Form, *i.e.*, the incorporation by reference of subsequently filed Exchange Act reports, including all reports filed subsequent to the effectiveness of the registration statement and prior to the termination of the offering. As the Commission noted in proposing Form S-3, however:

> Despite the fact that subsequently filed periodic reports under the Exchange Act are incorporated by reference into a Form S-3 prospectus, registrants should be aware that they may be required to amend the prospectus if the information actually presented therein has become materially false and misleading by reason of subsequent events that are reported in the incorporated Exchange Act documents.

See, Release No. 33-6331, [August 6, 1981][46 FR 41902] at fn. 64. Form F-4 registrants who elect the F-3 level for either entity should be similarly mindful with respect to information actually presented in the prospectus delivered in connection with the transaction.

combination, however, would be required to furnish Item 18 of Form 20–F financial statements. To achieve consistency with the integrated disclosure system, the Commission has determined not to adopt this concept.

c. *Information About the Company Being Acquired—Section C.* The following discussion assumes the company being acquired is another foreign private issuer eligible to use Form 20–F. If the company being acquired is not such a company, the registrant shall present information about such other company pursuant to Instruction C of proposed Form S–4.

(1) *Reporting Companies.*—Form F–4 generally provides for the same prospectus presentation about a reporting company being acquired that would be required by Form F–1, F–2, or F–3 were such company making a primary offering of securities not involving a business combination. Thus, Form F–4, for the most part, requires registrants to provide information about the company being acquired as if that company were the registrant.

(2) *Non-Reporting Companies.*—Form F–4 allows registrants to elect to provide information about non-reporting companies being acquired either at the annual report on Form 20–F level or at a lesser level depending upon the extent to which audited financial statements are available. With respect to financial statement requirements, this approach reflects a change from the proposal, which is discussed below. The Commission believes that these revised requirements strike a more appropriate balance between the cost of collecting and processing information not previously developed, and disclosure to investors.

Proposed Form F–4 would have required non-reporting companies being acquired to provide audited financial statements for the periods required to be presented by Rule 3–05 of Regulation S–X.[47] In addition, the proposed Form carried over the provisions of Item 15 of Schedule 14A [48] that such financial statements need be certified [49] only to the extent practicable, but that reoffers to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) would be prohibited until the required certified statements are provided.

Pursuant to commentator suggestion that some minimum level of disclosure should be required in the Form as to both entities, the financial statement requirements of Form F–4 with respect to non-reporting companies being acquired have been changed. Thus, Item 17(b)(5) provides that a non-reporting company being acquired must provide three year financial statements as would have been required to be included in an annual report of Form 20–F had the company being acquired been required to prepare such a report. The balance sheet for the year preceding the latest full fiscal year and the income statements for the two preceding years, however, need not be audited if they have previously not been audited. In addition, any interim financial statements required by Item 3–19 of Regulation S–X [50] also must be furnished. Furthermore, the financial statements required by Item 17(b)(5) need only comply with the reconciliation requirements of Item 17 of Form 20–F to the extent audited.

d. *Voting and Management Information—Section D.* (1) *Voting Information.*—If a proxy, consent [51] or authorization is to be solicited, Form F–4 requires registrants to present in the prospectus information concerning: (1) The vote needed for approval, (2) dissenters' rights of appraisal, (3) revocability of proxies, (4) interest of certain persons in the transaction, (5) persons making the solicitation, and (6) the registrant's relationship with independent public accountant. In the absence of a solicitation, the Form requires prospectus presentation of information about: (1) The date of the shareholder meeting, (2) the vote required for approval, (3) dissenters' rights of appraisal, (4) the registrant's relationship with independent public accountants, and (5) a statement that proxies, consents or authorizations are not being solicited. These requirements have been adopted as proposed, except that Item 19 has been revised to make clear which provisions are not applicable in the case of exchange offers.

(2) *Management Information.*—Whether or not proxies are to be solicited, Form F–1 requires information concerning voting securities and the principal holders of such shares [52] with respect to all directors and executive officers of both entities and, with regard to the directors and executive officers of the surviving or acquiring company, information about directors and executive officers,[53] remuneration and options,[54] and interest of management in certain transactions.[55] The form permits incorporation by reference of management information to the same extent as would be permitted in a primary offering not involving a business combination under Forms F–1, F–2 and F–3.

2. Information Not Required in the Prospectus—Part II

Part II of Form F–4 prescribes information called for by: (1) Item 702 of Regulation S–K [56] indemnification of directors and officers; (2) Item 601 of Regulation S–K,[57] exhibits; and (3) Item 512 of Regulation S–K,[58] undertakings. This information would be included in the registration statement, but could be omitted from the prospectus. These requirements have been adopted as proposed, with the addition of the two new undertakings (compliance with requests for information incorporated by reference and post-effective amendments for delayed business combinations) and the new exhibit requirement for reports, opinions, or appraisals materially related to the transaction that are referenced in the prospectus.

E. Other Amendments

1. Corresponding Amendments

In the Form S–4 Release, the Commission also adopted corresponding amendments to Rule 3–05 of Regulation S–X, Items 502, 512 and 601 of Regulation S–K, Rules 406, 463, 464, 473, 475a and 477 under the Securities Act and Rules 14a–3, 14a–6, 14c–2 and 14c–5 under the Exchange Act. These amendments are necessitated by rescission of Form S–15 and its replacement with Forms S–4 and F–4. The changes delete references to Form S–15 and, where appropriate, replace them with references to Forms S–4 or F–4. To avoid duplication the amendments

[47] Generally, Rule 3–05 requires audited financial statements for one, two or three years regarding a business that is being acquired depending upon the relative size of the acquisition.

[48] 17 CFR 240.14a–101.

[49] In the revised Form F–4 requirements, the word "certified" has been changed to "audited" for consistency.

[50] 17 CFR 210.3–19.

[51] In a consent solicitation, the 20 business day period discussed, *infra*, operates to require the registrant to send the prospectus to security holders 20 days in advance of the date on which such consents may be used to effect the transaction, rather than 20 days in advance of the date on which the requisite consents may be received by the soliciting party. This procedure considers the possibility of revocation for consents and establishes a fixed date for calculation of the 20 business day period in this context.

[52] Item 5 of Schedule 14A. However, the information specified in Item 4 of Form 20–F may be provided in lieu of the information required by paragraphs (d) and (e) of Item 5 of Schedule 14A.

[53] Item 10 of Form 20–F.

[54] Items 11 and 12 of Form 20–F.

[55] Item 13 of Form 20–F.

[56] 17 CFR 229.702.

[57] 17 CFR 229.601.

[58] 17 CFR 229.512.

necessitated by Form F–4 are included in the Form S–4 release.

2. Item 502 of Regulation S–K

In addition to the corresponding amendments noted above, a clarifying amendment to Item 502 of Regulation S–K also has been adopted in the Form S–4 Release. The amendment clarifies that the undertaking required of registrants to send documents that are incorporated and not delivered extends to beneficial owners.

3. Amendment to the Rule 145

Exception for Change of Domicile

The Commission has also adopted an amendment to paragraph (a)(2) of Rule 145 [59] to make clear that the change of domicile exception does not apply when a change of national jurisdiction is involved. This amendment codifies prior staff interpretations.

Statutory Authority

The Commission is adopting Form F–4 and the related amendments pursuant to sections 5, 6, 7, 10 and 19(a) of the Securities Act and sections 14(a), 14(c) and 23(a) of the Exchange Act.

As required by section 23(a) of the Exchange Act, the Commission has specifically considered the impact that the rulemaking actions revising 17 CFR Parts 230 and 239 taken pursuant to the various provisions of the Exchange Act would have on competition and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to Form F–4, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposing release (Release No. 33–6535, May 9, 1984 (49 FR 20852)).

The Need for and Objectives of Form F–4

The Form is designed to improve the effectiveness of the business combinations prospectus by requiring that information be presented in a more accessible and meaningful format, and to simplify the registration of securities issued in such transactions. The Commission is implementing these objectives by applying to business combination transactions the principles of the foreign integrated disclosure system developed in the context of primary offerings of securities. Thus, information about the companies involved is presented in, delivered with, or incorporated by reference into, the prospectus to the same extent as provided when such companies are making primary offerings. The Form, together with Form S–4, replaces Form S–15 under the Securities Act of 1933 ("Securities Act") and is available for the registration of all business combination transactions, including exchange offers previously registered on Forms S–1 and F–1 under the Securities Act.

Issues Raised by Public Comment

No commentators referred to the Initial Regulatory Flexibility Analysis in commenting on proposed Form F–4.

Significant Alternatives

Form F–4 is modeled on the disclosure requirements contained in Forms F–1, F–2 and F–3, the basic forms under the Commission's integrated disclosure system for foreign private issuers. The Form reflects the conclusion that the integrated disclosure system and its benefits are similarly appropriate in the context of business combinations. The Commission does not believe that other alternatives for foreign private issuers, including use of a performance rather than a design standard, or exempting small entities from all or part of the requirements of the Form would be consistent with the Commission's statutory mandate to protect investors.

List of Subjects

17 CFR Part 230

Advertising, Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

III. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising paragraph (a)(2) of § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(a) * * *

(2) *Mergers of Consolidations.* A statutory merger or consolidation or similar plan or acquisition in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any person, unless the sole purpose of the transaction is to change an issuer's domicile solely within the United States; or

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

2. By adding new § 229.34 to read as follows (This Form does not appear in the Code of Federal Regulations):

§ 239.34 Form F–4, for registration of securities of certain foreign private issuers issued in certain business combination transactions.

This form may be used by any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), eligible to use Form 20–F (§ 249.220(f) of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (a) In a transaction of the type specified in paragraph (a) of (b) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired Rule 145 (§ 230.145 of this chapter); (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1.79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n (a), (c), 78w(a))

Form F–4

Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(Translation of registrant name into English)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

(I.R.S. Employer Identification Number)

(Address, including Zip Code, and telephone number, including area code, of registrant's principal executive offices)

[59] 17 CFR 230.145(a)(2).

(Name, address, including Zip Code, and telephone number including area code, of agent of service)

Approximate date of commencement of proposed sale of the securities to the public.

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

General Instructions

A. Rule as to Use of Form F–4

1. This Form may be used by any foreign private issuer, as defined in Rule 405 (§ 230.405 of this chapter), eligible to use Form 20–F (§ 249.220f of this chapter), for registration under the Securities Act of 1933 ("Securities Act") of securities to be issued: (1) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (2) (b) in a merger in which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (3) in an exchange offer for securities of the issuer or another entity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

2. If the registrant meets the requirements of and effects to comply with the provisions in any Item of this Form or Form S–4 (§ 239.25) that provides for incorporation by reference of information about the registrant or the company being acquired, the prospectus must be sent to the security holder no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorization may be used the effect the transaction. Attention is directed to section 13(e), 14(d) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder regarding other time periods in connection with exchange offers and going private transactions.

3. This form shall not be used if the registrant is a registered investment company.

B. Information With Respect to the Registrant

1. Information with respect to the registrant shall be provided in accordance with the items referenced in one of the following subparagraphs:

(a) Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements for use of Form F–3 (§ 239.33 of this chapter) if (hereinafter, with respect to the registrant, "meet the requirements for use of Form F–3" for this offering of securities) and elects this alternative:

(i) The registrant meets the requirements of General Instruction I.A. of Form F–3, and

(ii) One of the following is met:

A. The registrant meets the aggregate market value requirement of General Instruction I.B.1. of Form F–3; or

B. Non-convertible debt or preferred securities are to be offered pursuant to this registration statement and are "investment grade securities" as defined in General Instruction I.B.2. of Form F–3; or

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.A.6. of Form F–3 is met.

(b) Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form F–2 (§ 239.32 of this chapter) or Form F–3, and elects this alternative; or

(c) Item 14 of this Form, if the registrant does not meet the requirements for use of Form F–2 or F–3 or if it otherwise elects this alternative.

2. If the registrant is a real estate entity of the type described in General Instruction A to Form S–11 (§ 239.18 of this chapter), the information prescribed by Items 12, 13, 14, 15 and 16 of the Form S–11 shall be furnished about the registrant in addition to the information provided pursuant to Items 10 through 14 of this Form. The information prescribed by such Items of Form S–11 may be incorporated by reference into the prospectus if (a) registrant qualifies for and elects to provide information pursuant to alternative 1.a. or 1.b. of this instruction and (b) the documents incorporative by reference pursuant to such elected alternative contain such information.

C. Information With Respect to the Company Being Acquired

1. Information with resect to the company whose securities are being acquired (hereinafter including, where securities of the registrant are being offered in exchange for securities of another company, such other company) shall be provided in accordance with the items referenced in one of the following subparagraphs:

(a) Item 15 of this Form, if the company being acquired meets the requirements of General Instruction I.A. and I.B. (hereinafter, with respect to the company being acquired, "meets the requirements for use of Form F–3" or use of Form F–3 and this alternative is elected;

(b) Item 16 of this Form, if the company being acquired meets the requirements for use of Form F–2, or Form F–3, and this alternative is elected; or

(c) Item 17 of this Form, if the company being acquired does not meet the requirements for use of Forms F–2 or F–3, or if this alternative is otherwise elected.

(d) If the company to be acquired is a U.S. company or a foreign private issuer not eligible to use Form 20–F, the registrant shall present information about such other company pursuant to Instructions C and F of Form S–4 (§ 239.25 of this Chapter).

2. If the company being acquired is a real estate entity of the type described in General Instruction A to Form S–11, the information that would be required by Items 13, 14, 15 and 16(a) of Form S–11 if securities of such company were being registered shall be furnished about such company being acquired in addition to the information provided pursuant to this Form. The information prescribed by such Items of Form S–11 may be incorporated by reference into the prospectus if: (a) The company being registered would qualify for use of the level of disclosure prescribed by alternative I.a. or I.b. of this instruction and such alternative is elected, and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

D. Application of General Rules and Regulations

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (§ 230.400 et seq. of this chapter). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed of Regulation S–K (Part 229 of this chapter) and Form 20–F for the requirements applicable to the content of non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K or Form 20 F and the item of Regulation S–K or Form 20–F so provides, information need only be furnished to the extent appropriate.

E. Compliance With Exchange Act Rules

1. If a corporation or other person submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a–1 through 14a–101 of this chapter) or 14C (§§ 240.14c–1 through 14c–101 of this chapter) under the Exchange Act, then the provisions of such Regulations shall apply in all respects to such person's submission, except that: (a) The prospectus may be in the form of a proxy or information statement and may contain the information required by this Form in lieu of that required by Schedule 14A (§240.14a–101) or 14C (§ 240.14c–101) of Regulation 14A or 14C under the Exchange Act; and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to such person's obligations under such Regulations.

2. If the proxy of information statement material sent to security holders is not subject to Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction in which the securities being registered are to be issued is subject to Section 13(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

F. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of This Chapter)

If the registration statement relates to offerings of securities pursuant to Rule 415(a)(1)(viii), required information about the type of contemplated transaction (and the company being acquired) need only be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired must be included in the prospectus by means of a post-effective amendment.

Part I. Information Required in the Prospectus

A. Information About the Transaction

Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (§ 229.501 of this chapter).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter).

In addition, include the following statement in bold face type, where applicable: This prospectus incorporates documents by reference which are not presented herein or delivered herewith. These documents are available upon request from (name, address and telephone number to which a request is to be directed). In order to ensure timely delivery of the documents, any request should be made by (date five business days prior to the date of the meeting on the date on which the final investment decision must be made).

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information.

Provide in the forepart of the prospectus a summary containing the information required by Item 503 of Regulation S–K (§ 229.503 of this chapter) and the following:

(a) The name, complete mailing address (including the Zip Code), and telephone number (including the area code) of the principal executive offices of the registrant and the company being acquired;

(b) A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(c) A brief description of the transaction in which the securities being registered are to be offered;

(d) The information required by Item 8 of Form 20–F (selected financial data) for (i) the registrant; (ii) the company being acquired; and (iii) if material, the registrant, on a pro forma basis, giving effect to the transaction. If the information is required to be presented in the prospectus pursuant to Items 12, 14, 16 or 17, it need not be presented pursuant to this Item;

(e) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 8 of Form 20–F (selected financial data);

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 8 of Form 20–F (selected financial data); and

(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 8 of Form 20–F (selected financial data).

Instructions

1. For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends declared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

2. Instruction 7 to Item 8 of Form 20–F is applicable to the financial information presented hereunder to the extent that this Form requires reconciliation of financial statements of foreign private issuers to United States generally accepted accounting principles ("U.S. GAAP") and Regulation S–X (Part 210 of this chapter).

(f) In comparative columnar form, the market value of securities of the company being acquired (on an historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the date preceding public announcement of the proposed transaction, or, if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into;

(g) With respect to the registrant and the company being acquired, a brief statement comparing the precentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates and the vote required for approval of the proposed transaction;

(h) A statement as to whether any regulatory requirements other than the U.S. federal securities laws, must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approvals;

(i) A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 18 or 19 of this Form; and

(j) A brief statement about the tax consequences of the transaction or if appropriate, consisting of a cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the Transaction.

(a) Furnish a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) A brief summary of the terms of the acquisition agreement;

(2) The reasons of the registrant and of the company being acquired for engaging in the transaction;

(3) The information required by Item 202 of Regulation S–K (§ 229.202 of this chapter), description of registrant's securities unless: (i) The registrant would meet the requirements for use of Form F–3, (ii) capital stock is to be registered, and (iii) securities of the same class are registered under Section 12 of the Exchange Act and listed for trading on a national exchange, or are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association;

(4) An explanation of any material differences between the rights of security holders of the company being acquired and the rights of holders of the securities being offered;

(5) A brief statement as to the accounting treatment of the transaction;

(6) The tax consequences of the transaction; and

(7) A discussion of any material differences in the corporate laws of the country of the company to be acquired and the country of the surviving company. The discussion should include, but not necessarily be limited to: corporate governance, board structure, quorums, class action suits, shareholder derivative suits, rights in inspect corporate books and records, rights to inspect the shareholder list, and rights of directors and officers to obtain indemnification from the company.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the prospectus, furnish the information called for by Item 9(b) (1) through (6) of Schedule 13E–3 (§ 240.13e–100 of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus, by means of a statement to that effect.

Item 5. Pro Forma Financial Information.

Furnish financial information required by Article 11 of regulation S–X (§ 210.11–01 et seq. of this chapter) with respect to this transaction.

Instructions

1. Any other Article 11 information required to be presented (rather than incorporated by reference) pursuant to other Items of this Form shall be presented together with the information provided pursuant to Item 5, but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to Item 11 or 15 of this Form only the pro forma results need be presented as part of the pro forma financial information required by this Item.

Item 6. Material Contacts With the Company Being Acquired.

Describe any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to Part I.B. or C. of this Form between the company being acquired or its affiliates and the registrant or its affiliates, such as those concerning: a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 7. Additional Information Required for Reoffering by Persons and Parties Deemed To Be Underwriters.

If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof, furnish the following information in the prospectus at the time it is being used for the reoffer of the securities, to the extent it is not already furnished therein:

(a) The information required by Item 507 of Regulation S–K (§ 229.507 of this chapter); and

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material change in the registrant's affairs subsequent to the transaction.

Item 8. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (§ 229.509 of this chapter).

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (§ 229.510 of this chapter).

B. Information About the Registrant

Item 10. Information With Respect to F–3 Companies.

If the registrant meets the requirements for use of Form F–3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report on Form 20–F and that have not been described in a report on Form 6–K (§ 249.306 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference from the registrant's latest Form 20–F in accordance with Item 11 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20–F in which case the prospectus shall disclose that the Form 20–F has been so amended, or in a Form 6–K; and

(c) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter), or from a Form 6–K filed during either of the two preceeding fiscal years:

(1) Financial information required by Rule 3–05 (§ 210.3–05 of this chapter) and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(2) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11–01(b) of this chapter); or

(4) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction

Reference is made to Rules 4–01(a)(2) and 10–01 of Regulation S–X (§§ 210.4–01(a)(2) and 210.10–01 of this chapter).

Item 11. Incorporation of Certain Information by Reference.

If the registrant meets the requirements of Form F–3 and elects to furnish information in accordance with the provisions of Item 10 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect listing all documents so incorporated, the documents listed in paragraph (1) below and, if applicable, (2) and (3) below.

(1) The registrant's latest annual report on Form 20–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20–F was required to be filed;

(2) All other reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in Item 11(a)(1) of this Form; and

(3) If capital stock is to be registered and securities of the same class are registered under section 12 of the Exchange Act, and (i) listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported on an automated quotations system operated by a national securities association the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

Instructions

1. All annual reports on Form 20–F filed by the registrant applicable to Items 11(a) and (b) herein shall contain financial statements that comply with Item 18 of Form 20–F except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade debt as defined in the General Instructions to Form F–3.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 to Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, or in a Form 6–K.

3. The registrant may incorporate by reference any Form 6–K meeting the requirements of Form F–3. See Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

(b) The prospectus also shall state that all annual reports on Form 20–F, and any Form 6–K so designated, subsequently filed by the registrant pursuant to section 13(a), 13(c) or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of security holders is to be held, the date on which such meeting is held;

(2) If a meeting of security holders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the termination of the offering; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the termination of such reoffering.

Instruction

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding consent to the use of material incorporated by reference.

Item 12. Information With Respect to F–2 or F–3 Registrants.

If the registrant meets the requirements for use of Form F–2 or F–3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. *However*, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements in the registrant's latest annual report on Form 20–F do not reflect: (1) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most

recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report on Form 20-F, or a complete and legible facsimile of such Form 20-F:

(1) indicate that the prospectus is accompanied by the registrant's latest annual report on Form 20-F.

(2) If the financial statements incorporated by reference from the registrant's latest Form 20-F in accordance with Item 13 are not sufficiently current to comply with the requirements of Item 3-19 of Regulation S-X, provide the information required by Rule 10-01 of Regulation S-X and Item 9 of Form 20-F by one of the following means:

(i) including such information in the prospectus;

(ii) providing without charge to whom a prospectus is delivered a copy of the registrant's Form 6-K report that contains such later information; or

(iii) in an amended Form 20-F in which case the prospectus shall disclose that the Form 20-F has been so amended.

(3) If not reflected on the registrant's latest Form 20-F annual report, provide information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs which have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest filing on Form 20-F and that have not been described in a report on Form 6-K delivered with the prospectus in accordance with paragraph (2)(ii) of this item.

(5) Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, or in a Form 6-K.

(b) If the registrant does not elect to deliver its latest Form 20-F annual report to the security holders of the company to be acquired:

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year based on the requirements of Items 1 and 2 of Form 20-F. The description shall also take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Item 18 of Form 20-F. In addition, provide:

(i) The interim financial information as required by Rule 10-01 of Regulation S-X, sufficient to meet the requirements of Rule 3-19 of Regulation S-X;

(ii) Financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with or reconciled to U.S. GAAP and Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; and

(v) Any financial information required because of a material disposition of assets outside the normal course of business.

Instruction

Reference is made to Item 4-01(a)(2) of Regulation S-X.

(3) Furnish the information required by the following:

(i) Items 1 (a)(3) and (a)(4) of Form 20-F, principal products, principal markets, methods of distribution, sales and revenues by categories of activity and into geographical markets;

(ii) Item 2 Form 20-F, properties if the registrant is engaged significantly in extractive industries;

(iii) Item 6 Form 20-F, exchange controls and other limitations on security holders;

(iv) Item 7 Form 20-F, taxation;

(v) Item 8 Form 20-F, selected financial data;

(vi) Item 9 Form 20-F, management's discussion and analysis of financial condition and results of operations;

(vii) Financial statements required by Item 18 of Form 20 (Schedules required under Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form), and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued; and

(viii) Where common equity securities are being issued, Item 5 of Form 20-F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to comply with Rule 3-19 of Regulation S-X.

Item 13. Incorporation of Certain Information by Reference.

If the registrant meets the requirements of Form F-2 or F-3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, and deliver with the prospectus the documents listed in paragraphs (1) and, if applicable, (2) below:

(1) The registrant's latest annual report on Form 20-F filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20-F was required to be filed; and

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

Instructions

1. All annual reports on Form 20-F filed by the registrant applicable to Item 13(a) or (b) herein shall contain financial statements that comply with Item 18 of Form 20-F.

2. Where common equity securities are being issued, the information required by Item 5 of Form 20-F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3-19 of Regulation S-X. Such updating may be made in the prospectus, in an amended Form 20-F, or in a Form 6-K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6-K containing information meeting the requirements of Form F-2. See Rules 4-01(a)(2) and 10-01 of Regulation S-X and Item of 18 of Form 20-F.

4. Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual reports on Form 20-F or reports on Form 6-K are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

Item 14. Information With Respect to Foreign Registrants Other Than F-2 or F-3 Registrants.

If the Foreign registrant does not meet the requirements for use of Form F-2 or F-3, or otherwise elects to comply with this Item in lieu of Item 10 or 12, furnish the information required:

(a) Item 1 of Form 20-F, description of business;

(b) Item 2 of Form 20-F, description of property;

(c) Item 3 of Form 20-F, legal proceedings;

(d) Item 6 of Form 20-F, exchange controls and other limitations affecting security holders;

(e) Item 7 of Form 20-F, taxation;

(f) Item 8 of Form 20-F, selected financial data;

(g) Item 9 of Form 20-F, management's discussion and analysis of financial condition and results of operation;

(h) Financial statements required by Item 18 of Form 20-F, (schedules required by Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form), as well as financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions

other than that pursuant to which the securities being registered are to be issued; and

(i) Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X.

Instruction

The financial statements required herein shall comply with Rule 3–19 of Regulation S–X. See also Rules 4–01(a)(2) and 10–01 of Regulation S–X.

C. Information About the Company Being Acquired

Item 15. Information With Respect to F–3 Companies.

If the company being acquired meets the requirements for use of Form F–3 and compliance with this Item is elected, furnish the information that would be required by Items 10 and 11 of this Form if securities of such company were being registered.

Instruction

Notwithstanding the requirements of Items 10 and 11, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 16. Information With Respect to F–2 or F–3 Companies.

If the company being acquired meets the requirements for use of Form F–2 or F–3 and compliance with this Item is elected, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

Instruction

Notwithstanding the requirements of Items 10 and 11, the financial statements of the company being acquired need only comply with the reconciliation requirements of Item 17 of Form 20–F.

Item 17. Information With Respect to Foreign Companies Other than F–2 or F–3 Companies.

If the company being acquired does not meets the requirements for use of Form F–2 or F–3 or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information required by paragraph (a) or (b) of this Item, whichever is applicable.

(a) If the company being acquired is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or compliance with this subparagraph in lieu of subparagraph (b) of this Item is elected, furnish the information that would be required by Item 14 of this Form if the securities of such company were being registered; *however*, only financial statements complying with the reconciliation requirements of Item 17 of Form 20–F, and those schedules required by Rules 12–15, 28, and 29 of Regulation S–X (§ 210.12–15, 28, 29 of this chapter) need be provided with respect to the company being acquired.

(b) If the company being acquired is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act, furnish the information that would be required by the following if securities of such company were being registered:

(1) A brief description on the business done by the company which indicates the general nature and scope of the business;

(2) Where common equity securities are being issued, the information required by Item 5 of Form 20–F, nature of trading markets, updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in amended Form 20–F, or in a Form 6–K;

(3) Item 8 of Form 20–F, selected financial data;

(4) Item 9 of Form 20–F, management's discussion and analysis of financial condition and results of operations;

(5) Financial statements as would have been required to be included in an annual report on Form 20–F had the company being acquired been required to prepare such a report; *provided, however*, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceeding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resales to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c), the financial statements of such companies must be audited for the periods required to be presented pursuant to Rule 3–05.

(6) Any interim financial statements that would be required to be included in order to comply with Rule 3–19 of Regulation S–X; and

(7) Schedules required by Rules 12–15, 28 and 29 of Regulation S–X.

Instruction

The financial statements required by paragraph (b) (5) and (6) above need only comply with the reconciliation requirements of Item 17 of Form 20–F to the extent audited.

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations Are To Be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, revocability of proxy;

(2) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(3) The information required by Item 3 of Schedule 14A, persons making the solicitation;

(4) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 4 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 5 of Schedule 14A, voting securities and principal holders thereof.

Instruction

The information specified in Item 4 of Form 20–F may be provided in lieu of the information specified in Items 5 (d) and (e) of Schedule 14A.

(5) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(6) The information required by Item 22 of Schedule 14A, vote required for approval;

(7) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 10 of Form 20–F, directors and officers of registrant;

(ii) Items 11 and 12 of Form 20–F, remuneration and options; and

(iii) Item 13 of Form 20–F, interest of management in certain transactions.

(b) If the registrant or the company being acquired meets the requirements for use of Form F–2 or F–3, any information required by paragraphs (a)(4)(ii) or (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 20–F.

Item 19. Information if Proxies, Consents or Authorizations Are Not To Be Solicited in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The information required by Item 3 of Schedule 14C, date, time and place of meeting;

(3) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(4) With respect to both the registrant and the company being acquired, a brief description of any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the registrant and of the company being acquired, in the proposed transaction;

Instruction

This subparagraph shall not apply to any interest arising from the owership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(5) With respect to both the registrant and the company being acquired, the information required by Item 5 of Schedule 14A, voting securities and principal holders thereof;

Instruction

The information specified in Item 4 of 20–F may be provided in lieu of the information specified in Items 5 (d) and (e) of Schedule 14A.

(6) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(7) The information required by Item 22 of Schedule 14A, vote required for approval; and

(8) With respect to each person who will serve as a director or an executive officer of

the surviving or acquiring company, the information required by:

(i) Item 10 of Form 20–F, directors and officers of the registrant;

(ii) Items 11 and 12 Form 20–F remuneration and options; and

(iii) Item 13 of Form 20–F, interest of management in certain transactions.

(b) If the transaction is an exchange offer, furnish the information required by paragraphs (a)(4), (a)(5), (a)(6) and (a)(8) of this Item, except as provided by paragraph (c) of this Item.

(c) If the registrant or the company being acquired meets the requirements for use of Form F–2 or F–3, any information required by paragraphs (a) (5) and (8) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 20–F.

Part II—Information Not Required in Prospectus

Item 20. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (§ 229.702 of this chapter).

Item 21. Exhibits and Financial Statement Schedules.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S–K (29.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S–X and Item 14(e), Item 17(a) or Item 17(b)(7) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of this Item.

(c) If information is provided pursuant to Item 4(b) of this Form, furnish the report, opinion or appraisal as an exhibit hereto, unless it is furnished as part of the prospectus.

Item 22. Undertakings.

(a) Furnish the undertakings required by Item 512 of Regulation S–K (229.512 of this chapter).

(b) Furnish the following undertaking: The undersigned registrant hereby undertakes: (i) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means; and (ii) to arrange or provide for a facility in the U.S. for the purpose of responding to such requests. The undertaking in subparagraph (i) above include information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) Furnish the following undertaking: The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

Signatures

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19 ___.

(Registrant) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer of officers, its principal financial officer, its controller or principal accounting officer, at least a majority of the board of directors or persons performing similar functions and its authorized representative in the United States. Where registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 (§ 230.402 of this chapter) concerning manual signatures and Item 601 of Regulation S–K (§ 229.601 of this chapter concerning signatures pursuant to powers of attorney.

3. If the securites to be offered are those of a corporation not yet in existence at the time the registration statement is filed which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

* * * * *

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), (c), 78w(a)).

Date: April 23, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–10580 Filed 5–3–85; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–2831–1]

Standards of Performance for New Stationary Sources; Appendix A—Reference Methods; Total Reduced Sulfur; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule for a test method to be used at kraft pulp mills that appeared on page 9579 in the **Federal Register** dated Friday, March 8, 1985 (50 FR 9578). The action is necessary to correct a factor used in the emission rate calculation.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: The following correction is made in 50 FR 9578 appearing on page 9579 in the issue dated March 8, 1985:

§ 60.285 [Corrected]

On page 9579 near the bottom of column 2, in § 60.285(d)(3), "[] = 0.08844 lb H_2S/ft^3 ppm for English units." is corrected to read "$= 0.08844 \times 10^{-6}$ lb H_2S/ft^3 ppm for English units."

* * * * *

Dated: April 26, 1985.

Charles Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–10908 Filed 5–3–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communiies listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or

show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq. Reorganization Plan No. 3 of 1978. E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown: Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ARKANSAS	
Little Rock, city, Pulaski County (FEMA Docket No. 5630)	
Grassy Flat Creek:	
Downstream side of Converse Drive	*392
Upstream side of Interstate 430	*405
Market Street	*419
Downstream side of Plainwood Drive	*424
Upstream side of Pleasant Valley Drive	*455
Rock Creek:	
Downstream side of Asher Avenue	*265
Upstream side of Asher Avenue	*268
Upstream side of 36th Street	*277
Taylor Loop Creek:	
Approximately 1,200 feet downstream of Taylor Loop Road	*311
Upstream side of Grishman Road	*319
Approximately .37 mile upstream of Grishman Road	*331
Upstream of Pebble Beach Drive	*362
Approximately .47 mile upstream of Pebble Beach Drive	*384
Maps available for inspection at the City Hall, Room 203, Markham and Broadway Streets, Little Rock, Arkansas.	
GEORGIA	
Unincorporated areas of Fulton County (Docket No. FEMA–6630)	
Autry Mill Creek:	
At mouth	*891
About 1,400 feet upstream of mouth	*891
Ball Mill Creek:	
At mouth	*872
About 900 feet upstream of mouth	*872
Boat Rock Creek:	
At mouth	*759
About 600 feet downstream of State Route 70	*759
Carney Creek:	
About 0.39 mile downstream of Shirley Bridge Extension	*994
Just upstream of Shirley Bridge Extension	*1,007
Chattahoochee River:	
About 200 feet upstream of the confluence of Camp Creek	*749
About 700 feet upstream of Interstate 20	*765
Just downstream of Powers Ferry Road	*792
Just downstream of Morgan Falls Dam	*819
Just upstream of Morgan Falls Dam	*851
About 1.2 miles upstream of State Route 141	*898
Colewood Creek:	
At mouth	*806
About 150 feet upstream of mouth	*806
Deep Creek:	
At mouth	*748
About 0.9 mile upstream of State Route 154	*748
Foe Killer Creek:	
At confluence with Big Creek	*962
About 0.15 mile upstream of the confluence with Big Creek	*962
About 0.30 mile upstream of Rucker Road	*1,034
About 0.36 mile upstream of Mid Broadwell Road	*1,055
Long Island Creek:	
At mouth	*778
About 0.32 mile upstream of mouth	*778
Marsh Creek:	
At mouth	*811
About 1200 feet upstream of mouth	*811
Riverside Creek:	
At mouth	*755
About 2000 feet upstream of Riverside Drive	*755
Strickland Creek:	
Just upstream of Houze Road	*1,052
About 0.14 mile upstream of Houze Road	*1,057
Tributary 6:	
About 480 feet upstream of Academy Street	*1,022
About 860 feet upstream of Academy Street	*1,022
Utoy Creek:	
At mouth	*761
Just downstream of Great Southwest Parkway	*761
Maps available for inspection at the Fulton County Courthouse, 165 Central Avenue SW., Atlanta, Georgia 30303.	
ILLINOIS	
City of Crystal Lake, McHenry County (Docket No. FEMA–6643)	
Crystal Lake:	
About 4,800 feet downstream of Dartmoor Drive	*853
Just downstream of Dartmoor Drive	*874
Just upstream of Dartmoor Drive	*878
Just downstream of Lake Avenue	*893
Maps available for inspection at the Planning Department, 240 Commerce Drive, Crystal Lake, Illinois.	
INDIANA	
Unincorporated areas of Elkhart County (Docket No. FEMA–6630)	
St. Joseph River:	
About 1.72 miles downstream of the confluence of Pine Creek	*743
About 2.05 miles upstream of the confluence of Washington Township Ditch	*752
About 1,100 feet downstream of the east bound lane of the Indiana East-West Toll Road	*756
About 1.73 miles upstream of the confluence of Trout Creek	*760
Pine Creek:	
At confluence with St. Joseph River	*744
Just upstream of State Route 120	*748
Maps available for inspection at the Planning Department, 401 South Second Street, Elkhart, Indiana.	
KANSAS	
Kansas City, Wyandotte (Docket No. FEMA–6643)	
Brenner Heights Creek:	
About 550 feet upstream of Freeman Avenue	*825
Just downstream of Parallel Avenue	*843
About 0.5 mile upstream of 59th Street	*872
Brenner Heights Creek Tributary:	
At confluence with Brenner Heights Creek	*763
About 500 feet upstream of confluence with Brenner Heights Creek	*763
About 1,350 feet upstream of confluence with Brenner Heights Creek	*767
Maps available for inspection at the Planning Department 7th Floor, 701 North Seventh Streetk, Kansas City, Kansas.	
MARYLAND	
Laurel, city, Prince Georges County (FEMA Docket No. 5630)	
Patuxent River:	
Most downstream corporate limits	*120
Downstream side of State Route 198	*134
Crows Branch:	
Confluence with Patuxent River	*122
Approximately 1,000 feet downstream of State Route 197	*126
Maps available for inspection at the Laurel Hall, Laurel, Maryland.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
MISSOURI	
City of Old Monroe, Lincoln County, (Docket No. FEMA-6630)	
Cuivre River:	
About 0.15 mile downstream of Burlington Northern Railroad	*445
About 0.16 mile upstream of State Highway 79	*445
Maps available for inspection at Second and Sycamore Streets, P.O. Box 213, Old Monroe, Missouri 63369.	
NEW JERSEY	
Atlantic City, city, Atlantic County (FEMA Docket No. 6619)	
Atlantic Ocean: Intersection of Gray Avenue and Rhode Island Avenue	
Maps available for inspection at the City Hall, 1301 Bacharach Boulevard, Atlantic City, New Jersey.	
Montville, township, Morris County (FEMA Docket No. 6630)	
Passaic River: Upstream Bloomfield Avenue	*174
Rockaway River:	
At confluence with Passaic River	*174
Upstream side of U.S. Route 46	*175
Upstream side of Vail Road	*177
Approximately 200 feet upstream Knoll Road	*184
Upstream corporate limits	*196
Crooked Brook: Approximately 700 feet above River Road	*184
Maps available for inspection at the Engineering Office, Sisco House, 132 Chain Bridge Road, Montville, New Jersey.	
NEW YORK	
Liberty, village, Sullivan County (FEMA Docket No. 6619)	
Middle Mongaup River:	
Most downstream corporate limits	*1,375
Upstream of State Route 17 westbound off ramp	*1,378
Just downstream of State Route 52/corporate limits	*1,382
Corporate limits located just downstream of confluence of Lewis Street Brook	*1,397
Maps available for inspection at 167 North Main Street, Liberty, New York.	
OHIO	
Village of Dublin, Franklin, Delaware, and Union Counties (Docket No. FEMA-6643)	
Scioto River:	
Just upstream of Hayden Run Road	*772
About 320 feet upstream of confluence of Tributary S3	*788
About 550 feet upstream of confluence of Deer Run	*797
Indian Run:	
At confluence with Scioto River	*778
About 270 feet upstream of High Street	*778
Tributary S1:	
At mouth	*776
About 600 feet upstream of mouth	*776
Tributary S2:	
At mouth	*781
About 550 feet upstream of mouth	*781
Maps available for inspection at 6665 Coffman Road, Dublin, Ohio.	
OKLAHOMA	
Tulsa, city, Osage, Rogers, and Tulsa, Counties, (FEMA Docket, No. 6619)	
Little Haikey Creek Tributary:	
Confluence with Little Haikey Creek	*706
Upstream of 77th Avenue	*708
Approximately 433 feet upstream of 77th Avenue	*709
Approximately 910 feet upstream of 77th Avenue	*713
Approximately 965 feet downstream of 72nd East Avenue	*716
Downstream of 72nd East Avenue	*722
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.	
PENNSYLVANIA	
Mount Carmel, borough Northumberland County, (FEMA Docket No. 6643)	
Shamokin Creek: At upstream corporate limits	*1,073
Maps available for inspection at the Borough Manager's Office, 100 North Vine Street, Mount Carmel, Pennsylvania.	
RHODE ISLAND	
Portsmouth, town, Newport County (FEMA Docket No. 6619)	
Sakonnet River:	
Approximately 200 feet north of intersection of Russell Street and Park Avenue	*18
Intersection of Ormerod Avenue and Pine Street	*16
Maps available for inspection at 2200 Main Road, Portsmouth, Rhode Island.	
TEXAS	
Plano, city, Collin and Denton Counties (FEMA Docket No. 6619)	
Stream 2I9:	
Approximately 320 feet downstream of Country Place Drive	*646
Approximately 1,800 feet upstream of Country Place Drive	*662
Stream 5B 13: Approximately 1,000 feet upstream of confluence of Tributary to Stream 5B 13	*697
Tributary to Stream 5B 13:	
At confluence with Stream 5B 13	*692
Approximately 480 feet upstream of confluence	*694
McKamy Branch: At downstream corporate limits	*683
Prairie Creek:	
Upstream side of Park Boulevard	*709
Approximately 3,650 feet upstream of Park Boulevard	*723
Maps available for inspection at the Municipal Annex Building, Plano, Texas.	
VERMONT	
Orleans, village, Orleans County (FEMA Docket No. 6630)	
Barton River:	
Approximately 200' upstream of Main Street	*704
Approximately 400' downstream of State Route 58 bridge	*721
Approximately 300' downstream of State Route 58 bridge	*730
Upstream of State Route 58 bridge	*738
Downstream of third footbridge located downstream of the Canadian Pacific Railroad Bridge	*740
Maps available for inspection at the Orleans Village Office, Memorial Square, Orleans, Vermont.	

Issued: April 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10887 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

Federal Insurance Administration

44 CFR Part 67

Final Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation

determinations, if promulgated, will not have a significant ecomomic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ARIZONA	
Mammoth (Town), Pinal County (FEMA Docket No. 6630)	
San Pedro River: Intersection of Main Street and Galiuro Street	*2,348
Maps available for inspection at Town Hall, Mammoth, Arizona.	
CALIFORNIA	
San Bernardino County (Unincorporated Areas), (FEMA Docket No. 6643)	
Sheet Flow: Intersection of Wilson Avenue and Day Creek Channel	#1
Maps available for inspection at Transportation and Flood Control Department, 825 East Third Street, San Bernardino, California.	
Ukiah (City), Mendocino County (FEMA Docket No. 6643)	
Orr Creek: 30 feet upstream of center of Orr Street	*609
Maps available for inspection at Department of Planning, 203 South School Street, Ukiah, California.	
Visalia (City), Tulare County (FEMA Docket No. 6643)	
Shallow Flooding: (Mill Creek, Mill Creek Ditch, Evans Ditch, and Persian Ditch) Intersection of Walnut Avenue and Heritage Drive	*308
Shallow Flooding: (Packwood Creek) Intersection of Walnut Avenue and Tracy Court	*336
Shallow Flooding: (Mill Creek and Persian Ditch) At Visalia Municipal Airport	*292
Maps available for inspection at City Department of Public Works, 707 W. Acequia Street, Visalia, California.	
MISSOURI	
Columbia (City), Boone County (FEMA Docket No. 6547)	
Goodin Branch:	
About 1,600 feet downstream of Gillespie Bridge Road	*584
About 1,950 feet upstream of Georgetown Road	*627
Hinkson Creek	
About 1.1 miles downstream of Missouri-Kansas-Texas Railroad	*592
About 1,700 feet upstream of Missouri-Kansas-Texas Railroad	*596
County House Branch	
At confluence with Hinkson Creek	*592
About 300 feet upstream of West Boulevard South	*592
Maps available for inspection at 7th and Broadway, Columbia, Missouri.	

Issued: April 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10885 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

Clarification of Filing Dates for Comments on Petitions for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Clarification of certain rule sections; petitions for reconsideration.

SUMMARY: This document announces the parties which have filed petitions for reconsideration of the Commission's Order Clarifying §§ 69.5 and 69.115 of the rules (published on March 28, 1985, 50 FR 12254). It also clarifies the filing period regarding oppositions and replies to oppositions to these petitions.

DATES: Oppositions must be filed by May 14, 1985 and replies to oppositions must be filed by May 24, 1985.

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

FOR FURTHER INFORMATION CONTACT: Sandra Eskin, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

May 2, 1985.

The Commission Clarifies Filing Dates for Pleadings on Petitions for Reconsideration of Order Clarifying §§ 69.5 and 69.115 of its Rules.

Ad Hoc Telecommunications Committee ("Ad Hoc"), Aeronautical Radio, Inc. ("ARINC"), and Pacific Bell have filed petitions for partial reconsideration of a Commission Order that clarifies a section of the Commission's Rules governing exemptions from the private line surcharge. Clarification of §§ 69.5 and 69.115 of the Rules of the Federal Communications Commission, Memorandum Opinion and Order, 50 FR 12254 (1985).

In order to clear up any confusion surrounding the filing dates for pleadings on these petitions, this notice establishes May 14, 1985 as the deadline for oppositions and May 24, 1985 as the deadline for replies. Copies of the Ad Hoc, ARINC, and Pacific Bell petitions and subsequent pleadings can be obtained from the International Transcription Service, 1919 M Street, NW., Room 246, Washington, D.C. 20554, (202) 857-3800. Parties should file comments with the Secretary, FCC, 1919 M Street, NW., Washington, D.C. 20554. For further information contact Sandra Eskin, Common Carrier Bureau, at (202) 632-9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-11008 Filed 5-3-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 87
Monday, May 6, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

Potato Research and Promotion Plan, Proposed Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites comments on an amendment proposed by the Potato Board to title the six subsidiary officers vice presidents. This change would bring the rules and regulations into conformance with the Bylaws as revised in March 1985.

DATE: Comments due by June 5, 1985.

ADDRESSES: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

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

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

The Potato Board is the administrative agency established by the Potato Research and Promotion Plan (7 CFR Part 1207). The Plan is effective under the Potato Research and Promotion Act (7 U.S.C. 2611–2627).

At its public annual meeting at Denver, Colorado, on March 14–16, 1985, the Potato Board amended its Bylaws to specify that the Executive Committee of the Potato Board shall be composed of the President and six Vice Presidents, one of whom shall also serve as the Secretary and the Treasurer. Previously the Executive Committee has been composed of the President, four Vice Presidents, a Secretary and a Treasurer. This proposed rule would amend the Rules and Regulations to conform with the recently changed Bylaws.

List of Subjects in 7 CFR Part 1207

Advertising, Agricultural research, Potatoes.

PART 1207—POTATO RESEARCH AND PROMOTION

1. The authority citation for Part 1207 would be revised to read as follows:

Authority: Title III of Pub. L. 91–670; 84 Stat. 2041; 7 U.S.C. 2611–2627, as amended.

2. Section 1207.507 (37 FR 17379, 42 FR 55879, 44 FR 25621) is hereby proposed to be further amended by revising paragraph (a) as follows:

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee consisting of not more than 25 members. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the President, and six Vice Presidents, one of whom shall also serve as the Secretary and Treasurer of the Board.

* * * * *

Dated: April 29, 1985.

D.S. Kuryloski

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

[FR Doc. 85–10766 Filed 5–3–85; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1423

[Amdt. 3]

Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey and Bulk Oils

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations found at 7 CFR 1423.1 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils. The proposed rule would: (1) Permit a parent company to submit a financial statement for a wholly-owned subsidiary; (2) permit warehousemen to submit financial statements on forms other than on Form WA–51; (3) revise the references to CCC regulations governing suspension and debarment; (4) require that a warehouseman leasing warehouse space must have a lease agreement which can be renewed and which provides for a minimum of 120 days cancellation notice; (5) permit CCC to accept an irrevocable letter of credit on forms other than Form CCC–33A; (6) delete the use of a Certificate of Competency issued by the Small Business Administration for a warehouseman who is deficient in net worth; (7) delete certain references to the withdrawal of approval of warehouses by CCC; and (8) make certain other miscellaneous changes.

DATES: Comments must be received on or before July 5, 1985 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Warehouse Division, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013; (202) 447–4018 or 447–7433.

FOR FURTHER INFORMATION CONTACT: Barry W. Klein, 202–447–7911, Warehouse Division, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Departmental Regulation 1512–1 and Executive Order 12291 and has been classified "not major." It has been determined that the provisions of this proposed rule 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, individuals industries,

Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment investment productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(h) of the CCC Charter Act provides that the Corporation shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, Section 5 of the CCC Charter Act provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth standards of approval which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of agricultural commodities which are owned by CCC or which are serving as collateral for price support loans made available by CCC.

CCC proposes to amend the following regulations which govern the Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils (7 CFR 1423.1 *et seq.*) in the manner described below.

Section 1423.1(d)(2) of the regulations currently requires warehousemen to submit financial statements on Form TW–51 and permits a chain of warehouses owned and operated by a single business entity to submit only one financial statement. That form has been revised and is now form WA–51. Several warehousemen have complained that their independently prepared financial statements should satisfy CCC needs and they should not be required to incur the added expense and paperwork burden of submitting financial information on the CCC's form. Also, several warehousemen whose warehouse facilities are wholly-owned and operated by a parent company have requested that the financial statement which is prepared for the parent company and which includes the combined financial position of the parent company and all subsidiaries be accepted by CCC. These warehousemen believe that to prepare a separate financial statement for each subsidary warehouse is very costly and unnecessary. This proposed rule would permit warehousemen to submit financial statements to CCC on forms other than the WA–51 with the approval of the Director, Kansas City Commodity Office (KCCO), or the Director's designee. In addition, this proposed rule provides that a financial statement from the parent company may be accepted by CCC in lieu of individual statements from each wholly-owned subsidary if approved by the Director, KCCO, or the Director's designee.

Sectin 1423.2(c) of the regulations currently provides that, in meeting the standards of approval, the warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse must not be either suspended or debarred under CCC's suspension and debarment regulations, 7 CFR Part 1407. The Board of Directors of the Corporation has adopted, with limited reservations, the regulations implemented by the Department of Agriculture with respect to the suspension and debarment of individuals and firms contracting with CCC. The provisions of § 1423.2(c) have been revised to merely reference the CCC suspension and debarment regulations. A conforming amendment has also been made in § 1423.6(c)(2).

Section 1423.2(d)(2) of the regulations currently provides that the warehouse must be under the control of the contracting warehouseman at all times. In order to better protect the interests of CCC, this proposed rule would also require that all warehousemen seeking approval for storage from CCC who do not own a warehouse must submit a copy of a written lease agreement to CCC. The lease agreement must establish that the warehouseman has control of the leased warehouse for which CCC approval is sought for a sufficient length of time to make it feasible for CCC to use the warehouse for storage. The lease agreement must also provide that the lessor cannot cancel the lease without giving a minimum of 120 days notice. The purpose for requiring a 120 day notice provision in leases is to coincide with the provisions of the CCC storage contracts which permit the termination of a storage contract based upon 120 days notice.

Section 1423.3(e) of the regulations currently provides that CCC may accept an irrevocable letter of credit in lieu of the required amount of bond coverage if the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation and the letter of credit is submitted to CCC on Form CCC–33A, "Irrevocable Letter of Credit". Several Banks have objected to the use of Form CCC–33A and would prefer to use their own letter of credit form. This proposed rule would permit commercial banks to issue letters of credit on forms other than Form CCC–33A, provided that such forms are approved by the Director, KCCO, or the Director's designee.

Section 1323.5(b) of the regulations currently provides that a Certificate of Competency issued by the Small Business Administration (SBA) for a warehouseman will be accepted by CCC for the purpose of establishing conformance by the warehouseman with certain of the Standards for Approval and the warehouseman will not be required to furnish bond coverage for any deficiency in net worth. The SBA has been reluctant to issue a Certificate of Competency to warehousemen since there is no guarantee that CCC-owned commodities will be stored with a warehouseman who has been issued a certificate. In fact, there have been no processed commodities warehousemen approved with a Certificate of Competency in the recent past. Accordingly, it has been concluded that

the provisions of § 1423.5(b), which reference the use use of a Certificate of Competency, are not needed and this proposed rule would delete that section accordingly.

Section 1423.6 of the present regulations sets forth the procedures under which CCC approves or disapproves a warehouse for the purpose of storing processed commodities owned by CCC. These regulations also provide for the administrative appeal procedures which may be utilized by a warehouseman whose warehouse was not approved by CCC. In addition, § 1423.6 sets forth the procedures and requirements involving the withdrawal of approval of a warehouse by CCC as a result of the failure of the warehouse to continue meeting the standards for approval or for the failure of the warehouseman to perform the contractual obligations specified in the CCC storage agreement. This proposed rule would delete any references in § 1423.6 to the withdrawal of approval of warehouses by CCC since it is felt that these regulations should only relate to the approval, rather than the disapproval, of warehouses by CCC. The terms and conditions with respect to the continuing obligations of the warehouseman to meet the standards of approval and storage commitments will be set forth in the Storage Contract for Processed Commodities entered into between the warehouseman and CCC.

Section 1423.6(c)(1) has also been revised to provide that any request by a warehouseman for reconsideration of a determination by CCC that the warehouseman has failed to meet the Standards for Approval must be in writing. Previously, such a request for reconsideration could be made orally to the Director, KCCO, as well as in writing.

In addition to the foregoing, § 1423.1(b) of the regulations has been amended to correct the mailing address for the Kansas City Commodity Office and the table of contents has been revised and a new § 1423.8 has been added to include control numbers assigned by the Office of Management and Budget (OMB) in accordance with the information collection requirements of the Paperwork Reduction Act.

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Honey, Oilseeds, Reporting and recordkeeping requirements, Security bonds, warehouses.

Proposed Rule

PART 1423—[AMENDED]

Accordingly, it is proposed that the regulations at 7 CFR Part 1423 be amended as follows:

1. The table of contents to Subpart-Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Bulk Oils is amended by adding an entry for § 1423.8 to read as follows:

Sec.

* * * * *

1423.8 OMB Control numbers assigned pursuant to Paperwork Reduction Act.

2. The authority citation to 7 CFR Part 1423, Subpart-Standards for Approval of Dry and Cold Storage Warehouses for Processed Commodities, Extracted Honey, and Bulk Oils, is revised to read as follows:

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended. (15 U.S.C. 714b and c).

3. In § 1432.1, paragraphs (b) and (d)(2) are revised to read as follows:

§ 1423.1 General statement and administration.

* * * * *

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

* * * * *

(d) * * *

(2) A current financial statement on Form WA–51, "Financial Statement", supported by such supplemental schedules as CCC may requests. Financial statements may be submitted on forms other than Form TW–51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

* * * * *

4. In § 1423.2, paragraphs (c)(2) and (d)(2) are revised to read as follows:

§ 1423.2 Basic standards.

* * * * *

(c) * * *

(2) Be neither suspended nor debarred under applicable CCC suspension and debarment regulations.

(d) * * *

(2) Be under the control of the contracting warehouseman at all times. If a warehouse is leased by the warehouseman, a copy of the written lease agreement must be furnished to CCC at the time the warehouseman applies for approval under this subpart. The lease agreement must be renewable and must provide that the lessor cannot cancel the agreement without giving at least 120 day notice to the warehouseman. All leases are subject to approval by the CCC Contracting Officer.

* * * * *

5. In § 1423.3, paragraph (e) is revised to read as follows:

§ 1423.3 Bonding requirements for net worth.

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC–3A, "Irrevocable Letter of Credit", or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

§ 1423.5 [Amended]

6. Section 1423.5 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

7. Section 1423.6 is revised to read as follows:

§ 1423.6 Approval of warehouse, requests for reconsideration.

(a) CCC will approve a warehouse if it determines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's

obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and

(2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

8. Section 1423.8 is added to read as follows:

§ 1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1423) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0052, 0560–0044, 0560–0064, 0560–0065, 0560–0034, and 0560–0041.

Signed at Washington, D.C., on May 1, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–10939 Filed 5–3–85; 8:45 am]

BILLING CODE 3410–09–M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 84–016P]

Withdrawal of Three Countries From the List of Those Eligible To Import Meat Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to withdraw the countries of Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States under the Federal Meat Inspection Act (FMIA). To be eligible to have its meat products imported into the United States, the FMIA requires that the meat inspection system of the exporting country assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States. The countries of Bulgaria, Colombia, and Luxembourg have indicated in written responses, or lack of response, to two Food Safety and Inspection Service (FSIS) cables, that they do not wish to remain eligible to have their products imported into the United States. In addition, these countries have no certified plants, and have not exported meat products to the United States in several years. Therefore, FSIS is proposing to withdraw Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their meat products imported into the United States.

DATE: Comments must be received on or before July 5, 1985.

ADDRESS: Written comments to: Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250 (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. William Havlik, Acting Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this proposed rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposal would only formally delist three countries that have not exported meat products to the United States for several years.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 because there are no domestic importers of meat products from these countries.

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicate to the Regulations Office. Please include the docket number which appears in the heading of this document. All comments submitted in response to this proposal will be made available for public viewing in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service the authority to issue regulations and implement appropriate procedures to ensure compliance with

the requirements of the FMIA. The regulations addressing imported meat products are in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat or meat food products into the United States may become eligible to do so.

Part 327 of the Federal meat inspection regulations requires that foreign countries maintain their meat inspection programs at a level "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States if they wish to obtain and/or retain their eligibility to import meat products in the United States. Maintenance of eligibility depends on results of periodic reviews of the foreign meat inspection system by an FSIS representative and submission of information and documentation so that the Administrator can determine their eligibility status.

The Administrator has authority to withdraw the eligibility of a foreign country to import meat products into the United States under § 327.2(a)(4) (9 CFR 327.2(a)(4)).

" " " Whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all the inspection, building construction standards, and other requirements of the Act and the regulations in this subchapter as applied to the official establishments in the United States: " " "

Recent changes in domestic meat inspection requirements, including provisions contained in the 1981 Farm Bill, which amended Section 20 of the FMIA (21 U.S.C. 620) dealing with imports, prompted FSIS to require demonstrated compliance in certain technical areas to maintain country eligibility. Special evaluations of country performance resulted in the February 1984 withdrawal of six countries actively exporting to the United States from the list of eligible countries because of their inability to comply with United States requirements. Since that time, three of the six countries have corrected their deficiencies and have regained their eligibility.

This eligibility evaluation was subsequently exended to eligible foreign countries that had not exported meat products to the United States in several years and had no certified plants. In March 1984, telegrams were sent to 11 such countries including Bulgaria, Colombia, and Luxembourg, requesting that they inform FSIS of their interest in remaining on the list of eligible countries and of their plans for complying with all United States requirements. These countries would have to provide assurance and verification that all provisions contained in the 1981 Farm Bill, amending Section 20 of the FMIA, including detailed technical procedures for residue testing, would be met. The telegrams stated that "a no response" would be considered a desire to be removed from the eligible list. Two of the 11 countries—Bulgaria and Colombia—failed to respond to that telegram. A third, Luxembourg, indicated its desire to remain on the list; the Agency then requested preparation of supporting documents and data necessary to remain eligible.

In June 1984, telegrams were sent to Bulgaria and Colombia notifying them that since FSIS had not received a reply, the Agency presumed no interest on their part in remaining on the list. On June 28, 1984, Colombia cabled its desire to be removed. On October 10, 1985, Luxembourg cabled its desire to be removed. Since no response has been received from Bulgaria, FSIS has determined that Bulgaria has no interest in remaining on the list.

Therefore, pursuant to §327.2 of the regulations (9 CFR 327.2), the Administrator is proposing to withdraw Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States.

If, at a future date, Bulgaria, Colombia or Luxembourg desire to be placed on the list of eligible countries and the Administrator of FSIS is satisfied that the meat inspection officials of that country have provided verification that their system meets all the provisions of the FMIA and regulations thereunder, that country may again be added to the list of countries eligible to have their meat products imported into the United States.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

Accordingly, § 327.2, paragraph (b) of the Federal meat inspection regulations would be amended as set forth below:

1. The authority citation for Part 327 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) would be amended by removing the following countries from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States: Bulgaria, Colombia, Luxembourg.

Done at Washington, D.C., on April 30, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-10938 Filed 5-3-85; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 85-286b]

Settlement of Insurance; Reconsideration Procedures

Dated: April 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing for comment an amendment to the regulations of the FSLIC concerning the settlement of insurance on accounts in insured institutions in default, in order to further clarify and increase the efficiency of procedures previously adopted by the Board whereby the holder of such an account may obtain agency reconsideration of a determination that all or a portion of such an account is uninsured.

DATE: Comments must be received by June 5, 1985.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Sandra L. Richardson, Attorney, Office of General Counsel (202-377-6432), or Mary A. Creedon, Director, Insurance Division, Office of the FSLIC (202-377-6620), Federal Home Loan Bank Board, 1700 G. Street, NW, Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 405(b) of the National Housing Act directs the Corporation, in the event of a default by an institution the accounts of which are insured by the FSLIC ("insured institution"), to make payment of insurance on accounts and permits the Corporation to require the filing of

proofs of claims prior to paying insurance. 12 U.S.C. 1728(b)(1982). Section 564.1 of the Regulations of the FSLIC ("Insurance Regulations") provides that, in the event of a default by an insured institution, the Corporation shall determine from the books and records of the institution or otherwise the insured members of the institution and the amount of each insured member's account(s), and shall give each insured member notice of the time and place of payment of insurance on accounts. 12 CFR 564.1(a)(1984). The Board, as operating head of the FSLIC, has delegated on a case-by-case basis the authority to settle and pay insurance, in accordance with section 405 of the National Housing Act and its implementing regulations, to the Director, Deputy Director, an Associate Director, or the Director of the Insurance Division, Office of the FSLIC.

Section 405(b) of the National Housing Act neither precludes reconsideration by the agency of such insurance determinations nor provides a formal mechanism for such consideration. An increase in the number of inquiries by accountholders as to the availability of administrative review of insurance determinations, however, prompted the Board to adopt formal reconsideration procedures by amending § 564.1 of its insurance regulations to provide a two-step process to be followed by the FSLIC and accountholders regarding determinations on the extent of insurance on accounts. See 49 FR 36632 (Sept. 19, 1984) (to be codified at 12 CFR 564.1(d)).

Paragraph (d) of § 564.1 currently delegates authority to the Director or Acting Director of the Insurance Division, Office of the FSLIC ("Director of the Insurance Division"), to notify accountholders in an insured institution in default of the time and place of the FSLIC's payment of insurance on accounts, and to make initial determinations regarding the extent of insurance coverage of such accounts in accordance with the principles for determining insurance coverage set forth in Part 564 of the Insurance Regulations. The determination by the Director of the Insurance Division must specify the bases upon which the determination was made and must be provided to the accountholder in writing. An accountholder who disagrees with the determination by the Director of the Insurance Division may request reconsideration of that determination by the Director or Acting Director of the Office of the FSLIC ("Director"). Pursuant to the present rule, the Director will reconsider only those determinations as to which a request for reconsideration is substantial, *i.e.*, is in writing, seasonably filed, sets forth an issue of law or fact which was not addressed, or in the Director's opinion was not adequately addressed, in the prior determination, and is consistent with one of the regulatory bases set forth in Part 564 for entitlement to insurance. The Director's determination regarding the substantiality of a request for reconsideration, as well as the Director's determination of the extent of FSLIC insurance in those cases in which the request for reconsideration is found to be substantial, must be provided to the accountholder in writing. In the event, however, that the Director determines that a request for reconsideration presents a significant issue of agency policy, that issue will be referred to the Board for decision.

The reconsideration procedures have been in effect for approximately seven months and a number of accountholders have availed themselves of this further administrative remedy accorded to accountholders who receive initial determinations from the FSLIC that all or a portion of their accounts in an insured institution which is in default is uninsured. It has, however, recently been brought to the Board's attention that considerable confusion on the part of accountholders has been and continues to be associated with these reconsideration procedures regarding their purpose, intent and practical application and their effect upon the initial determination procedures previously employed by the Corporation in reaching insurance determinations. This confusion has significantly decreased the efficiency of the reconsideration process and has highlighted administrative difficulties in the reconsideration procedures which previously had not been contemplated.

For these reasons, the Board is proposing to amend § 564.1(d) in order to further clarify and streamline the reconsideration procedures, the procedures regarding initial determinations, and the Board's intent regarding the interrelationship between these two steps in the insurance claims determinations process. The amendments which the Board proposes to make to § 564.1(d) are described below. Comments with respect to these proposed amendments and suggestions regarding other procedures which would achieve the Board's goal of providing a formal administrative avenue for review of initial determinations, without unduly burdening or delaying the insurance claims determinations process, are requested.

Description of the Proposed Rule

The amendments proposed to § 564.1(d) can be organized for purposes of discussion into essentially three categories. First, the proposal incorporates clarifying changes which further delineate the role of initial determinations and determinations on reconsideration in the insurance claims process and accountholders' rights and obligations with respect to each step. More specifically, the proposed amendments would clarify the Board's intent that determinations on reconsiderations of initial determinations, and not initial determinations constitute final agency action on insurance claims, that filing a request for reconsideration is a necessary step in seeking administrative review of an initial determination that an account is not fully insured, and that failure to file such a request regarding a negative initial determination would be deemed to be a waiver of objections to such initial determination and an acceptance of its terms. The proposed amendments also expressly include procedures that would codify the Director's present practice regarding amending and supplementing requests for reconsideration by accountholders, and the ability of the Directors of FSLIC to request and the accountholder to submit additional information in connection with such a request or amendment thereof.

Second, the proposed amendments would delete the present procedures set forth in § 564.1(d)(3) regarding determinations with respect to the substantiality of requests for reconsideration. The Board has discovered that these procedures have been the source of confusion among accountholders, difficult to implement and effectuate and have resulted in an inefficient use of staff resources. For this reason, the Board is proposing more streamlined procedures whereby requests for reconsideration of an initial determination may be granted or denied in writing by the Director of the FSLIC after his review of a request without the issuance of a lengthy substantiality determination. Instead, in the event that the Director of the FSLIC denies a request for reconsideration, the initial determination issued by the Director of the Insurance Division would become final and the accountholder could pursue whatever judicial remedies might be available to it. Conversely, in the event the Director of the FSLIC grants a request for reconsideration, the Director would consider the merits of the insurance claims set forth in the request

and would issue a determination on reconsideration, which would constitute final agency action on the claim. The Board believes that this proposed procedure would provide accountholders with the same level of administrative review of initial determinations as is currently available, and would, at the same time, increase the efficient use of staff resources and the more speedy resolution of claims.

Third, after its experience with the reconsideration procedures during the last seven months, the Board is proposing to amend § 564.1(d) to revise and further clarify the time limits applicable to procedures associated with requests for reconsideration. Thus, the proposed rule would change the present requirement that requests for reconsideration must be filed within 60 days of the *receipt* of an initial determination to within 60 days of the *issuance* of such a determination, *i.e.*, the date indicated on the letter or memorandum constituting the initial determination so that the FSLIC may readily ascertain the date on which the period for filing such a request expires. The proposed rule would also extend the period for the Director's issuance of a determination on reconsideration from 90 days to 180 days. This proposed change is due to the larger than expected volume of requests for reconsideration and the limited available resources to process and review such requests.

Finally, the Board is proposing a conforming change to § 564.1(d)(1) which would grant the Director of FSLIC the same authority to delegate authority to make determinations to a designee as was previously granted to the Director of the Insurance Division in the current rule.

Initial Regulatory Flexibility Analysis

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

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all holders of accounts in institutions that are insured by the FSLIC.

3. *Impact of the proposed rule on small institutions.* The proposed rule would clarify procedures pertaining to agency reconsideration of initial determinations regarding the extent of insurance of accounts in insured institutions without regard to their asset size.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with the proposal.

5. *Alternatives to the proposed rule.* The provisions of the proposed regulation are based upon the Board's experiences to date with the present procedures for requests for reconsideration and the perceived need for clarification and elaboration of such procedures. The Board is not aware of any alternatives to the proposed rule that would better satisfy the Board's objectives discussed above in SUPPLEMENTARY INFORMATION but has solicited comments regarding any such alternatives.

The Board has determined to provide less than a 60-day comment period because (1) it is in the interests of accountholders for prompt action to be taken by the Board to clarify the subject regulation, and (2) the amendment relates to internal agency procedures regarding the settlement of FSLIC insurance claims.

List of Subjects in 12 CFR Part 564

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to amend Part 564, Subchapter D, Chapter V of Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority for 12 CFR Part 564 would continue to read:

Authority: Sec. 308, Pub. L. 96–221; secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, 1259, as amended; 12 U.S.C. 1724, 1725, 1726, 1728; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend paragraph (d) of § 564.1 as follows: Amend paragraph (1) by inserting "initial" between the words "make" and "determinations" in the first sentence, inserting "or his or her designee" between "("Director")" and "is", and "made" between "determinations" and "by", in the second sentence, and removing the third sentence in its entirety; amend paragraph (2) by substituting "*Initial determination*" for "*Determination by the Director of the Insurance Division*" in the heading, inserting "initial" between the words "such" and "determination" in the first sentence, and removing the last sentence and substituting the following sentence therefor: "Failure of the accountholder to file with the Director a request for reconsideration pursuant to paragraph (d)(3) of this section shall be deemed to constitute acceptance of the initial determination by the accountholder."; revise paragraphs (3) and (4) as set forth below; and add new paragraphs (5) and (6) as set forth below:

§ 564.1 Settlement of insurance upon default.

* * * * *

(d) *Processing of insurance claims.*

* * * * *

(3) *Request for reconsideration*—(i) *Time for filing.* Within 60 days after issuance of an inital determination by the Director of the Insurance Division that all or a portion of an accountholder's account is uninsured, such accountholder may obtain reconsideration of the initial determination by filing with the Director a written request for reconsideration.

(ii) *Content of request.* Any request for reconsideration must include:

(*a*) A statement of the facts on which the claim for insurance is based;

(*b*) A statement of the basis for the initial determination to which the accountholder objects and the alleged error in such determination, including citations to applicable statutes and regulations;

(*c*) Copies of the accountholder's records, maintained in good faith and in the ordinary course of business, which support the accountholder's claim for insurance;

(*d*) A separate identification and statement of all facts and matters relied upon by the accountholder seeking reconsideration which were not previously provided to the Director of the Insurance Division, together with all records maintained in good faith and in the ordinary course of business which support the accountholder's claim for insurance, in the event that reconsideration is sought based on matters not available for consideration by the Director of the Insurance Division at the time of the issuance of the initial determination.

(iii) *Procedures for review of request.* (*a*) Within 30 days of the date of the Director's receipt of a request for reconsideration, the Director may request in writing that the accountholder submit additional facts and records in support of its request. If additional information is requested by the Director, the accountholder shall have 30 days from the date of issuance of such written request to provide such additional information. Failure by the accountholder to provide such

additional information may, as determined solely by the Director, result in denial of the accountholder's request that the initial determination be reconsidered.

(*b*) Within 60 days from the date of the Director's receipt of a request for reconsideration, the accountholder may amend or supplement the request in writing. In the event that the accountholder does amend or supplement the request, the provisions of paragraph (d)(3)(iii)(*a*) of this section with respect to requests for additional information and responses to such requests shall apply with equal force to any such amendment or supplement to a request.

(*c*) Within 60 days from the last day on which an accountholder may either amend or supplement the request pursuant to paragraph (d)(3)(iii)(*b*) of this section or submit additional information to the Director pursuant to paragraphs (d)(3)(iii) (*a*) and (*b*), whichever is later in time, the Director shall in writing either grant or deny the accountholder's request that the initial determination be reconsidered. In the event that the Director fails to grant or deny the accountholder's request within such 60-day period, the request shall be deemed to be denied for purposes of paragraph (d)(5) of this section.

(iv) *Failure to file request results in waiver—(a) Complete waiver.* If an accountholder does not file a request for reconsideration within the time permitted under this section, any objection to the initial determination by the accountholder is waived.

(*b*) *Partial waiver.* If an accountholder does not object to a part of an initial determination in its request for reconsideration within the time permitted under this section, any objection by the accountholder to that part of the initial determiantion is waived.

(4) *Determination on reconsideration.* (i) Within 180 days from the date of the Director's issuance of a grant of a request for reconsideration under paragraph (d)(3)(iii)(*c*), the Director shall issue a decision regarding the merits of the accountholder's claim for insurance set forth in the request for reconsideration, determining the extent of the accountholder's insurance pursuant to the rules of this Part.

(ii) The determination by the Director on reconsideration shall be provided to the accountholder in writing, stating the reason(s) for the determination, and shall constitute final agency action regarding the accountholder's claim for insurance.

(iii) If the Director determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of such insurance the accountholder shall promptly surrender to the Corporation the certificate of claim in liquidation provided in connection with the initial determination. In the event that the Director determines that the accountholder is only entitled to a portion of the amount of insurance claimed, upon the accountholder's surrender of such certificate a new certificate of claim in liquidation will be provided which reflects the revised amount of the uninsured account.

(iv) Failure by the Director to issue a determination on reconsideration of the accountholder's claim for insurance within the 180-day period provided for under this paragraph (d)(4) shall be deemed to be a denial of such claim for purposes of paragraph (d)(5) of this section.

(5) *Judicial review.* (i) For purposes of seeking judicial review of actions taken pursuant to this section, only the following actions shall constitute final agency action regarding an accountholder's claim for insurance:

(*a*) Any determination on reconsideration issued by the Director pursuant to paragraph (d)(4) of this section;

(*b*) Any initial determination made by the Director of the Insurance Division pursuant to paragraph (d)(2) of this section which was the subject of a request for reconsideration filed with the Director by the accountholder, if such request has been denied by the Director pursuant to paragraph (d)(3)(iii)(*c*) of this section.

(ii) Initial determinations made by the Director of the Insurance Division pursuant to paragraphs (d)(2) of this section which are not the subject of requests for reconsideration filed with the Director pursuant to paragraph (d)(3) shall in no event be considered to constitute final agency action regarding an accountholder's claim for insurance for purpose of seeking judicial review of such determinations.

(iii) Failure by an accountholder to file a request for reconsideration with regard to an initial determination to which it objects shall constitute a failure by the accountholder to exhaust its available administrative remedies and, due to such failure, any objections to the initial determination shall be deemed to be waived in accordance with paragraph (d)(3)(iv) of this section and such initial determination shall be deemed to have been accepted by the accountholder pursuant to paragraph (d)(2) of this section.

(6) The Corporation shall make available to the public copies of the Director's determinations on reconsideration of insurance claims.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10820 Filed 5-3-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-15]

Airworthiness Directives; Garrett TFE 731-2, -3, -3A, -3AR, -3B, -3BR, and -3R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require an inspection of the rear mount weld attachments to the engine interstage turbine duct, or require modification, or require a replacement of these rear mounts on Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines. The proposed AD is needed to detect and remove from service, ducts with engine mount clevises which were improperly welded during manufacture. Separation of the engine rear mount on certain aircraft may result in an unsafe engine installation.

DATE: Comments must be received on or before July 16, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Docket No. 85-ANE-15, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, delivered in duplicate to the above address, to Room 311.

Comments delivered must be marked: Docket No. 85-ANE-15.

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

The applicable service documents may be obtained from: Garrett Turbine Engine Company, Post Office Box 5217, Phoenix, Arizona 85010.

A copy of each of the applicable service documents is contained in the Rules Docket, Federal Aviation Administration, New England Region

Room 311, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT:
Mr. Bill Moring, Aerospace Engineer, Propulsion Section, ANM-174W, FAA Northwest Mountain Region, Western Aircraft Certification Office, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone (213) 536-6382.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 85-ANE-15". The post card will be date/time stamped and returned to the commenter.

There have been three reports of failures of the Garrett TFE731 rear engine mount. Two failures were found with the engine installed on the aircraft and the other was found during routine inspection at a maintenance shop. One duct which failed on an installed engine had been X-ray inspected. These failures resulted from fatigue cracking of the electron beam weld attaching the rear mount clevis to the turbine interstage turbine duct (hereinafter referred to simply as the duct). These weld attachments cracked due to lack of weld penetration during the original manufacture of the ducts. Weld penetration can be determined by proper X-ray inspection.

A review by the manufacturer of previous X-ray inspections on the ducts accomplished during the manufacturing process and during field inspections conducted in compliance with a previously issued AD 81-24-08, Amendment 39-4248, made effective January 6, 1982, has revealed that specifically identified ducts require either replacement or another X-ray inspection. The manufacturer has issued a service bulletin (SB) which identifies the serial number (S/N) of all ducts which have failed to pass X-ray inspection or require another X-ray inspection. This bulletin provides instructions to X-ray inspect the welds of applicable ducts at any one of several qualified inspection facilities to assure adquate weld penetration. The remainder of the ducts are required to be replaced.

There are, however, provisions to allow these ducts to continue in service. The manufacturer is making available an aft mount auxiliary bracket which, when installed, is capable of supporting all engine mount loads currently approved for the existing rear mount. This auxiliary bracket requires a longer rear engine mount bolt which is a new aircraft part. Therefore, each type aircraft will require an FAA approved aircraft SB to complete the installation.

Since this condition is likely to exist or occur on other engines of the same type design, the proposed AD would require an inspection, repair or modification, if necessary, of the rear engine mount weld joints on certain Garrett TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R engines.

Conclusion

The FAA has determined that this proposed regulation involves 1,630 engines. The approximate cost per engine would be $10 for 1,460 engines and $3,000 for the remaining 170 engines. These engines are used in highly sophisticated multi-engine jet aircraft such as the Falcon 50, Lear Jet 55, and Citation III. Aircraft of this class are generally operated by major business corporations rather than "small entities" as that term is used under the criteria of the Regulatory Flexibility Act. For this reason, the FAA believes it highly improbable that a substantial number of small entities would be significantly affected by the proposed rule. Therefore, I certify that this action (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); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, 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 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Garrett Turbine Engine Company (formerly the AiResearch Manufacturing Company of Arizona): Applies to all Model TFE731-2, -3, -3A, -3AR, -3B, -3BR, and -3R turbofan engines installed in aircraft certified in all categories equipped with turbine interstage transition ducts: Part Nos. 3072318-3, 3071486-7, -8, -9, and -10, 3072726-1, and -2 identified by individual S/N (hereinafter referred to as duct(s)).

Compliance is required prior to the accumulation of 1,150 hours time in service from the effective date of this AD, unless already accomplished.

To prevent separation of the engine rear mount from the duct accomplish the following:

(a) Determine by visual inspection whether or not the turbine interstage transition duct S/N is included in the lists of ducts identified in Table 1 or Table 2 in Paragraph 2.A of Garrett SB TFE731-72-3309, dated March 7, 1985, hereinafter referred to as Bulletin -3309. Engine visual inspection to assure that the duct serial number is not on Table 1 or Table 2 in Paragraph 2.A of Bulletin -3309 constitutes terminating action for this AD.

Note.—The ducts listed in Table 1 have had X-ray inspection and subsequent review of the X-rays indicate that the rear mounts have inadequate weld penetration. The ducts listed in Table 2 require additional X-ray inspection to determine the adequacy of the rear mount weld penetration.

(b) For all engines which contain ducts listed in Table 2 in Paragraph 2.A of Bulletin-3309, the duct either must be X-ray inspected in accordance with Paragraph (d) or must be in compliance with (c) of this AD, before the engine may be returned to service.

(c) For all engines which contain ducts listed in Table 2 in Paragraph 2.A of Bulletin-3309 which have not been X-ray inspected in accordance with Paragraph (d) of this AD and all engines which contain ducts listed in Table 1 in Paragraph 2.A of Bulletin-3309, the duct must be replaced with a serviceable duct or modified by installing an aft mount auxiliary bracket in accordance with Paragraph (e) of this AD, before the engine may be returned to service.

(d) For ducts not replaced or modified per Paragraph (c) or (e) of this AD, perform radiographic (X-ray) weld inspection of the electron beam attachment of all three engine rear mount clevises on the duct in accordance with instructions provided in Paragraph 2.C of Bulletin-3309.

(1) If X-ray inspections of all three engine mount clevises are acceptable, reidentify duct with identifier code of X-ray facility and by adding "-3309" following the duct part number in accordance with instructions provided in Paragraph 2.C of Bulletin-3309.

Note.—X-ray inspections of the engine mount clevises accomplished in accordance with Paragraph 2.D of Garrett SB TFE731-72-3159, dated April 23, 1981, or Revision 1, dated September 16, 1981, or Revision 2, dated February 1, 1982, or Revision 3 of this bulletin, dated June 29, 1982, and done in compliance with AD No. 81-24-08, Amendment 39-4348, made effective January 6, 1982, hereinafter referred to as Bulletin-3159, are not alternative inspections which provide an equivalent level of safety to this AD.

(2) If the X-ray inspection of the three engine mount clevises reveals an unsatisfactory weld penetration at a position which is not used to mount the engine to the aircraft, the mount is to be destroyed by cutting through the unsatisfactory clevis mounting bolt holes, and the duct reidentified. The bolt hole cut-through must be done in accordance with Paragraph 2.F(1) of Bulletin-3159. The ducts are to be reidentified by electrochemically etching a new part number thereon (0.0004 inch maximum depth) as follows:

Part No. 3072318-3 is reidentified as Part No. 3076070-2.

Part No. 3071486-7 is reidentified as Part No. 3071486-15.

Part No. 3071486-8 is reidentified as Part No. 3071486-16.

Part No. 3071486-8 is reidentified as Part No. 3071486-17.

Part No. 3071486-10 is reidentified as Part No. 3071486-18.

Part No. 3072726-1 is reidentified as Part No. 3076070-3.

Part No. 3072726-2 is reidentified as Part No. 3076070-4.

(3) If the X-ray inspection of the three engine mount clevises reveals an unsatisfactory weld penetration at a position which is used to mount the engine to the aircraft, the duct must either be rejected or modified by incorporating an aft mount auxiliary bracket in accordance with Paragraph (e) of this AD. All unsatisfactory engine mount clevises not used to mount the engine are to have those unsatisfactory clevis mounting bolt holes cut through in accordance with Paragraph 2.F.(1) of Bulletin-3139. Reidentify ducts in accordance with Paragraph (e) of this AD if an aft mount auxiliary bracket is incorporated.

(e) Modify ducts identified in Paragraph (c) or (d)(3) of this AD, by installing an aft mount auxiliary bracket at the mount clevis position which is to be used to mount the engine to the aircraft in accordance with Paragraph 2.B. of Garrett SB TFE731-72-3170, Revision 2, dated March 7, 1985.

The aft mount auxiliary bracket requires a longer rear engine mount bolt which is a new aircraft part. Therefore, each type aircraft will require an FAA approved SB to complete the installation. If an approved aircraft SB is not available for the particular installation required, the aft mount auxiliary bracket may not be used.

Ducts which are modified by incorporating this aft mount auxiliary bracket may not have the bracket removed and be returned to service unless the radiographic (X-ray) inspection of all three engine mount clevises in accordance with Paragraph (d)

AUXILIARY

Old part No.	Bracket location (looking forward along engine axis from the rear)	New part No.
3071486-7/-8/-9/-10	Left	3073362-1
3071486-7/-8/-9/-10	Top	3073362-2
3071486-7/-8/-9/-10	Right	3073362-3
3072318-3	Left	3073362-4
3072318-3	Top	3073362-5
3072318-3	Right	3073362-6
3071486-7/-8/-9/-10	Left and right	3073362-9
3072318-3	do	3073362-13
3072726-1	Left	3073362-15
3072726-1	Top	3073362-16
3072726-1	Right	3073362-17
3072726-2	Left	3073362-18
3072726-2	Top	3073362-19
3072726-2	Right	3073362-20
3072726-1	Left and right	3073362-23
3072726-2	do	3073362-27

(f) Ducts with an engine mount clevis found to have improper weld penetration or which have had any clevis cut through in accordance with Paragraph 2.F. of Bulletin-3159 may be returned to the engine manufacturer for repair in accordance with Paragraph 2.B(2) of Bulletin-3309. The duct may be returned to service when it is determined to be serviceable.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, Post Office Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturer's SBs identified and described in this document.

(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 11.85)

Issued in Burlington, Massachusetts, on April 26, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-10898 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 231, and 241

[Release Nos. 33-6577; 34-21973; 35-23670; IC-14481; File No. 87-18-85]

Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comment a revision to Rule 3A-02 or Regulation S-X under the Securities Act of 1933 and the Securities Exchange Act of 1934. The proposed technical amendment would clarify that the rule is subject to the overriding consideration of accounting for the substance of the particular relationship.

DATE: Comments must be received on or before June 29, 1985.

ADDRESS: Five copies of comments should be submitted to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-18-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dorothy Walker, Office of the Chief Accountant (202-272-2130), or Howard Hodges, Division of Corporation Finance, (202-272-2553), Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing for comment a technical amendment to Rule 3A-02 of Regulation S-K, its regulation relating to the form and content of and requirements for financial statements, under the Securities Act of 1933 (the "Securities Act") [15 U.S.C. 77a et seq. (1976 and Supp. IV 1980)] and the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq. (1976 and Supp. IV 1980)].

I. Background and Introduction

Accounting Research Bulletin ("ARB") No. 51, paragraph 1, provides that "there is a presumption that consolidated statements are more meaningful than separate statements and that they are necessary for a fair presentation when one of the enterprises in the group directly or indirectly has a controlling financial interest in the other enterprises." While the usual condition

for a controlling financial interest is ownership of a majority voting interest, the power to control may be evidenced in other ways, depending on particular facts and circumstances.

Rule 3A-02 of Regulation S-X, while stating that the registrant shall follow a consolidation policy which clearly exhibits the financial position and results of operations of the registrant and its subsidiaries, also states that a registrant "shall not consolidate any subsidiary which is not majority owned." That rule was written at a time when the Commission was attempting to prevent registrants who did not, in substance, control a "subsidiary" from consolidating that entity and thereby filing financial statements which did not clearly exhibit the financial position and results of operations of the registrant and its subsidiaries.

Notwithstanding releases[1] which have indicated the Commission's view that the requirement to "clearly exhibit the financial position and results operations of the registrants and its subsidiaries" is the overriding requirement in this rule, some registrants have cited this rule as prohibiting the consolidation of a controlled entity that is, in substance a subsidiary of the registrant.

Therefore, the Commission has determined to consider an amendment of the rule and to use this opportunity to state once again that, as in all accounting determinations, the substance of the transaction, as opposed to its form, must be considered in preparing financial statements.[2]

II. Synopsis

The new proposed first paragraph of the rule would incorporate the guidance in ARB No. 51 that the general presumption is that consolidated financial statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one enterprise directly or indirectly has a controlling financial interest in another enterprise.

The sentence that states that a registrant shall not consolidate any subsidiary which is not majority owned would be amended to indicate that the determination of majority ownership requires a careful analysis of the facts and circumstances of relationships among entities, and that the registrant's accounting policies should be clearly explained in the statement as to principles of consolidation or combination followed as required by Rule 3A-03. The title of Rule 3A-02 would be changed in order to more clearly reflect the contents of the rule to read "Consolidated and Combined Financial Statements of the Registrant and its Subsidiaries and Affiliates," rather than "Consolidated Financial Statements of the Registrant and Subsidiaries." The rest of the rule would be reordered and renumbered, and some additional guidance would be incorporated, but the substance of the Commission's position would remain unchanged.

The Commission believes that the rule as amended would be consistent with generally accepted accounting principles ("GAAP") which emphasize substance over form. No rule can cover all sets of circumstances, particularly in a rapidly changing economic environment. The proposed amendments will continue to require the use of judgment in determining whether to consolidate or combine subsidiaries and other controlled entities; and the Commission will continue to expect registrants and their independent accountants to consider substance over form to determine appropriate consolidation policy.

III. Paperwork Reduction Act Status

The release proposes a technical amendment to Regulation S-X, but the amendment is not material for purposes of the Paperwork Reduction Act because it does not significantly affect the information reporting burden.

IV. Regulatory Flexibility Act Certification

John S. R. Shad, Chairman of the Commission, has certified that the proposed amendment will not have a significant economic impact on any entity subject to its provisions, and therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are consistent with GAAP and would merely codify present interpretations, and therefore, it is anticipated that the effects of the amendment will not be significant for any class of registrants because the compliance burden is not being changed.

V. Request for Comment

The Commission invites written comments on the proposed amendment. Pursuant to section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and it is not aware at this time of any burden that such proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under the Act.

List of Subjects in 17 CFR Parts 210, 231 and 241

Accounting, Reporting requirements, Securities.

VI. Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

Article 3A—Consolidated and Combined Financial Statements (17 CFR Part 210)

1. The authority citation for Part 210 would continue to read as follows:

Authority: Secs. 6, 7, 8, 10, 12, 13, 15, 19, 23, 48 Stat. 78, 79, as amended, 81, as amended, 85, as amended, 892, as amended, 894, 895, as amended, 901, as amended, secs. 5, 14, 20, 49 Stat. 812, 827, 833, secs. 8, 30, 31, 38, 54 Stat. 803, 836, 838, 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78l, 78m, 78o, 78w, 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37.

2. By revising § 210.3A-02 to read as follows:

§ 210.3A-02 Consolidated and combined financial statements of the registrant and its subsidiaries and affiliates.

In deciding upon consolidation policy, the registrant must consider what financial presentation is most meaningful in the circumstances and should follow in the consolidated or combined financial statements principles of inclusion or exclusion which will clearly exhibit the financial position and results of operations of the registrant. There is a presumption that consolidated statements are more meaningful than separate statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has a controlling

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[1] *In the matter of Atlantic Research*, Securities Exchange Act Release No. 4657 (December 6, 1963); *In the Matter of Loventhol & Horwath*, Securities Exchange Act Release No. 13976 (September 21, 1977); *SEC v. Digilog, Inc. and Ronald Moyer*, Litigation Release No. 10448 (July 5, 1984); and, *In the Matter of Coopers & Lybrand and M. Bruce Cohen, CPA*, Securities Exchange Act Release No. 21520 (November 27, 1984.)

[2] This action by the Commission is not intended to change in any substantive way the current consolidation requirements of generally accepted accounting principles.

financial interest in another entity. Other particular facts and circumstances may require combined financial statements, an equity method of accounting, or valuation allowances in order to achieve a fair presentation. In any case, the disclosures required by § 210.3A-03 should clearly explain the accounting policies followed by the registrant in this area, including the circumstances involved in any departure from the normal practice of consolidating majority owned subsidiaries and not consolidating entities that are less than majority owned. Among the factors that the registrant should consider in determining the most meaningful presentation are the following:

(a) *Majority ownership:* Registrants generally shall consolidate subsidiaries that are majority owned and generally shall not consolidate entities that are not majority owned. The determination of "majority ownership" requires a careful analysis of the facts and circumstances of a particular relationship among entities. In rare situations, consolidation of a majority owned subsidiary may not result in a fair presentation, because the registrant, in substance, does not have a controlling financial interest (for example, when the subsidiary is in legal reorganization or in bankruptcy), or when control is likely to be temporary. In other situations, consolidation of an entity, notwithstanding the lack of technical majority ownership, is necessary to present fairly the financial position and results of operations of the registrant, because of the existence of a parent-subsidiary relationship by means of control exercised other than through record ownership of voting stock.

(b) *Different fiscal periods:* Registrants generally shall not consolidate any entity whose financial statements are as of a date or for periods substantially different from those of the registrant. Rather, the earning or losses of such entities should be reflected in the registrant's financial statements on the equity method of accounting. However:

(1) A difference in fiscal periods does not of itself justify the exclusion of an entity from consolidation. It ordinarily is feasible for such entity to prepare, for consolidation purposes, statements for a period which corresponds with or closely approches the fiscal year of the registrant. Where the difference is not more than 93 days, it is usually acceptable to use, for consolidation purposes, such entity's statements for its fiscal period. Such difference, when it exists, should be disclosed as follows: the closing date of the entity should be expressly indicated, and the necessity for the use of different closing dates should be briefly explained. Furthermore, recognition should be given by disclosure or otherwise to the effect of intervening events which materially affect the financial position or results of operations.

(2) Notwithstanding the 93-day provision specified in (b)(1) above, in connection with the retroactive combination of financial statements of entities following a "pooling of interests," the financial statements of the constituents may be combined even if their respective fiscal periods do not end within 93 days, except that the financial statements for the latest fiscal year shall be recast to dates which do not differ by more than 93 days, if practicable. Disclosure shall be made of the periods combined and of the sales or revenues, net income before extraordinary items and net income of any interim periods excluded from or included more than once in results of operations as a result of such recasting.

(c) *Bank Holding Company Act:* Registrants shall not consolidate any subsidiary or group of subsidiaries of a registrant subject to the Bank Holding Company Act of 1956 as amended as to which (1) a decision requiring divestiture has been made, or (2) there is substantial likelihood that divestiture will be necessary in order to comply with provisions of the Bank Holding Company Act.

(d) *Foreign subsidiaries:* Due consideration shall be given to the propriety of consolidating with domestic corporations foreign subsidiaries which are operated under political, economic or currency restrictions. If consolidated, disclosure should be made as to the effect, insofar as this can reasonably be determined, of foreign exchange restrictions upon the consolidated financial position and operating results of the registrant and its subsidiaries.

PART 231—INTERPRETIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

2. By amending Part 231 by adding this release to the list of interpretive releases set forth thereunder.

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

3. By amending Part 241 by adding this release to the list of interpretive releases set forth thereunder.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

April 23, 1985.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 3A-02 of Regulation S-X, contained in Securities Act Release No. 33-6577 will not have a significant economic impact on any entity subject to its provisions and, therefore, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments are consistent with generally accepted accounting principles and would merely codify present interpretations, and therefore, would not be significant for any class of registrants because the compliance burden is not being changed.

John S.R. Shad.

April 23, 1985.

[FR Doc. 85-10780 Filed 5-3-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 740, 746, 750, and 772

Surface Mining Coal Mining and Reclamation Operations; Permanent Regulatory Program; Application Fee for Permit to Conduct Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for processing Mining Plan; Fee for Mid-Term Review of Surface Coal Mining and Reclamation Permit

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

ACTION: Extension of Public Comment Period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (the Department) extends until June 3, 1985, the public comment period on the rule it proposed in the February 22, 1985 **Federal Register** (50 FR 7522). The proposed rule would govern the collection by OSM of application fees for permits to conduct surface coal mining and reclamation operations, and for permits to conduct coal exploration,

as well as fees for processing mining plans and for mid-term review of surface coal mining and reclamation permits. Recipients of these services would be required to reimburse OSM for the actual cost incurred by the Department in providing the service.

The rule would apply to applications for mining on Indian lands, in Federal Program States (Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee and Washington), and on Federal lands in States not having State-Federal cooperative agreements. The rule would also require payment to the Department for costs the Department incurs in reviewing and approving mining plans.

DATES: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on June 3, 1985.

ADDRESSES: Hand-deliver written comments to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C., 20240: Telephone: 202–343–5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSM proposed a rule in the February 22, 1985, **Federal Register** which would govern the collection by OSM of fees for certain activities related to the processing of permits and mining plans for surface coal mining and reclamation operations (50 FR 7522). That notice announced a public comment period on the proposed rule closing May 3, 1985. In response to a request for more time to submit public comments on this rule, OSM is extending the closing date of the public comment period by 30 days. Comments will now be accepted by the location given above ("ADDRESSES") until 5 p.m. eastern time on June 3, 1985.

Dated: May 1, 1985.

Carl C. Close,

Acting Assistant Director, Program Operations and Inspections.

[FR Doc. 85–11018 Filed 5–2–85; 3:06 pm]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A–5–FRL–2828–5]

Indiana; Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The State of Indiana has requested that USEPA change the Total Suspended Particulates (TSP) designation for a portion of Wayne County, Indiana. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such a change. USEPA proposes for Wayne County (1) to disapprove a redesignation of Wayne Township from unclassified to attainment for TSP, and (2) to approve the redesignation of Webster, Center and Boston Townships to full attainment for TSP.

In addition, the State of Indiana submitted a request to revise the Indiana State Implementation Plan (SIP) for TSP for Richmond State Hospital. USEPA is proposing to approve revised emission limits for this facility.

DATE: Comments on this redesignation and revision and on the proposed USEPA action must be received by July 5, 1985.

ADDRESSES: Copies of the redesignation request, technical support documents, supporting air quality data, and the SIP revision request are available at the following addresses for review: (It is recommended that you telephone Anne E. Tenner, at (312) 886–6036, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Under Section 107(d) of the Act, the Administrator of USEPA has promulgated the NAAQS attainment status for each area of every State. See 43 FR 8962 (March 3, 1978). These area designations may be revised whenever the data warrants. The primary TSP NAAQS is violated when, in a year, either: (1) the geometric mean value of TSP concentrations exceeds 75 micrograms per cubic meter of air (75 $\mu g/m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 $\mu g/m^3$ more than once (the 24-hour standard). The secondary TSP is violated when, in a year, the maximum 24-hour concentration exceeds 150 $\mu g/m^3$ more than once.

Wayne County Redesignation

The current designation for TSP in Wayne County, Indiana is that the area included within Boston, Center, Wayne, and Webster Townships is designated unclassifiable and the remainder of the County is attainment as codified at 40 CFR 81.315 (1984) [November 2, 1981; 46 FR 543401]. On September 11, 1984, the State of Indiana requested USEPA to revise the TSP designation for Webster, Center, Wayne and Boston Townships from unclassifiable to attainment. To support its request, the State of Indiana submitted 8 consecutive quarters (July 1982–August 1984) of air quality data from two sites in Richmond, which is located in Wayne Township in eastern Wayne County. No violations of the TSP NAAQS were measured during this period.

However, the State of Indiana submitted air quality modeling analyses which indicate that the two monitors are not located in the area of poorest air quality in Wayne Township. These analyses project secondary nonattainment for a small area in the north part of the City of Richmond in Wayne Township. Therefore, without further modeling or monitoring data to support redesignation to attainment for all of Wayne Township, the redesignation of Wayne Township to full attainment cannot be approved. The available modeling and monitor data do indicate that the TSP NAAQS are attained in Webster, Center, and Boston Townships in Wayne County. The technical data are discussed in more detail in the technical support document which is available at USEPA's Region V office.

Therefore, based on the available technical support from the State, USEPA proposes to disapprove the redesignation of Wayne Township from unclassified to attainment for TSP, but to approve the redesignation of

Webster, Center, and Boston Townships in Wayne County to full attainment for TSP. The remainder of the County would remain designated attainment.

Richmond State Hospital

On March 28, 1984, the State of Indiana requested that Richmond State Hospital, a major TSP source in Wayne County, be permitted to utilize its four boilers simultaneously and increase its TSP emission limit to 0.60 lbs/MMBTU. The current federally approved SIP for Richmond State Hospital allows simultaneous operation of the four boilers, but restricts each boiler to a 0.35 lb/MMBTU emission limit. USEPA proposed to disapprove this SIP revision on May 8, 1984, because the State had not submitted an air quality modeling analysis, consistent with USEPA reference modeling methodology, demonstrating that the revision would not cause or contribute to a violation of the TSP standards. On September 11, 1984, the State submitted additional information which supported the earlier request to revise the SIP for Richmond State Hospital.

In order for there to be an increase in Richmond State Hospital's operations and emissions, the State must demonstrate attainment and maintenance of both the short term and long term TSP NAAQS. The State submitted both a Climatological Dispersion Model (CDM) analysis to estimate the annual TSP concentration in Wayne County and two PTPLU model runs to illustrate the current and proposed short term impact of the SIP revision in the area surrounding Richmond State Hospital.

The CDM model analysis submitted by the State indicates (1) that the proposed Richmond State Hospital's emissions have an insignificant annual impact in the area of Wayne County that modeling projects as a secondary nonattainment area and (2) that the annual TSP standard will be attained and maintained with the relaxation both in the immediate vicinity of the Hospital and elsewhere in the County.

As to the short term TSP standards, these analyses depend on the previous State requirements for the source. As stated earlier, the Federal SIP permits the simultaneous operation of all four Richmond State Hospital boilers. However, the previous State operating permits restricted the operation of these boilers to one boiler at a time, except in the case of emergencies. If Richmond State Hospital was complying with the State's requirements, then a true assessment of the short term impact of the proposed revision for Richmond State Hospital's relative to previous TSP levels in Wayne County must consider the increase in TSP emissions from the operation of one boiler at 0.35 lbs/MMBTU versus four boilers at 0.6 lbs/MMBTU. The PTPLU analysis submitted by the State indicates that the maximum 24-hour impact of this emission increase would be to increase TSP concentrations by 9 mg/m^3.

In addition, USEPA modeled Richmond State Hospital's emission increase using 3 years of National Weather Service meteorological data and the MPTER model to obtain a more refined estimate of the effect of this relaxation on 24-hour concentrations. The highest 24-hour concentration predicted was 2.91 $\mu g/m^3$, significantly less than the 9 $\mu g/m^3$ worst case estimate obtained from the screening model PTPLU.

The available monitoring and modeling data indicate that the small increase in ambient TSP concentrations resulting from the proposed changes for Richmond State Hospital will not threaten the 24-hour TSP NAAQS within Wayne County and will not have a significant impact within the area of projected worst case air quality in the Richmond area (about 3 km east of Richmond State Hospital). Consequently, USEPA proposes approval of the revised emission limit as a revision to the SIP.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations and SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Dated: March 29, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85-10910 Filed 5-3-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50525; FRL-2800-8]

Substituted Tetrafluoro Alkene and Disubstituted Tetrafluoro Alkane; Proposed Determination of Significant New Uses

Correction

In FR Doc. 85-6706 beginning on page 11384 in the issue of Thursday, March 21, 1985, make the following correction:

§ 721.1015 [Corrected]

On page 11390, third column, in § 721.1015(b)(1)(iii), fourth line, insert the word "this" after the word "of".

BILLING CODE 1501-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6656]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to Qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Divison, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain

management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 is proposed to be revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Huntsville, Madison County.	Huntsville Spring Branch	About 12,350 feet downstream of Johnson Road	*575	*575
			Just upstream of Johnson Road	*586	*586
			Just downstream of Drake Avenue	*596	*595
			Just upstream of Governors Drive	*607	*608
			At confluence of Pinhook and Fagan Creeks	*610	*609
		Pinhook Creek	At confluence with huntsville Spring Branch and Fagan Creek.	*610	*609
Maps available for inspection at the Public Works Department, P.O. Box 308, Huntsville, Alabama.					
Send comments to Honorable Joe W. Davis, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.					
Arizona	Yuma City, Yuma County	Colorado River	22nd Avenue extended to north side of Yuma Levee	*134	*135
Maps available for inspection at the Department of Development Services, 3 W 3rd Street, Yuma, Arizona.					
Send comments to the Honorable Phillip G. Clark, 200 First Street, Yuma, Arizona 85364.					
Arizona	Yuma County (Unincorporated Areas).	Colorado River	Extension of Avenue D to North Side of Yuma Levee	*131	*132
Maps available for inspection at the Department of Public Works, 2703 Avenue B, Yuma, Arizona.					
Send comments to the Honorable Robert W. Kennerly, P.O. Box 1112, Yuma, Arizona 85365.					
California	Alameda County (Unincorporated Areas).	Arroyo De La Laguna	Downstream edge of Interstate Highway 680	*321	*318
		Arroyo Del Valle	100 feet downstream from the centerline of Isabel Avenue.	*403	(¹)
		Bockman Canal	Pile Trestle Bridge crossing	*6	*7
		Line N-3	Southern Pacific Railroad crossing	*6	*7
		San Francisco Bay	Approximately 300 feet southwest of the intersection of Cabot Boulevard and Depot Road.	(¹)	*7
		Ward Creek-Line B	50 feet east of the intersection of New England Village Drive and Huntwood Avenue.	(¹)	*10
Maps available for inspection at the Alameda County Flood Control and Water Conservation District, 1221 Oak Street, Oakland, California.					
Send comments to the Honorable John George, 1221 Oak Street, 536, Oakland California 94612.					
California	Avalon (City), Los Angeles County.	Avalon Canyon	Intersection of Crescent and Catalina Avenues	*13	*8
		Pacific Ocean	Along shoreline at Catalina Avenue extended	*13	*5
Maps available for inspection at City Hall, Avalon, California.					
Send comments to the Honorable Gilbert Saldana, P.O. Box 707, Avalon, California 90704.					
California	Los Angeles County (Unincorporated Areas).	Pacific Ocean	At shoreline, approximately 600 feet from the intersection of Mulholland Highway and Pacific Coast Highway.	(¹)	*11
Maps available for inspection at Los Angeles County Flood Control, District, 2250 East Alcazar Street, Los Angeles, California.					
1Send comments to the Honorable Dean Dana, 383 Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.					
California	Morro Bay (City), San Luis Obispo County.	Pacific Ocean	Approximately 600 feet west of the intersection of Beachcomber Avenue and Easter Street along Easter Street Extended.	(¹)	*9
Maps available for inspection at the Department of Public Works, 595 Harbor Street, Morro Bay, California.					
Send comments to the Honorable Eugene Shelton, 595 Harbor Street, Morro Bay, California 93442.					
California	Oxnard (City) Ventura County	Santa Clara River of Harbor Boulevard.	300 feet downstream shown	(¹)	*12
		Santa Clara River Breakout	150 feet upstream from mouth	(¹)	*7

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Pacific Ocean	Along shoreline, at West Fifth Street extended	(1)	*10
Maps available for inspection at City Hall, 300 West 3rd Street, Oxnard, California.					
Send comments to the Honorable Nao Takasugi, 300 West 3rd Street, Oxnard, California 93030					
California	Santa Barbara (City), Santa Barbara County.	Pacific Ocean	East Beach, at mouth of Sycamore Creek	(1)	*8
		Mission Creek (shallow flooding only).	Intersection of San Andres Street and Michelltorena Street.	(1)	*82
		Arroyo Burro (shallow flooding only).	Intersection of Palermo Drive and Amalfi Way	(1)	*140
Maps available for inspection at the Department of Building and Zoning, 1235 Chapala Street, Santa Barbara, California.					
Send comments to the Honorable Sheila Lodge, P.O. Drawer P-P, Santa Barbara, California 93102.					
Colorado	Glenwood Springs (City), Garfield County.	Roaring Fork River	Approximately 300 feet east of the intersection of Midland Avenue and Latson Court along Latson Court.	(1)	*5,736
		Colorado River	350 feet south of the intersection of U.S. Highway 6 and Donegan Road.	(1)	*5,710
		Threemile Creek	Approximately 35 feet downstream from the center of Midland Avenue.	(1)	*5,879
		Mitchell Creek	150 downstream of center of U.S. Interstate 70	(1)	*5,694
Maps available for inspection at the Planning Department, 806 Cooper Avenue, Glenwood Springs, Colorado.					
Honorable Carl Schiesser, 806 Cooper Avenue, Glenwood Springs, Colorado 81601.					
Colorado	Mesa County (Unincorporated Areas)	230 feet upstream from the center of U.S. Highway 6.		(1)	*4,698
Maps available for inspection at the County Engineering Department, 1000 S. 9th Street, Grand Junction, Colorado.					
Send comments to the Honorable Richard C. Pond P.O. Box 897, Grand Junction, Colorado 81502.					
Colorado	Sheridan (City), Arapahoe County.	Bear Creek	Upsteam edge of South Federal Boulevard Crossing	*5,300	*5,298
Maps available for inspection at City Hall, 4400 S. Federal Boulevard, Englewood, Colorado.					
Send comments to the Honorable Roger Rowland, 4400 S. Federal Boulevard, Englewood, Colorado 80110.					
Delaware	Sussex County	Atlantic Ocean and Little Assawaman Bay.	North side of State Route 54 approximately 1,000' west of the intersection of State Route 58 and State Route 14.	*5	*6
			South side of State Route 54 approximately 1,000' west of the intersection of State Route 58 and State Route 14.	*8	*7
Maps available for inspection at the Planning and Zoning Office, Sussex County Courthouse, Room 112, Georgetown, Delaware.					
Send comments to the Honorable Joseph G. Conway, Sussex County Administrator, P.O. Box 407, Georgetown, Delaware 19947.					
Georgia	Cobb County	Chattahoochee River	At downstream County Boundary	*757	*761
			Just downstream Morgan Falls Dam	*813	*819
			Just upstream Morgan Falls Dam	*854	*851
			At upstream County Boundary	*858	*862
		Nickajack Creek	At mouth	*762	*766
			About 1,640 feet usptream of US Route 78	*766	*766
		Queen Creek	At mouth	*761	*766
			About 1,000 feet downstream of Queen Mill Road	*766	*766
		Gilmore Creek	At mouth	*769	*774
			About 200 feet downstream of Woodland Brook Drive	*774	*774
		Vinings Branch	At mouth	*771	*775
			About 300 feet downstream of Randall Farm Road	*775	*775
		Powers Branch	At mouth	*792	*794
			Just downstream of Columns Drive	*798	*798
		Terrel Brach	At mouth	*792	*794
			Just downstream of Columns Drive	*802	*802
		Rottenwood Creek	At mouth	*774	*778
			About 1,000 feet upstream of mouth	*778	*778
			Just upstream of Delk Road	*929	*928
			At confluence of Powers Creek	*934	*932
			About 1,900 feet downstream of US Highway 41	*950	*950
		Poorhouse Creek	At mouth	*925	*925
			About 200 feet upstream of mouth	*926	*926
		Powers Creek	About 300 feet downstream of Powers Ferry Drive	*934	*932
			Just upstream of Powers Ferry Dive	935	*935
		Sope Creek	At mouth	*801	*803
			About 350 feet upstream of mouth	*803	*803
		Willeo Creek	At mouth	*858	*862
			About 1,150 feet upstream of Willeo Road	*862	*862
		Timber Ridge Branch	At mouth	*860	*862
			About 150 feet upstream of Timber Ridge Road	*862	*862
Maps available for inspection at the Cobb County Development Control Department, 10 E. Park Square, Marietta, Georgia 30090-9623.					
Send comments to Honorable Earl E. Smith, Chairman, Cobb County Board of Commissioners, 10 E. Park Square, Marietta, Georgia 30090-9602.					
Idaho	Eagle (City), Ada County	Boise River	On upstream (east) side of Eagle Road (State Highway 69) at Ballentine Canal crossing.	*2,557	*2,555
		South Fork Boise River	Approximately 800 feet west along Mace Road from the Mason-Catlin Canal Crossing	(1)	*2,539

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at City Hall, 67 East State Street, Eagle, Idaho.					
Send comments to the Honorable Carol Haley, P.O. Box 477, Eagle, Idaho 83616.					
Illinois	DuPage County (uninc. areas)	Spring Brook	Just upstream of Lake Kadijah Spillway	(1)	*703
			About 540 feet upstream of Medinah-on-the-Lake Road.	(1)	*706
Maps available for inspection at the Department of Public Works, 521 North County Farm Road, Wheaton, Illinois.					
Send comments to Honorable Jack T. Knuepfer, Chairman of the County Board, DuPage County, 421 North County Farm Road, Wheaton, Illinois 60187.					
Illinois	Unincorporated Areas of McHenry County.	Elizabeth Lake Drain	At confluence with North Branch Nippersink Creek	*788	*788
		Crystal Creek	At County Boundary	*795	*794
			About 5300 feet upstream of Plum Street	(1)	*828
			Just downstream of McHenry Drive	(1)	*879
Maps available for inspection at the Planning Department, Room 105, McHenry County Courthouse, 2200 North Seminary, Woodstock, Illinois.					
Send comments to Honorable Clint Claypool, Chairman, McHenry County Board, McHenry County Courthouse, Room 204, 2200 North Seminary, Woodstock, Illinois 60098.					
Maryland	Anne Arundel County, unincorporated areas.	Chesapeake Bay	Intersection of Lake Avenue and Spruce Avenue	*8	*7
			Intersection of Park Avenue and Pine Avenue	*10	*8
Maps available for inspection at the Planning and Zoning Office, Arundel Center, 44 Calvert Street, Annapolis, Maryland.					
Send comments to Honorable O. James Lighthizer, County Executive, Anne Arundel County, Arundel Center, 44 Calvert Street, Annapolis, Maryland 21401.					
Nebraska	City of Wahoo, Saunders County	Wahoo Creek	About 2.16 miles downstream of U.S. Highway 77	(1)	*1,162
			Just upstream of U.S. Highway 77	*1,184	*1,184
			About 0.21 mile upstream of County Road	*1,191	*1,190
		Sand Creek	About 0.87 mile downstream of County Road	(1)	*1,162
			About 140 feet upstream of County Road	*1,171	*1,171
		Cottonwood Creek	At confluence with Wahoo Creek	*1,186	*1,186
			Just downstream side of U.S. Highway 30A & State Highway 92	*1,189	*1,188
			About 1.03 miles upstream of U.S. Highway 30A and State Highway 92	*1,194	*1,194
		Dry Run Creek	At confluence with Cottonwood Creek	*1,188	*1,187
			Just downstream of Burlington Northern dismantled railroad bridge	*1,188	*1,188
Maps available for inspection at City Hall, 605 North Broadway Street, Wahoo, Nebraska.					
Send comments to Honorable Daryle Reitmajer, Mayor, City of Wahoo, City Hall, 605 North Broadway Street, Wahoo, Nebraska 68066.					
New York	New Paltz, village, Ulster County	Wallkill River	Downstream corporate limits	*193	*190
			State Route 299	*193	*190
			Upstream corporate limits	*193	*191
Maps available for inspection at the New Paltz Village Hall, New Paltz, New York.					
Send comments to Honorable Robert I. Remsnyder, Mayor of the Village of New Paltz, P.O. Box 877, New Paltz, New York 12561.					
Oklahoma	Moore, city, Montgomery County	North Fork River	Upstream side of NE 22nd Street	*1,235	*1,240
			Downstream side of NE 23rd Street	(1)	*1,247
			Approximately 500 upstream of NE 23rd Street	(1)	*1,252
Maps available for inspection at the Planning and Engineering Department, Moore City Hall, Moore, Oklahoma.					
Send comments to Honorable Louis Kindrick, Mayor of the City to Moore, 125 East Main Street, P.O. Box 7248, Moore, Oklahoma 73153.					
Oklahoma	Tulsa, city, Tulsa, Osage, and Rogers Counties.	Vensel Creek Relocated	At confluence with Arkansas River located southwest of 91st Street and Delaware Avenue intersection.	(1)	*614
			Approximately 350' upstream of confluence of Tributary 1 to Vensel Creek Relocated.	*629	*626
			Downstream side of South Harvard Avenue	*642	*641
		Tributary 1 to Vensel Relocated	At confluence with Vensel Creek Relocated	(1)	*614
			Approximately .42 mile upstream of confluence with Vensel Creek Relocated.	(1)	*617
Maps available for inspection at the City Hall, 200 Civic Center, Tulsa, Oklahoma.					
Send comments to Honorable Terry Young, Mayor of the City of Tulsa, 200 Civic Center, Tulsa, Oklahoma 74103.					
Oregon	Portland (city), Multnomah, Clackamas, and Washington Counties.	Johnson Creek	Center of the intersection of Duke Street and SE 102nd Avenue.	*208	*207
		Columbia River	200 feet north of the intersection of Marine Drive and Northeast 148th Avenue.	(1)	*30
Maps available for inspection at Engineering Department, 1220 SW 5th Avenue, Portland, Oregon.					
Send comments to the Honorable Francis Ivancie, 1220 SW 5th Avenue, Portland, Oregon 97204.					
South Carolina	Town of Summerville, Dorchester County.	Sawmill Branch	About 100 feet upstream of Ashley Drive	*42	*42
			About 250 feet downstream of South Gum Street	*44	*46
			Just downstream of Norfolk Southern Railway	*48	*48
Maps available for inspection at 104 Civic Center, Summerville, South Carolina.					
Send comments to the Honorable Berlin G. Myers, Mayor, Town of Summerville, 104 Civic Center, Summerville, South Carolina 29483.					
Tennessee	City of Germantown, Shelby County.	Wolf River Lateral E	About 0.16 mile downstream of confluence of Wolf River Lateral EA.	*297	*291

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of U.S. Highway 72 (Poplar Avenue)	*308	*308
		Wolf River Lateral EA	At confluence with Wolf River Lateral E	*300	*295
			Just upstream of U.S. Highway 72 (Poplar Avenue)	*326	*326

Maps available for inspection at Germantown Municipal Center, 1930 Germantown Road—South, Germantown, Tennessee 38138.

Send comments to the Honorable Boyd Arthur, Jr., Mayor, City of Germantown, P.O. Box 3809, Germantown, Tennessee 38138-3809.

Tennessee	City of Memphis, Shelby County	Nonconnah Creek	About 200 feet upstream of Airways Boulevard	*243	*243
			About 170 feet downstream of confluence of Hurricane Creek.	*248	*247
			At confluence of Tenmile Creek	*255	*255

Maps available for inspection at the Office of Planning and Development, Memphis and Shelby County, 125 North Main, Memphis, Tennessee.

Send comments to the Honorable Richard C. Hackett, Mayor, City of Memphis, City Hall, 125 North Main Memphis, Tennessee 38103.

Tennessee	Unincorporated areas of Shelby County	Fletcher Creek	Just upstream of Whitten Road	*264	*260
			Just upstream of confluence of Fletcher Creek Lateral E.	*269	*269
		Fletcher Creek Tributary A	About 0.15 mile downstream of U.S. Route 64	*273	*273
			Just downstream of U.S. Route 64	*277	*273
			About 0.17 mile upstream of Appling Road	*292	*292
		Fletcher Creek Tributary C	At confluence with Fletcher Creek Tributary A	*278	*274
			About 0.45 miles above confluence with Fletcher Creek Tributary A.	*282	*282
		Johns Creek	Just downstream of Raines Road	*294	*291
			Just downstream of Tennessee Yards	*301	*301
		Johns Creek Lateral A	At mouth	*297	*295
			About 950 feet upstream of St. Louis San Francisco Railway Spur.	*306	*300
		Ten Mile Creek	About 0.4 mile downstream of East Shelby Drive	*319	*318
			Just downstream of East Shelby Drive	*327	*325
			About 420 feet upstream of East Shelby Drive	*331	*331

Maps available for inspection at George Reed, County Engineer, Suite 701 County Administrative Building, 160 N. Mid America Mall, Memphis, Tennessee.

Send comments to Honorable William N. Morris, Mayor, Shelby County, Shelby County Administrative Building, Suite 850, 160 N. Mid America Mall, Memphis, Tennessee 38103.

Texas	Irving, city, Dallas County	Elm Fork of the Trinity River	Approximately 2,000 feet upstream of the confluence of Hackberry Creek.	*429	*428
			Upstream side of Royal Land	*430	*429
			Downstream side of Interstate Route 635	*432	*431
		Delaware Creek	Approximately 500 feet downstream of Story Road	*524	*525
			Downstream side of Story Road	*526	*527

Maps available for inspection at the City Hall Public Works Building, 825 West Irving Boulevard, Irving, Texas.

Send comments to Honorable Bobby Joe Raper, Mayor of the City of Irving, Dallas County, P.O. Box 3008, Irving, Texas 75061.

Texas	Matagorda County (uninc. areas)	Cottonwood Creek	Approximately .9 mile upstream of Hammon Road	(1)	*44
			Approximately 1.04 miles upstream of Hammon Road	(1)	*45

Maps available for inspection at the Matagorda County Courthouse Building, 1700 Seventh Street, Bay City, Texas.

Send comments to Honorable Burt O'Connell, Matagorda County Court Judge, P.O. Box 1331, Bay City, Texas 77414.

Texas	Palacios, city, Matagorda County	Tres Palacios Bay	Area at intersection of Welch Avenue and Tenth Street.	(2)	*10
			Area at intersection of Eighth Street and Duson Avenue.	*10	*12
			Shoreline at south end of Twelfth Street (extended)	*13	*14
			Shoreline at south end of First Street (extended)	*13	*16

Maps available for inspection at the Palacios City Hall, Palacios, Texas.

Send comments to Hororable Leonard Lamar, Mayor of the City of Palacios, P.O. Box 845, Palacios, Texas 77465.

Texas	San Antonio, city, Bexar County	Leon Creek	Approximately 200 feet upstream of Culebra Road	*755	*756
			At (Abandoned) Potranco Road	*764	*762
		Huebner Creek Tributary	Approximately 500 feet upstream of confluence with Huebner Creek.	*839	*841
			At Eckert Boulevard	*852	*850
			At weir	*860	*858

Maps available for inspection at the City Clerk's Office, City Hall, Plaza de Armas, San Antonio, Texas.

Send comments to Hororable Henry Cisneros, Mayor of the City of San Antonio, P.O. Box 9066, San Antonio, Texas 78285.

Virginia	Newport News, city, Independent City.	Hampton Roads	Newmarket Creek, downstream of Chestnut Avenue	*8	8.5
			Intersection of Hampton and Maple Avenues	*9	*8.5
			Buxton Avenue between 19th and 27th Streets	*9	*8.5
			Intersection of Poplar Avenue and 29th Street	*9	*8.5
			Indigo Lake, just below Indigo Dam	*9	*8.5
			Fishers Creek at Madison Lane north	*9	*8.5
			Yoder Pond	*9	*8.5
			Tributary to Deep Creek at Normandy Lane	*9	*8.5
			Deep Creek north of Yoder Pond	*9	*8.5
			Lucas Creek at Tabbs Lane	*9	*8.5

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Warwick River upstream of Moyer Road (extended)	*9	*8.5
			Stony Run, upstream of mouth	*9	*8.5
			Skiffes Creek	*9	*8.5

Maps available for inspection at the Codes Compliance Office, City Hall, 3rd Floor, Newport News, Virginia.

Send comments to Honorable Joseph C. Ritchie, Mayor of the City of Newport News, 2400 Washington Avenue, Newport News, Virginia 23607.

Washington	Des Moines (city), King County	Pacific Ocean	Along shoreline of Puget Sound approximately 475 feet west of the intersection of Marine View Drive South and South 249th Street	(1)	*13

Maps available for inspection at the Engineering Department, 21630 11th Avenue South, Des Moines, Washington.

Send comments to the Honorable Pat De Blasio, 21630 11th Avenue South, Des Moines, Washington 98188.

Wisconsin	City of Foud du Lac, Fond du Lac County.	West Branch Fond du Lac River	Just upstream of Highway T	None	*772
			About 0.3 mile upstream of County Highway T	None	*774
		De Neveu Creek	At mouth	*750	*750
			About 3.94 miles above mouth	*804	*808
		Taycheedah Creek	About 0.7 mile above mouth	None	*752
			About 0.1 mile upstream of State Highway 23	None	*769
		Supple Creek	At mouth	None	*750
			About 1.3 miles above mouth	None	*753

Maps available for inspection at the Engineering Department, P.O. Box 150, Fond du Lac, Wisconsin.

Send comments to Honorable Daniel R. Thompson, City Manager, City of Fond du Lac, P.O. Box 150, Fond du Lac, Wisconsin 54935-0150.

[1] None. [2] Zone B.

Issued: April 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10884 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6658]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participatin in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 proposed to be is revised to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Wetumpka (City), Elmore County	
Coosa River:	
About 1.5 miles downstream of West Bridge Street	*172
About 3.2 miles upstream of West Bridge Street	*180
Maps available for inspection at the City Hall, Wetumpka, Alabama.	
Send comments to Honorable Jeanette E. Barrett, Mayor, City of Wetumpka, City Hall, P.O. Box 180, Wetumpka, Alabama 36092.	
COLORADO	
Jefferson County (Unincorporated Areas)	
Bear Creek (Below Mt. Carbon Dam): 800 feet north of the intersection of South Oak Court and Bear Creek Drive	*5,455
Bear Creek (at Morrison): 100 feet upstream from center of Soda Lake Road	*5,734
Bear Creek (at Idledale): On Miller Lane, 150 feet northwest of its intersection with Bear Creek Road	*6,413
Bear Creek (Kittredge to Evergreen):	
At the intersection of Avenue D and Creek Court	*6,822
On Upper Bear Creek Road, 200 feet south of its intersection with Meadow Drive	#2
Bear Creek (above Evergreen Lake): 50 feet upstream from center of Upper Bear Creek Road	*7,410
Bear Creek Tributary Number 1:	
At the intersection of Fireweed and Meadow Drive	*7,090
40 feet east of the centerline of Meadow Drive, 575 feet southeast of its intersection with Iris Drive	#2
Bear Creek Tributary Number 2: 20 feet upstream from center of Independence Trail	*7,020
Bear Creek Tributary Number 3:	
50 feet upstream from center of Dedisse Park Road	*7,196
On Scenic Drive, 100 feet west of the intersection with State Highway 74	#2
Bear Creek Tributary Number 5: 150 feet upstream from Ward Canal crossing	*5,680
Bear Creek Tributary Number 6: 25 feet upstream from center of State Highway 8 (Morrison Road)	*5,487
Bergen Creek: Intersection of Aspen Lane and Lewis Ridge Road	*7,314
Big Dry Creek: Intersection of creek and center of Indiana Street	*5,609
Buffalo Creek: Intersection of creek and center of South Decker Road	*6,652
Clear Creek: 50 feet upstream from center of McIntyre Street	*5,528
Cold Spring Gulch: 100 feet upstream from center of Bear Creek Road	*6,661
Coon Creek: Intersection of creek and center of South Kipling Street	*5,632
Cub Creek: Intersection of creek and center of Stansky Road	*7,985
Deer Creek: 50 feet upstream from center of Grizzly Drive	*5,853
Ditch Creek:	
Intersection of West Weaver Drive and South Eaton Court	*5,420
Intersection of South Webster Street and West Coal Mine Road	#3
Elk Creek (at Pine): 50 feet upstream from center of South Dockers Road	*6,729
Elk Creek (at Sphinx Park): On South Elk Creek Road, approximately 5200 feet north of its intersection with Pine Street	*6,967
Jackson Gulch: Intersection of creek and center of County Highway 93	*6,120
Kenneys Run: On 12th Street, approximately 700 feet northeast of its intersection with Ford Street	*5,651
Kerr Gulch: 180 feet upstream from center of Wheler Road	*7,320
Lena Gulch:	
Intersection of D and E Streets	*5,885

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Intersection of Denver West Boulevard and Interstate Highway 70	#1
Lena Gulch Tributary:	
50 feet upstream from center of Orchard Street	*5,804
On West 14th Place, 250 feet north of its intersection with West 14th Avenue	#1
Lilyan Creek:	
170 feet upstream from center of 75th Place	*5,469
Intersection of West 75th Place and Alkire Street	#1
Lilley Gulch:	
Intersection of creek and center of West Peakview Drive	*5,514
200 feet west from center of South Wadsworth Boulevard, 950 feet north of its intersection with West Peakview Drive	#2
Little Cub Creek: 30 feet upstream from center of Silver Spruce Lane	*7,090
Massey Draw Tributary: 100 feet upstream from center of South Garrison Street	*5,635
Mount Vernon Creek: 100 feet upstream from center of Red Rocks Park Access Road	*6,101
Myers Gulch: At Center Drive as it crosses stream	*6,829
North Branch Coon Creek:	
Intersection of creek and center of South Miller Street	*5,570
Intersection of South Kipling Street and West Montgomery Avenue	#1
North Fork South Platte River: Intersection of river and center of Jefferson Street	*6,731
North Turkey Creek: Intersection of North Turkey Creek and Malamute Drive	*7,695
Parmalee Gulch: Intersection of creek and center of Santa Clara Road	*6,813
Pine Gulch: 50 feet upstream from center of County Highway 126	*6,794
Rooney Gulch: Intersection of creek and center of Old Morrison Road	*5,642
Rooney Gulch Spillway: Approximately 150 feet east from center of Rooney Road, at a point 875 feet south of the intersection with West Alameda Parkway	*5,905
Sand Draw: Intersection of creek and center of Sherman Road	*6,727
Sawmill Gulch: At the intersection of creek and center of South Grapevine Road	*6,861
SJCD 6N00: Intersection of creek and center of Kendall Boulevard	*5,482
SJCD 6200: Intersection of creek and center of South Pierce Street	*5,484
SJCD 6200 North Tributary:	
South Kendall Boulevard	*5,487
Intersection of West Caryl Avenue and South Ames Way	#1
South Platte River: Intersection of river and center of County Highway 126	*6,399
Swede Gulch: 70 feet upstream from center of Ken Gaich Road	*7,038
Switzer Gulch: On South Deer Creek Canyon Road, 450 feet north of its intersection with Homewood Park Avenue	*6,697
Troublesome Creek: 50 feet upstream from center of State Highway 74	*7,704
Turkey Creek (above Bear Creek Lake): 100 feet upstream from center of Soda Lake Road	*5,740
Turkey Creek (at Tiny Town): Intersection of South Turkey Creek Road and Ross Road	*6,831
Van Bibber Creek:	
Intersection of creek and center of Foothills Road	*5,877
100 feet west of Ulysses Street, 600 feet south of its intersection with West 60th Avenue	#1
Van Bibber Creek Tributary: 50 feet upstream from center of Ulysses Street	*5,688
Weaver Creek:	
Intersection of creek and center of South Simms Street	*5,620
Intersection of West Quincy Avenue and South Simms Street	#1
Wilmot Creek: Intersection of creek and center of High School Entrance Road	*7,196
Wilmot Creek Tributary: 30 feet upstream from center of Hazel Road	*7,313

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Planning Department, 1700 Arapahoe Street, Golden, Colorado.	
Send comments to the Honorable Rick Ferdinandsen, 1700 Arapahoe Street, Golden, Colorado 80419.	
COLORADO	
Palisade (Town), Mesa County	
Colorado River: 100 feet upstream from the center of U.S. Highway 6	*4,698
Maps available for inspection at Town Manager's Office, 175 East 3rd, Palisade, Colorado.	
Send comments to the Honorable Larry McNeese, P.O. Box 128, Palisade, Colorado 81526.	
Connecticut	
Guilford (Town), New Haven County	
Long Island Sound:	
At intersection of Rosemary Lane and Summer Street	*11
At intersection of Seaside Avenue and Field Road	*13
At intersection of Andrews Road and Little Harbor Road	*14
Shoreline at Indian Cove	*16
West River:	
Upstream side of U.S. Route 1	*11
Upstream side of Sawmill Road	*28
Downstream side of Flat Meadow Road	*55
Approximately 1.0 mile downstream of State Route 80	*113
Downstream side of State Route 80	*144
Approximately 1.0 mile upstream of Race Hill Road	*175
East River:	
Upstream side of Bear House Hill Road	*11
Upstream side of White Birch Drive	*18
Approximately 2,200 upstream of North Madison Road	*53
Little Meadow Brook:	
At confluence with East River	*23
Upstream side of North Madison Road	*33
Approximately 0.5 mile upstream of North Madison Road	*53
Downstream side of Little Meadow Road	*78
Upstream side of Meadow Hills Drive	*98
Approximately 1,170 upstream of Malloys Pond Dam	*408
Neck River:	
Approximately 800 downstream of Opening Hill Road	*58
Downstream side of Goulds Pond Dam	*77
Maps available for inspection at the Office of Selectman, Guilford, Connecticut.	
Send comments to Honorable Frank Larkins, Jr., First Selectman of the Town of Guilford, 31 Park Street, Guilford, Connecticut 06437.	
FLORIDA	
Beverly Beach (Town), Flagler County	
Atlantic Ocean:	
About 100 feet landward of shoreline	*9
Along shoreline	*15
Intracoastal Waterway:	
At southern corporate limits	*5
At northern corporate limits	*6
Maps available for inspection at the Recreation Building, Beverly Beach Mobile Home Park, Beverly Beach, Florida.	
Send comments to Honorable Sam McBride, Mayor, Town of Beverly Beach, P.O. Box 146, Flagler Beach, Florida 32036.	
IDAHO	
Lemhi County (Unincorporated Areas)	
Lemhi River: 90 feet upstream from center of Lemhi Street	*2,067

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Salmon River: 200 feet upstream from center of U.S. Route 93 bridge at Carmen	*3,867

Maps available for inspection at County Clerk's Office, 206 Courthouse Drive, Salmon, Idaho.

Send comments to the Honorable Louie Demick, 206 Courthouse Drive, Salmon, Idaho 83467.

ILLINOIS

Unincorporated Areas of Alexander County

Mississippi River:	
Above 7.0 miles upstream of mouth of Ohio River	*334
Above 6.4 miles upstream of State Route 146	*361
Ohio River:	
About 0.2 mile upstream of Illinois Central Gulf Railroad	*330
About 3.1 miles upstream of Illinois Central Gulf Railroad	*331
Pigeon Creek:	
At mouth	*340
About 1.83 miles upstream of State Route 3	*359

Maps available for inspection at the Supervisor of Assessments Office, Alexander County Courthouse, Cairo, Illinois.

Send comments to Honorable C.E. Farris, Chairman, County Board of Commissioners, Alexander County, Alexander County Courthouse, Cairo, Illinois 62914.

Fulton County (Unincorporated Areas)

Illinois River:	
About 0.2 mile downstream of downstream county boundary	*452
At upstream county boundary	*455
Copperas Creek:	
About 0.5 mile downstream of U.S. Route 24	*455
About 0.5 mile upstream of U.S. Route 24	*457
Spoon River:	
About 0.2 mile downstream of State Route 116	*532
About 0.93 mile upstream of State Route 116	*537
Tributary to Swegle Creek:	
About 1.88 miles upstream of mouth	*535
About 2.3 miles upstream of mouth	*539

Maps available for inspection at the County Planning and Zoning Department, 700 East Oak Street, Canton, Illinois.

Send comments to Honorable Melba Ripper, Chairperson, County Board, Fulton County Courthouse, Lewistown, Illinois 61542.

Unincorporated Areas of Morgan County

Illinois River: Within community	*477
Mauvaisterre Creek:	
Just upstream of Poor Farm Road	*558
Just downstream of Sandusky Street	*563
Just upstream of Sandusky Street	*568
About 1,600 feet upstream of Woods Lane	*597
Town Brook:	
About 500 feet upstream of Morton Avenue	*596
Just downstream of Massey Lane	*602
Tributary No. 1:	
At confluence with Mauvaisterre Creek	*568
Just downstream of Harmony Drive	*607
Tributary No. 2:	
Just upstream of Woods Lane	*597
Above 2,500 feet upstream of Township Road 1225	*611

Maps available for inspection at the County Board Office, County Courthouse, Jacksonville, Illinois.

Send comments to Honorable Vern Bergschneider, Chairman, Morgan County Board, Morgan County Courthouse, 300 West State Street, Jacksonville, Illinois 62650.

Northlake (City), Cook County

Addison Creek:	
About 1,850 feet downstream of Hirsch Avenue	*637
About 1,700 feet upstream of Chicago and North Western Railroad	*654

Maps available for inspection at the City Manager's Office, Municipal Building, 55 East Lake Street, Northlake, Illinois.

Send comments to Honorable Eugene E. Doyle, Mayor, City of Northlake, Municipal Building, 55 East Lake Street, Northlake, Illinois 60164.

Pike County (Unincorporated Areas)

Mississippi River:	
About 2.2 miles downstream of Lock an Dam No. 24	*457
About 2.4 miles upstream of Burlington Northern Railroad	*477
Illinois River:	
About 4.2 miles downstream of Illinois Central Gulf Railroad	*442
About 3,000 feet upstream of State Route 104	*447
Bay Creek:	
About 2,400 feet downstream of County Route 10	*479
About 2,400 feet upstream of County Route 10	*483

Maps available for inspection at the Zoning Administrator's Office, c/o County Clerk, Pike County Courthouse, Pittsfield, Illinois.

Send comments to Honorable Lester Vincent, Chairman, County Board of Commissioners, Pike County Courthouse, Pittsfield, Illinois 62363.

Unincorporated Areas of Scott County

Illinois River:	
About 2.1 miles downstream of confluence of Big Sandy Creek	*443
About 1.0 mile upstream of confluence of Coon Run	*447
Wolf Run Creek:	
About 2,800 feet downstream of Rockwood Street	*446
About 700 feet upstream of Norfolk Southern Railway	*461

Maps available for inspection at the County Commissioner's Office, Scott County Courthouse.

Send comments to Honorable Richard Hoots, Chairman, County Board of Commissioners, Scott County Courthouse, Winchester, Illinois 62694.

Sidney (Village), Champaign County

Salt Fork River: Within community	*659
Right Bank Tributary of Salt Fork River:	
At mouth	*659
About 0.22 mile upstream of Victory Street	*660
Left Branch of Right Bank Tributary of Salt Fork River: Within community	*659

Maps available for inspection at the Village Clerk's Office, Village Hall, Sidney, Illinois.

Send comments to Honorable Dennis Stewart, Village President, Village Hall, Sidney, Illinois 61877.

INDIANA

Unincorporated Areas of Brown County

North Fork Salt Creek:	
About 1.4 miles downstream of Green Valley Road	*584
About 1.4 miles upstream of Private Road	*656
Beanblossom Creek:	
About 1,300 feet downstream of confluence of Plum Creek	*632
About 200 feet upstream of Upper Beanblossom Road (about 1.5 miles upstream of Sprunica Road)	*764
North Fork Beanblossom Creek:	
At mounth	*662
Just upstream of State Route 135	*690
Crooked Creek:	
About 550 feet downstream of Crooked Creek Road (about 3.25 miles above mouth)	*566
About 1,500 feet upstream of Private Road	*627
Lower Schooner Creek:	
At mouth	*570
At confluence of Cold Well Hollow	*605
Upper Schooner Creek:	
At confluence of Cold Well Hollow	*605
About 300 feet unstream of County Road (about 2.0 miles upstream of confluence of Cold Well Hollow)	*684
Gnaw Bone Creek:	
At mouth	*617
About 1.24 miles upstream of Mount Liberty Road	*668
Henderson Creek:	
At confluence of Gnaw Bone Creek	*666
Just downstream of County Road (about 2.2 miles upstream of Mount Liberty Road)	*704
Just upstream of County Road (about 2.2 miles upstream of Mount Liberty Road)	*708
About 0.25 mile upstream of County Road (about 2.86 miles upstream of Mount Liberty Road)	*779

Maps available for inspection at the Brown County Plan Commission, P.O. Box 401, Nashville, Indiana.

Send comments to Honorable Norman McCormick, President, Brown County Commissioners, P.O. Box 401, Nashville, Indiana 47448.

Unincorporated areas of Crawford County

Little Blue River:	
Just upstream of Old State Route 37	*467
At confluence of Bird Hollow Creek	*515
Stinking Fork Creek:	
At southern county boundary (upstream crossing)	*451
About 0.6 mile upstream of Interstate 64	*513
Potts Creek:	
At mouth	*490
About 200 feet upstream of Farm Road	*523
Otter Creek:	
At mouth	*471
Just downstream of County Route 9	*549
Tributary No. 1:	
At mouth	*511
About 3,400 feet upstream of mouth	*531
Tributary No. 2:	
At mouth	*526
About 1,200 feet upstream of mouth	*535
Bird Hollow Creek:	
At confluence with Little Blue River	*515
About 0.9 mile upstream of State Route 37	*548
Brownstown Creek:	
At mouth	*515
About 1.7 miles upstream of mouth	*550
Dog Creek:	
At mouth	*527
About 1.7 miles upstream of mouth	*561
Camp Fork Creek:	
About 0.75 mile upstream of mouth	*515
About 2.0 miles upstream of mouth	*539
Blue River:	
About 1.7 miles downstream of Main Street	*542
About 1.3 miles upstream of Main Street	*554
Ohio River:	
About 2.8 miles downstream of confluence of Little Blue River	*422
About 0.9 mile upstream of confluence of Blue River	*432
Patoka Lake: Along shoreline	

Maps available for inspection at the Auditor's Office, Crawford County Courthouse, English, Indiana. Send comments to the Honorable Jim Taylor, President of the Crawford County Board of Commissioners, Crawford County Courthouse, English, Indiana 47118.

English (town), Crawford County

Little Blue River:	
About 1,500 feet downstream of Norfolk Southern Railway	*502
Just upstream of State Route 64	*515

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Bird Hollow Creek: Within corporate limits	*515
Camp Fork Creek:	
At mouth	*506
About 2,000 feet upstream of Beasley Road	*519

Maps available for inspection at the Town Hall, English, Indiana. Send comments to the Honorable Mike Gaither, President of the Town Board, Town of English, English Town Hall, English, Indiana 47118.

Unincorporated areas of Kosciusko County

Tippecanoe Lake: Entire shoreline	*840
James Lake: Entire shoreline	*840
Webster Lake: Entire shoreline	*855
Winona Lake: Entire shoreline	*814
Oswego Lake: Entire shoreline	*840
Tippecanoe River:	
About 0.05 mile downstream of 100 North Road	*804
Just downstream of Armstrong Road	*840
About 0.03 mile downstream of 675 East Road	*840
Just downstream of Webster Lake Outlet	*853
Turkey Creek:	
About 250 feet downstream of 1250 North Road	*820
About 1.52 miles upstream of 300 East Road	*853
Walnut Creek:	
At mouth	*810
Just upstream of 300 South Road	*841
Big Barbee Lake: Entire shoreline	*841
Ridinger Lake: Entire shoreline	*850
Syracuse Lake: Entire shoreline	*860
Lake Wawasee: Entire shoreline	*860

Maps available for inspection at the Plan Commission Office, County Courthouse, Warsaw, Indiana. Send comments to the Honorable Charles Lynch, President County Commission, c/o Kosciusko County Auditor, County Courthouse, Warsaw, Indiana 46580.

KANSAS

City of Albert, Barton County

Walnut Creek Right Bank Overflow:	
About 0.4 mile downstream of Center Street	*1,916
Just downstream of Center Street	*1,920
Shallow Flooding:	
At intersection of Eugene Street and Second Avenue	*1,915
At intersection of Center Street and Second Avenue	*1,917

Maps available for inspection at City Hall, Albert, Kansas. Send comments to the Honorable Warren Brady, Mayor, City of Albert, City Hall, Albert, Kansas 67511.

Hoisington (city), Barton County

Shop Creek:	
Just upstream of Missouri Pacific Railroad	*1,825
Just downstream of Ninth Street	*1,833
Shop Creek Tributary:	
At mouth	*1,826
Just downstream of Ninth Street	*1,833
Shallow Flooding (Overflow from Shop Creek Tributary):	
About 250 feet upstream of Ninth Street	*1,834
About 500 feet upstream of Fifteenth Street	*1,844

Maps available for inspection at City Hall, 109 East First Street, Hoisington, Kansas. Send comments to Honorable Oliver Sears, Mayor, City of Hoisington, City Hall, 109 East First Street, Hoisington, Kansas 67544.

KENTUCKY

Unincorporated areas of Mogolfin County

Licking River:	
About 0.37 mile downstream of Gifford Road	*843
About 2.86 miles upstream of State Route 1090	*873
State Road Fork:	
About 1,200 feet downstream of 4th Street	*856
Just downstream of Bear Branch Road	*885
Mush Fork:	
At mouth	*860
About 0.6 mile above mouth	*865
Burning Fork:	
About 0.27 mile downstream of Ward Road	*857
About 0.90 mile upstream of Mountain Parkway	*864

Maps available for inspection at the County Courthouse, Salyersville, Kentucky. Send comments to the Honorable Paul Salyer, Magoffin County Judge Executive, County Courthouse, Salyersville, Kentucky 41465.

MAINE

Bath (city), Sagadahoc County

Kennebec River: Entire shoreline within community	*9
Merrymeeting Bay: Entire shoreline within community	*9
Androscoggin River: Entire shoreline within community	*10
New Meadows River: Entire shoreline within community	*10

Maps available for inspection at the City Hall, 55 Front Street, Bath, Maine. Send comments to Honorable J. Michael Lydon, Chairman of the Council for the City of Bath, City Hall, 55 Front Street, Bath, Maine 04530.

Boothbay (town), Lincoln County

Atlantic Ocean:	
Shoreline at Dry Point on Reeds Island	*16
Shoreline at Emerson Road (extended)	*21
Shoreline at west end of Middle Road (extended)	*17
Shoreline approximately 1,200' south of Spruce Shores	*10
Shoreline at Paradise Point	*16
Shoreline 400' east of junction of County Routes 840 and 452	*13
Sheepscot River: Entire shorelines of Sheepscot River within community, Back River and Cross River	*10
Damariscotta River:	
Shoreline at Farnham Point	*10
Shoreline at northern corporate limits	*10
Shallow Flooding	#1

Maps available for inspection at the Boothbay Town Hall, Boothbay, Maine. Send comments to Honorable Thomas Nickerson, Chairman of the Board of Selectmen for the Town of Boothbay, Town Hall, Boothbay, Maine 04537.

MASSACHUSETTS

Nantucket (town), Nantucket County

Atlantic Ocean:	
Shoreline at Great Point	*15
Shoreline at Quidnet Road (extended)	*16
Shoreline at Hoicks Hollow Road (extended)	*20
Shoreline at confluence of Sasachacha Pond	*11
Shoreline at New Street (extended)	*15
Shoreline at Jonathan Road (extended)	*11
Shoreline at Central Avenue (extended)	*23
Shoreline at Wannacomet Street (extended)	*14
Shoreline at Somerset Road (extended)	*13
Shoreline at Sheep Pond Road (extended)	*13
Entire shoreline of Miacomet Pond	*7
Shallow Flooding:	
Dune Area east of interslection of Great Point Road and Wauwinet Road	#1
Dune Area approximately 1,300 feet north of intersection of Chase Lane and Squam Road	#2
Dune Area approximately 600 feet south of intersection of Madaket Road and Chicago Street	#2
Approximately 250 feet east of end of New South Road	*13
At Miaxes Pond	*9
At Sheep Pond	*7
At Reedy Pond	*9
Nantucket Sound:	
Entire shoreline of Coskata Pond	*8
Shoreline at Proprietor's Road (extended)	*6
Entire shoreline at Polpis Harbor	*8
Shoreline at Five Finger Point	*10
Shoreline at Pocomo Head	*8

Maps available for inspection at the Office of Nantucket Planning and Economic Development Office, Town & County Building, Nantucket, Massachusetts. Send comments to Mr. Bernard D. Grossman, Chairman of the Town of Nantucket Board of Selectmen, Town & County Building, Broad Street, Nantucket, Massachusetts 02554.

MICHIGAN

Corunna (city), Shiawassee County

Shiawassee River:	
About 1.4 miles downstream of State Road	*734
About 1.2 miles upstream of dam	*741

Maps available for inspection at the City Clerk's Office, City Hall, 402 North Shiawassee Street, Corunna, Michigan. Send comments to Honorable Steven M. Duchane, City Manager, City of Corunna, City Hall, 402 North Shiawassee Street, Corunna, Michigan 48817.

Woodhaven (city), Wayne County

Brownstown Creek:	
Just upstream of Vreeland Road	*590
About 2100 feet upstream of West Road	*600
Marsh Creek:	
Just upstream of Vreeland Road	*586
Just downstream of King Road	*592
Clee Drain East:	
At mouth	*591
About 1,900 feet upstream of Van Horn Road	*593
Clee Drain West:	
At mouth	*593
About 5,000 feet upstream of mouth	*594

Maps available for inspection at the City Clerk's Office, City Hall, 21869 West Road, Woodhaven, Michigan. Send comments to Honorable James Lambert, Mayor, City of Woodhaven, City Hall, 21869 West Road, Woodhaven, Michigan 48183.

MISSOURI

Lupus (city), Moniteau County

Missouri River: Within community	*583

Maps available for inspection at the City Hall, Lupus, Missouri.

Send comments to Honorable Doug Elley, Mayor, City of Lupus, City Hall, Lupus, Missouri 65046.

NEW JERSEY

East Hanover (Township), Morris County

Passaic River:	
At confluence of Rockaway River	*174
At upstream corporate limits	*176
Rockaway River: Entire length within corporate limits	*174
Whippany River:	
At confluence with Rockaway River	*174
Downstream of Morristown and Erie Railroad	*178
Upstream of railroad spur	*180
At upstream corporate limits	*182
Black Brook: Entire length with corporate limits	*182
Pinch Brook: Entire length within corporate limits	*182

Maps available for inspection at the Municipal Building, 411 Ridgedale Avenue, East Hanover, New Jersey.

Send comments to Honorable James Marano, Mayor of the Township of East Hanover, Municipal Building, 411 Ridgedale Avenue, East Hanover, New Jersey 07936.

Ho-Ho-Kus (Borough), Bergen County

Ho-Ho-Kus Brook:	
At downstream corporate limits	*112

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of CONRAIL	*149
At upstream corporate limits	*187
Saddle River: At downstream corporate limits	*90
Maps available for inspection at the Borough Hall, Ho-Ho-Kus, New Jersey.	
Send comments to Honorable Richard M. Sayres, 2 E. Franklin Turnpike, Ho-Ho-Kus, New Jersey 07423.	
Lincoln Park (Borough), Morris County	
Passaic River:	
At downstream corporate limits	*173
At upstream corporate limits	*173
Pompton River:	
At confluence with Passaic River	*173
Upstream side of CONRAIL bridge	*178
At upstream corporate limits	*181
Beaver Dam Brook:	
At downstream corporate limits	*180
At upstream corporate limits	*180
West Ditch:	
At confluence with Beaver Dam Brook	*180
Upstream side of Square Place bridge	*189
At upstream corporate limits	*192
East Ditch:	
At confluence with Beaver Dam Brook	*180
At upstream corporate limits	*180
Maps available for inspection at the Lincoln Park Municipal Building, 34 Chapel Hill Road, Lincoln Park, New Jersey.	
Send comments to Honorable Stephen Marabeti, Mayor of the Borough of Lincoln Park, Municipal Building, 34 Chapel Hill Road, Lincoln Park, New Jersey 07035.	
Wayne (Township), Passaic County	
Passaic River:	
At downstream corporate limits	*138
At upstream face of Beatties Dam	*166
At upstream face of State Route 23	*170
At upstream corporate limits	*173
Pompton River:	
At confluence with Passaic River	*173
At upstream face of State Route 23	*183
At confluence of Ramapo and Pequannock Rivers	*186
Ramapo River:	
At confluence with Pompton River	*186
At upstream corporate limits	*209
Singac Brook:	
At confluence with Passaic River	*172
At upstream face of French Hill Road bridge	*180
At upstream face of Preakness Avenue bridge	*200
At upstream face of Ratzer Road bridge	*241
At upstream face of Paterson Hamburg Turnpike bridge	*268
Approximately 1,400 feet downstream of upstream crossing of Valley Road	*319
Jones Brook:	
At confluence with Ramapo River	*207
At confluence of Haycock Brook	*214
At downstream face of Vale Road bridge	*290
Approximately 190 feet upstream of Tulip Terrace bridge	*316
Haycock Brook:	
At confluence with Jones Brook	*214
Downstream face of Pines Lake Drive	*231
At upstream face of dam at Pines Lake	*269
At upstream face of West Pines Lake Drive bridge	*283
At upstream face of Baywood Avenue bridge	*314
Approximately 60 feet downstream of Briar Drive	*345
Nauchtourkit Brook:	
At confluence with Singac Brook	*175
At upstream face of Private Dam	*187
At upstream face of Chadwick Road bridge	*262
At upstream face of Sutters Lane	*333
Approximately 285 feet upstream of last Access Road bridge	*381
Tributary 1 to Singac Brook:	
At confluence with Singac Brook	*206

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream face of Rose Terrace bridge	*234
Approximately 1,200 feet upstream of Rose Terrace bridge	*240
Tributary 3 to Singac Brook:	
At confluence with Singac Brook	*181
At upstream face of MacDonald Drive	*190
Approximately 129 feet downstream of Woodstock Road	*217
Maps available for inspection at the Municipal Building, Wayne, New Jersey.	
Send comments to Honorable Walter Jasinski, Mayor of the Township of Wayne, Passaic County, Municipal Building, 475 Valley Road, Wayne, New Jersey 07470.	
NEW YORK	
Fenner (Town), Madison County	
Chittenango Creek:	
Downstream corporate limits	*548
Approximately 1.1 miles downstream State Route 13	*629
Approximately .04 mile downstream State Route 13	*700
Downstream side of State Route 13	*860
Downstream side of Bingley Road	*1,004
Upstream corporate limits	*1,069
Maps available for inspection at the Town Clerk's Home, David Shepherd, Shepherd Road, Fenner, New York.	
Send comments to Honorable Francis T. Costello, Supervisor of the Town of Fenner, Madison County, P.O. Box 308, Cazenovia, New York 13035.	
Hamptonburgh (Town), Orange County	
Walkill:	
Downstream corporate limits	*359
CONRAIL (upstream side)	*361
Upstream corporate limits	*363
Otter Kill:	
Downstream corporates limits	*323
CONRAIL (upstream side)	*348
Route 207 (upstream side)	*358
Upstream corporate limits	*366
Otter Kill Tributary 11: Confluence with Otter Kill approximately 600' upstream	*366
Cromline Creek:	
Downstream corporate limits	*322
2,500 feet upstream of upstream corporate limits	*325
Maps available for inspection at the Town Hall, Hamptonburgh, New York.	
Send comments to Honorable Robert J. Flynn, Supervisor of the Town of Hamptonburgh, R.R. 1, Box 6300, Campbell Hall, New York 10916.	
NORTH CAROLINA	
Laurinburg (City), Scotland County	
Leith Creek:	
About 1050 feet downstream of Church Street	*194
Just downstream of Laurinburg and Southern Railroad	*196
Just upstream of Laurinburg and Southern Railroad	*199
About 3000 feet upstream of Gill Street	*208
Maps available for inspection at City Hall, 303 West Church Street, Laurinburg, North Carolina.	
Send comments to Honorable P.G. Vanderburg, City Manager, City Hall, P.O. Box 249, Laurinburg, North Carolina 28352.	
Nashville (Town), Nash County	
Stony Creek:	
About 240 feed downstream of County Route 1600	*131
About 290 feet upstream of U.S. Route 64 Bypass (U.S. Route 64 Bypass upstream of West Washington Street)	*152

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, 11 North Boddie Street, Nashville, North Carolina.	
Send comments to Honorable Raymond Boutwell, Town Manager, City Hall, P.O. Box 987, Nashville North Carolina 27856.	
NEW YORK	
North Salem (Town), Westchester County	
Titicus River:	
At Confluence with Titicus Reservoir	*327
Upstream side of June Road	*343
Upstream side of New York Route 121	*377
Upstream side of dam	*455
Upstream side of of Keeler Lane	*481
Upstream side of Norton Lane	*490
At upstream corporate limits	*496
Crook Brook:	
At confluence with Titicus River	*331
Approximately 1,600 feet downstream of New York Route 121	*356
Upstream side, most downstream crossing of Hawley Road	*386
Upstream side, most upstream crossing of Hawley Road	*452
Maps available for inspection at the Town House, c/o Town Clerk, North Salem, New York.	
Send comments to Honorable Jeanette McNamara, Supervisor of the Town of North Salem, Westchester County, Town House, North Salem, New York 10560	
NORTH CAROLINA	
Shallotte (Town), Brunswick County	
Shallotte River: Within community	*11
Mulberry Branch:	
At mouth	*11
About 2300 feet Upstream of Bridgers Drive	*13
Charles Branch:	
At mouth	*11
About 700 feet upstream of Smith Street	*11
Maps available for inspection at the Town Hall, Shallotte, North Carolina.	
Send comments to Honorable Beamon Hewett, Mayor, Town of Shallotte, P.O. Box 27, shallotte, North Carolina 28459.	
OHIO	
Chauncey (Village), Athens County	
Hocking River:	
At confluence of Sunday Creek	*661
About 1800 feet upstream of Conrail	*662
Sunday Creek: Within community	*661
Maps available for inspection at Village Hall, 42 Converse Street, Chauncey, Ohio.	
Send comments to Honorable Roger Hamer, Mayor, Village of Chauncey, Village Hall, 42 Converse Street, Chauncey, Ohio 45719.	
Killbuck (Village), Holmes County	
Killbuck Creek:	
About 0.4 mile downstream of Front Street	*812
About 0.4 mile upstream of abandoned railroad	*814
Maps available for inspection at the Mayor's Office, Killbuck, Ohio.	
Send comments to Honorable Henry Yoder, Mayor, Village of Killbuck, P.O. Box Killbuck, Ohio 44637	
Logan (City), Hocking County	
Hocking River:	
About 1,300 feet downstream of State Route 328	*717
About 2,500 feet upstream of State Route 664	*737
Maps available for inspection at City Building, Logan, Ohio.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to Honorable Edward Tucker, Mayor, City of Logan, 10 South Mulberry Street, Logan, Ohio 43138.	
City of Mansfield, Richland County	
Rocky Fork:	
About 1,150 feet downstream of confluence of Painters Creek	*1,138
About 0.7 mile upstream of Old Bowman Street	*1,159
Touby Run:	
At confluence with Rocky Fork	*1,150
Just downstream of Bowman Street	*1,169
Painters Creek:	
At confluence with Rocky Fork	*1,139
Just downstream of Grace Street	*1,162
Maps available for inspection at the City Building, 30 North Diamond Street, Mansfield, Ohio.	
Send comments to Honorable Edward Meehan, Mayor, City of Mansfield, City Building, 30 North Diamond Street, Mansfield, Ohio 44902.	
Mt. Blanchard (Village), Hancock County	
Blanchard River:	
About 1,500 feet downstream of Norfolk Southern Railway	*824
About 600 feet upstream of Clay Street	*831
Maps available for inspection at the Mayor's Office, Mt. Blanchard, Ohio.	
Send comments to Honorable Max Hindinger, Mayor, Village of Mt. Blanchard, 513 South Main Street, Mt. Blanchard, Ohio 45867.	
Nelsonville (City), Athens County	
Hocking River:	
About 1,500 feet upstream of State Route 691	*678
About 0.9 mile upstream of Lake Hope Drive	*690
Maps available for inspection at the City Building, 29 Fayette Street, Nelsonville, Ohio.	
Send comments to Honorable Ralph Davis, Mayor, City of Nelsonville, City Building, 29 Fayette Street, Nelsonville, Ohio 45764.	
Ottawa (Village), Putnam County	
Blanchard River:	
About 1.2 miles downstream of confluence of Tawa Run	*725
About 1.9 miles upstream of Detroit, Toledo, and Ironton Railroad	*732
Tawa Run:	
At mouth	*726
About 1.0 mile upstram of Agner Street	*735
Shallow Flooding (sheet flow from Blanchard River to Tawa Run):	
At the intersection of Locust Street and Fourth Street	#1
At the intersection of Hall Street and Main Street	#1
About 200 feet south of the intersection of Locust Street and Main Street	#2
Maps availble for inspection at the Municipal Building, 136 North Oak Street, Ottawa, Ohio.	
Send comments to Honorable Louis Macke, Mayor, Village of Ottawa, Municipal Building, 136 North Oak Street, Ottawa, Ohio 45875.	
OREGON	
Hubbard (City), Marion County	
Mill Creek: 60 feet upstream of center of Hubbard Boones Ferry Road	*138
Maps available for inspection at the Public Works Department, City Hall, Hubbard, Oregon.	
Send comments to the Honorable Beverlee Koutmy, P.O. Box 237, Hubbard, Oregon 97032.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
RHODE ISLAND	
Charlestown (Town), Washington County	
Block Island Sound:	
Entire shoreline within community	*18
Intersection of Buddington and Overlook Avenue	*12
Pawcatuck River:	
Downstream corporate limits	*39
Upstream side of State Route 91	*52
Upstream crossing of Shannock Road	*74
Approximately 1,500 feet upstream of Biscuit City Road	*90
Maps available for inspection at the Building Inspector's Office, South County Trail, Route 2, Charlestown, Rhode Island.	
Send comments to Mr. Gary W. Anderson, President of the Town of Charlestown Town Council, Washington County, P.O. Box 849, Charlestown, Rhode Island 02813.	
Westerly (Town), Washington County	
Mastuxet Brook:	
Approximately 430' downstream of Watch Hill Road	*11
Approximately 99' upstream of Watch Hill Road	*13
Approximately 950' miles downstream of Airport Road	*39
Downstream of Airport Road	*41
Pawcatuck River:	
Approximately 1,950' downstream of State Route 78	*11
Upstream side of State Route 78	*15
Upstream side of dam located below Bridge and Boombridge Roads	*23
Upstream side of Boombridge Road	*26
Approximately 100' upstream of Potter Hill Road	*33
Upstream side of Main Street	*38
Upstream corporate limits	*39
Block Island Sound:	
Shoreline of Thompson Cove within community	*11
Shoreline at Watch Hill Point	*24
Shoreline at Shore Gardens (extended south)	*18
Shoreline at corporate limits at Weekapaug Beach	*18
Block Island Sound: Sheet Flow Areas within Community	#2
Block Island Sound: Ponding Areas within Community	*12
Maps available for inspection at the Office of the Westerly Town Clerk, Town Hall, Westerly, Rhode Island.	
Send comments to Honorable William Gingerella, President of the Town of Westerly, Town Hall, Westerly, Rhode Island 02891.	
TEXAS	
Freeport (City), Brazoria County	
Gulf of Mexico:	
Area in vicinity of Brazos and Stauffer Turning Basin	*12
Corporate limits adjacent to Intracoastal Waterway	*12
Corporate limits at confluence of Upper Turning Basin and Brays Harbor	*12
Extreme southern portion of community (south of levee located south of FM 242)	*12
Southwestern tip of community	*7
West of Brazos River's right bank levee (approximately 6,500' south of State Route 36)	*9
Shallow Flooding:	
Brazos River: South of State Route 288	#1
Oyster Creek: South of State Route 332	#1
Maps available for inspection at the City Hall, 128 East Fourth Street, Freeport, Texas.	
Send comments to the Honorable Tobey Davenport, Mayor of the City of Freeport, Brazoria County, Texas.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Shady Shores (City), Denton County	
Lynchburg Creek:	
Upstream side of Shady Shores Road at corporate limits	*537
Approximately 1,000 feet downstream of upstream corporate limits	*537
At upstream corporate limits	*540
Stream LC-1:	
Confluence with Lynchburg Creek	*537
Approximately 0.54 mile upstream of confluence with Lynchburg Creek	*537
Upstream side of Shady Shores Road	*548
Upstream side of Denton-Shady Shores Road	*559
Approximately 140 feet upstream of corporate limits	*560
Stream PEC-1:	
Approximately .42 mile downstream of most downstream corporate limits	*537
At most downstream corporate limits	*537
Approximately 0.35 mile downstream of Shady Shores Road	*549
Approximately .026 mile downstream of Shady Shores Road	*550
Approximately 700 feet downstream of Shady Shores Road	*552
At most upstream corporate limits (downstream side of Shady Shores Road)	*555
Lewisville Lake: Entire shoreline with community	*537
Maps available for inspection at the Community Building, 101 South Shores Road, Shady Shores, Texas.	
Send comments to the Honorable Olive Stephens, Mayor of the City of Shady Shores, P.O. Box 362, Lake Dallas, Texas 75065.	
WASHINGTON	
Chewelah (City), Stevens County	
Chewelah Creek: Intersection of Lincoln Avenue and Park Street	*1,674
Paye Creek: 50 feet upstream of center of Lincoln Avenue	*1,678
Thomason Creek: At the confluence with East and West Thomason Creeks	*1,660
East Thomason Creek: 50 feet upstream of Main Street	*1,669
West Thomason Creek: 30 feet upstream of Lincoln Avenue	*1,679
Maps available for inspection at Public Works Department, City Hall, Chewelah, Washington.	
Send comments to the Honorable Larry Richmond, P.O. Box 258, Chewelah, Washington 99109.	
Mukilteo (City), Snohomish County	
Possession Sound: Along entire Coastline within corporate limits	*10
Maps available for inspection at Planning Department, City Hall, Mukilteo, Washington.	
Send comments to the Honorable John C. Corbett, P.O. Box 178, Mukilteo, Washington 98275.	
Winslow (City), Kitsap County	
Puget Sound (Eagle Harbor): 200 feet east from the center of the intersection of Parfitt Way SW and Madison Avenue S	*10
Maps available for inspection at City Hall, Winslow, Washington.	
Send comments to the Honorable Alice Tawusey, P.O. Box 10100, Winslow, Washington 98110.	
WEST VIRGINIA	
Hurricane, City, Putnam County	
Hurricane Creek:	
Approximately .4 mile downstream of downstream crossing of State Route 34	*621
Downstream side of Lakeview Drive	*628

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Most upstream corporate limits	*634
Maps available for inspection at the Town Hall, Hurricane, West Virginia.	
Send comments to the Honorable Raymond Teak, Mayor of the City of Hurricane, 2803 Virginia Avenue, Hurricane, West Virginia 25526.	
Winfield, town, Putnam County	
Kanawha River	
At downstream corporate limits	*579
At upstream corporate limits	*580
Maps available for inspection at the Town Hall, Winfield, West Virginia.	
Send comments to the Honorable Claude J. Hunt, Mayor of the City of Winfield, P.O. Box 269, Winfield, West Virginia 25213.	

Issued: April 23, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-10886 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 79-184; FCC 85-176]

Policies To Be Followed in the Authorization of Common Carrier Facilities To Meet North Atlantic Telecommunications Needs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission's present policy for the distribution of circuits among available North Atlantic common carrier facilities expires at the end of 1985. This proceeding is necessary to develop circuit distribution policies for the 1986–1991 period. This Notice of Proposed Rulemaking sets forth the Commission's tentative conclusions regarding the policy for distribution of circuits among available North Atlantic facilities it will follow during the 1986–1991 period and requests comments on those tentative conclusions.

Under the Commission's proposed policy for the 1986–1991 period, AT&T would be permitted, but not required, to increase the percentage of message telephone circuits placed on either cable or satellite facilities by 2 percent per year up to a limit of placing a maximum of 60 percent of such circuits on either type of facility. Circuits used by any carrier for the provision of record services and circuits used by new entrants for any telecommunications service would be subjected to any specified distribution methodology under the policy proposed by the Commission.

DATES: Entities made parties to this proceeding shall, and other interested persons may, submit: Comments by May 10, 1985; and Reply Comments by May 28, 1985.

ADDRESS: Responses to this notice should be submitted to: The Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Robert Gosse, International Policy Divisions, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

Second Notice of Proposed Rulemaking

In the matter of inquiry into the policies to be followed in the authorization of common carrier facilities to meet North Atlantic Telecommunications needs during the 1985–1995 period; CC Docket No. 79-184; FCC 85-176.

Adopted: Aprill 11, 1985.

Released: April 22, 1985.

By the Commission:

I. Introduction

1. We hereby give notice of a proposed rulemaking to develop guidelines governing the distribution (loading) of circuits among available North Atlantic cable and satellite facilities during the 1986–1991 period. The existing circuit-distribution guidelines negotiated by the United States international service carriers and their European correspondents for the North Atlantic region are embodied in the comprehensive facilities construction and use plan developed in Docket No. 18875.[1] Those guidelines, based on the balanced-loading methodology, extend only through year-end 1985. The purpose of this proceeding, then, is to develop distribution (*i.e.*, loading) guidelines governing traffic between the United States and CEPT [2] which can efficiently be implemented beginning January 1, 1986.

2. A fully competitive market does not now exist in the provision of international telecommunications services. Equally important is the fact that certain biases exist in the market which prevent market forces from producing an environment in which costs are minimized, demand is satisfied, service quality is retained, technological development is encouraged and benefits to users are maximized. Therefore, we have tentatively concluded that we should continue to exercise supervision of the activation of cable and satellite circuits during the 1986–1991 period to assure that all facilities in use in the North Atlantic during that period are reasonably and efficiently used.[3] However, we recognize that competition is increasing and that existing biases may, over time, diminish. Therefore, we also tentatively conclude that the public interest would be served by gradually moving away from balanced loading and permit the carriers greater flexibility in making loading decisions. Specifically, we tentatively conclude to continue to exempt from distribution requirements circuits used for international record services and to extend that exemption to new entrants into the international message telecommunications service (IMTS) market. As to the American Telephone and Telegraph Company (AT&T), we tentatively conclude to permit it to increase at a rate of two percent per year over a six-year period the percentage of traffic it routes over cable facilities from 48 per cent to a maximum of 60 per cent. Below we summarize the Third Notice of Inquiry, the comments and reply comments filed in response to the notice, and the joint proposal submitted by the Communications Satellite Corporation (Comsat) and AT&T at the recently-concluded North Atlantic Consultative Working Group

[1] Future Licensing of Overseas Communication Facilities, 73 FCC 2d 326 (1979). *See also* Overseas Communications, 71 FCC 2d 71 (1979). In the earlier phase of this proceeding, *Policies for Overseas Common Carriers*, 84 FCC 2d 760 (1981) (Report and Order), we considered a number of cable and satellite facilities options for the 1985–1995 period and found that the public interest would be served by construction of a digital, optical-fiber submarine cable (TAT-8) to be introduced into service as early as 1988 and by use of either of two proposed designs then under consideration in INTELSAT for the INTELSAT-VI series of satellites. Subsequently, we authorized U.S. participation in the construction of both these facilities: *See* American Telephone and Telegraph Company, FCC 84-230, ——— FCC 2d ——— (released June 8, 1984) [TAT-8 Authorization] and Communications Satellite Corporation, File No. CSS-82-001-P, FCC 84-230, ——— FCC 2d ——— (released May 25, 1984 [INTELSAT-VI Authorization].

[2] CEPT is the Conference European des Administration des Poste et des Telecommunications, an organization of the postal and telecommunications entities of 26 European nations.

[3] Further, we have tentatively concluded that it would be in the public interest to revisit the issue of loading prior to the end of this period. Of course, if conditions warrant we would revisit the issue at an earlier date.

Meeting. We then indicate our understanding of the views of our carriers' foreign correspondents, analyze the various options, and reach several tentative conclusions.

A. Third Notice of Inquiry

3. We initiated this proceeding on August 3, 1984, with the release of our *Third Notice of Inquiry* (Notice), FCC 84-351, ——— FCC 2d ———. In our Notice we set out the history of our involvement in the development of loading guidelines for facilities use. We particularly noted that our desire ultimately to permit carriers greater flexibility in loading decisions had to be balanced with the realization that Comsat is dependent upon AT&T and the international record carriers (IRCs), entities with a clear economic preference for cable usage, for almost all of its traffic. We stated that our goal is to establish an efficient communications network which balances the need for high-quality service, diverse routes and sufficient capacity with the desire for reasonable rates for users. More specifically, we have through our comprehensive facilities planning proceedings sought to achieve the least-cost combination of facilities capable of meeting demand and of maintaining acceptable levels of service quality and reliability. Our pursuit of this goal has led us, in partnership with interested United States carriers and their overseas correspondents, to examine facilities options and costs to achieve what we hope will be the optimal combination of cable and satellite facilities. Central to this effort, of course, is the question of loading—the distribution of traffic between and among cable and satellite facilities.

4. We indicated in the Notice that AT&T is now generally required to distribute the circuits it uses for IMTS among available cable and satellite facilities in accordance with what is known as the "balanced loading" principle.[4] Circuits for international record services (leased-channel, telex, public message service, Datel, etc.) are not subject to any distribution guidelines.

5. In our Notice we identified essentially three policy options we could follow in fashioning loading guidelines for the 1986–1991 period. The first such option would be to continue to use balanced loading. We noted, as we had in Docket No. 18875, that balanced loading is a useful loading mechanism. That is, balanced loading assures that all existing cable and satellite facilities are reasonably used and facilitates restoration planning. Balanced loading also automatically handles sharp deviations of actual from forecasted traffic levels (either shortfalls or overages), without unduly prejudicing or benefitting the owners of particular facilities. On the other hand, balanced loading treats all facilities as equal and does not have any mechanism to take into account technological improvements which might make one facility more desirable or efficient than others.

6. The second option we identified would be to remove ourselves immediately from circuit-distribution decisions, leaving the matter entirely to the discretion of the carriers. We noted that we have already done this in Docket No. 18875 with respect to record services, merely requiring the record carriers to provide us with their expected distributions, and speculated that it might be possible to adopt the same approach for IMTS circuits. We further noted that such a course would give U.S. carriers flexibility to negotiate acutal distributions with their overseas correspondents as well as to meet their service and economic needs. We emphasized, however, that our concern is the interest of the user, not the carriers, and that it is not clear that unfettered carrier discretion would necessarily serve user interests. International communications are now in transition. Although there have recently been new entrants, the market is not yet competitive: IMTS accounts for 89 per cent of all cable and satellite circuits in use in the North Atlantic and AT&T accounts for in excess of 99 per cent of those IMTS circuits. Also, as a rate-base-regulated entity, AT&T has a bias in favor of facilities it can own (cable) and on which it may earn a return, as compared to facilities it can only lease (satellite) and treat as an expense. We further noted that AT&T's position as a manufacturer of submarine cable systems gives it a pro-cable bias not related to relative costs. Additionally, our 1966 *Authorized User I* decision had required Comsat to lease circuits only to carriers and, thus, prevented it from developing its own customer base.[5] As a result, while we reaffirmed that a "no guidelines" policy might be a valid long-term goal, we indicated that an immediate Commission withdrawal may not be feasible.

7. The third option we identified would be to develop a new distribution mechanism which would increase carrier flexibility and discretion, and reduce Commission involvement in loading decisions, but which would allow us to retain sufficient authority to assure that user interests are protected. We have previously in this proceeding and in Docket No. 18875 considered some alternative guidelines which might be useful and the number of potential approaches is virtually limitless. In particular, we stated in the Notice that loading guidelines might focus solely on AT&T, giving other IMTS carriers and the international record carriers complete freedom to use whatever facilities they feel will best satisfy their requirements. We also indicated that the parties might wish to consider the use of arbitrary cable/satellite ratios, the prescription for use of absolute numbers of cable and satellite circuits, or phase-ins and that they might wish to approach circuit distribution on either a country-by-country or on a region-wide basis.

B. Summary of Comments

8. In our Third Notice we directed interested U.S. international service carriers and Comsat to file information and comments on the designated issues. We directed the parties to make four separate filings. First, we directed the carriers to file their traffic forecasts for the planning period. Second, we directed the parties to file proposed circuit distributions and comments on the three policy options we presented in our Notice. Third, we directed the parties to file their analyses of the proposed circuit distributions filed in the second round. Fourth, we directed the parties to file "final comments" on the plans and the filings of other parties.

9. In response to our Notice, carriers filed updated traffic forecasts on August 31, 1984. On September 14, 1984, we received initial comments and circuit distributions from AT&T, Consat,[6] GTE

[4] The balanced routing (or balanced loading) methodology distributes circuits among facilities with unused capacity in a manner which, to the extent possible, seeks to place equal number of circuits on all transmission systems between the United States and a given country carrying equal numbers of circuits. When one cable or satellite tranamission system reaches the limit of its capacity, it falls out of the loading pattern and subsequent growth traffic is equally distributed among the remaining facilities with unused capacity. When a new satellite or cable facility is introduced into service, all additional growth circuits are placed on that facility until it carries as many circuits as the other balanced systems.

[5] *See* Authorized Users and Authorized Entities, 4 FCC 2d 421 (1966) [Authorized User I], *reconsid. grid in part*, 6 FCC 2d 1446 (1967).

[6] Comsat filed its first-round comments on September 17, 1984, and included therewith, a motion to accept them one business day late.

Continued

Service Corporation (on behalf of its wholly-owned subsidiary the Hawaiian Telephone Company), GTE Sprint Communications Corporation (GTE Sprint), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCAGC), and TRT Telecommunications Corporation (TRT).[7] On September 14, 1984, we also received comments on the policy issues in our Notice from two non-carrier respondents: the National Telecommunications and Information Administration in the United States Department of Commerce (NTIA) and Aeronautical Radio, Inc. (ARINC), a large user of international telecommunication services.[8] On October 10, 1984, we received comments from ARINC, AT&T, Comsat, and NTIA. On November 2, 1984, we received comments from ARINC, AT&T, Comsat, ITTWC, NTIA, RCAGC and Satellite Business Systems (SBS). Finally, on November 1, 1984, AT&T filed a revised traffic forecast in which it reduced its estimate of circuit needs during the planning period by 5–9 per cent.

10. In their comments, the commenters addressed separately the question of loading criteria for record services, IMTS by new entrants, and IMTS by AT&T. In brief, they generally favor exemption from loading guidelines for suppliers of record services and suppliers of IMTS other than AT&T. They also generally favor some form of increased flexibility for AT&T—although none favors the immediate elimination of all restrictions on AT&T. Even AT&T, who argues that the market is ripe for reducing restrictions upon it, does not advocate immediate exemption from all restrictions. Rather, it argues for gradually increasing its flexibility over a number of years as competition develops in the marketplace. Only Comsat argues in favor of retaining the current balanced-loading methodology indefinitely, although GTE Sprint favors its retention until the introduction of TAT–8 in 1988. Even Comsat, however, has agreed that some relaxation of balanced loading could be implemented without unduly harming the public interest. In the presentation which follows we will address separately the respondents' arguments for record service, IMTS provided by new entrants and IMTS provided by AT&T.

11. *Record Services.* All of those filing comments either argue that we should continue to exempt record services from any loading requirements or do not oppose such an exemption. The carriers observe that the record-services market is relatively small [9] and that they are therefore unlikely to affect the efficiency of North Atlantic facilities. Moreover, the commenters argue that there are now several providers of such services and that record-circuit loading is subject to market forces. They also state that constraints could inhibit the further development of competition. More importantly, the carriers state that the vast majority of record-service circuits (approximately 85 percent) are used for leased-channel service where customers tend to have requirements for a cable or a satellite circuit and that the public interest would be served be giving record carriers flexibility to respond to these customer needs.[10] Comsat did not oppose exemption of record services from binding restrictions.

12. *New Entrants.* Most of those filing comments also advocate extending the exemption from loading restrictions to new entrants into the IMTS market and to existing IMTS providers other than AT&T. The advocates of such an exemption argue that new entrants and existing IMTS providers other than AT&T now provide a very small percentage of IMTS and that their share of the market is expected to grow slowly over the 1986–1991 period. As a result, they argue that such new entities will have a relatively insignificant effect on the loading of overall facilities. Further, some of those filing comments argue that having maximum flexibility in routing traffic over cable or satellite facilities will aid new entrants in obtaining operating agreements from potential correspondents. The commenters also assert that flexibility in routing traffic will result in the most economical provision of service. GTE Service Corporation (on behalf of its affiliate the Hawaiian Telephone Company) states that established, but small, providers of IMTS also need such flexibility. GTE notes that its affiliate has new circuits to Europe and that it can save money by be being able to route its circuits over the lowest-cost facilities. GTE also argues that routing flexibility will allow it to realize the benefits of digital transmission technology: by aggregating all its traffic on one digital facility it would have enough circuits to make use of digital circuit-multiplication equipment. Again, neither AT&T nor Comsat opposed exemption of new and existing providers of IMTS other than AT&T from loading criteria.

13. *AT&T Loading.* The commenters, however, do not support relieving AT&T of loading restrictions for IMTS. Although all parties recognize that our long-range goal is to remove ourselves from the loading question and to rely upon competitive market forces for such decisions, they argue that conditions are not now ripe for such a move. They believe that freeing AT&T too soon would be counterproductive in that it would stifle, rather than spur, the growth of a competitive market. The respondents state that AT&T, unlike other providers of international service, has overwhelming market power—AT&T accounts for over 99 per cent of total IMTS service in the North Atlantic and 89 per cent of total circuits in use in that region. ARINC characterizes AT&T's market power as "monolithic" and argues that the only way we will ever to able to remove ourselves from loading decisions will be to provide users with true alternatives to AT&T's monopoly services. ARINC asserts that the only way this can be guaranteed is to allow users to lease satellite circuits directly from Comsat (*Authorized User II* [11]) and to purchase indefeasible rights of user (IRUs) in cable circuits. Until such choices exist, ARINC argues, removal of loading restrictions will simply stifle competition.[12] ITTWC

Comsat cited as the reason for its lateness a breakdown in its word-processing equipment. Comsat also sought late acceptance of its November 2, 1984, final comments on the grounds that it needed to obtain the review of senior management officials who were absent. Inasmuch as no one was unduly inconvenienced by the slight delays, we shall grant both Comsat's motions.

[7] MCI International, INC. (MCI) filed forecast and circuit distribution data but no comments.

[8] ARINC is a not-for-profit joint venture of the U.S. airline industry which serves the communications needs of its member airlines. ARINC is not a carrier, but an unregulated user group.

[9] Record services as a whole account for less than 11 per cent of circuits in use in the North Atlantic.

[10] For example, the type of data processing equipment a user employs may dictate its choice of facility. Briefly, some older data-processing equipment relies for error detection upon retransmission from the receiving computer to the sending computer. In such equipment, the delay of satellite transmission requires the sending computer to pause, waiting for retransmission, and reduces the amount of processing that can be accomplished in a given time (the so-called "throughput"). Such a user would ordinarily opt for a cable circuit. Newer data-processing equipment incorporates error-correction devices to accommodate satellite delay. Further, high-speed data transmission, which requires greater bandwidth than that of voice-grade circuits, now depends upon satellite circuits which can be more easily and efficiently configured for such broad-band circuits than can cable circuits.

[11] Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation, FCC 84-633, ——— FCC 2d ———, 50 FR 2552 (January 17, 1985) (Second Report and Order). *See also* 90 FCC 2d 1394 (1982) (Report and Order), *vacated and remanded sub nom.* ITTWC v. FCC, 725 F. 2d 732 (D.C. Cir. 1984).

[12] ARINC devotes the balance of its pleadings to its request for a change in the basis on which

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notes that AT&T's market power is so strong that freeing AT&T of restrictions would raise an unacceptable risk of anticompetitive abuses. GTE Sprint and SBS are particularly concenred that AT&T could immediately use up remaining idle circuits in the TAT–6 and TAT–7 cables, thereby depriving new entrants of access to cable circuits until the introduction of TAT–8 in 1988.[13] They argue that such an occurrence would severely impair the ability of new entrants to establish themselves in the market.

14. In response to the last issue, AT&T counters that the concerns relating to the availability of cable circuits are unfounded. First, it notes that the Commission has retained jurisdiction to reallocate circuits in TAT–7 and TAT–8 cables as required by the public interest. Second, it points out that the decisions authorizing the U.S. carriers to participate in the construction of these cables were conditioned on circuits being available to new entrants. AT&T notes that, in connection with TAT–7, AT&T itself stated that it would make circuits available to any other U.S. international carrier if cable circuits were not generally available to meet the needs of those carriers. AT&T states that none of these parties has provided any foundation for the belief that AT&T would not reasonably make indefeasible right of user interests in cable circuits available to new entrants.

15. Comsat emphasizes that AT&T's preference for cable facilities, which it notes arises both from its substantial investment in such facilities and its position as a manufacturer of cable systems, distorts AT&T's loading decisions. As a result, Comsat argues that Commision withdrawal would merely place loading decisions in the hands of AT&T, not the market. Finally, Comsat argues that AT&T could, absent a loading requirement, severely impair the satellite medium by routing all or virtually all its traffic over cable. The licensing of TAT–8, Comsat argues, enhances AT&T's existing dominance, by increasing its ability to divert future traffic to cable facilities. With respect to its entry as a competitor of AT&T, Comsat argues that it will take time for it to make inroads upon AT&T's currently "overwhelming" market power and that it is therefore unclear how soon, if ever, it would be able to divert enough IMTS traffic from AT&T to support the satellite system on its own.

16. The commenters, however, do not agree on what kind of loading restrictions should be applied to At&T. Comsat argues that we should continue to impose balanced loading for the foreseeable future. The other commenters[14] agree that we should move away from balanced loading (at least after introduction of TAT–8) in favor of increased flexibility for AT&T.[15] Most argue that balanced loading is too rigid, does not take into consideration any cost differences between facilities, and, thus, will not maximize economy or efficiency. They also argue that balanced loading, by guaranteeing a fixed share of traffic to satellite facilities, will not give Comsat an incentive to enter the retail-service market and to build its own customer base. This is a problem, they argue, because such a guarantee will not encourage intermodal competition and will, thus, not require the owners of either type of facility to reduce costs or improve the quality of their respective facilities. Rather, these parties favor the development of an alternative loading methodology, splitting generally between those calling for cost-based loading and those which would gradually increase the percentage of circuits AT&T each year could place on cable facilities. In all, there were essentially six proposed methodologies which will be described below. These are the AT&T, the Comsat, the GTE Sprint, the ITTWC, the NTIA and the joint AT&T/Comsat compromise approaches.

17. *AT&T Proposal.* AT&T proposes what it describes as a gradual change or "phase-in" of increased loading flexibility over a four-year period (1986–89). At the end of this four-year period AT&T proposes that we withdraw and leave it with total flexibility in loading satellite and cable facilities. During the four-year phase-in (or phase-out) period, AT&T proposes to move from a 52 per cent satellite/48 per cent cable use ratio which will obtain at year end 1985 under balanced loading to a ratio of 40 per cent satellite /60 per cent cable by year-end 1989.[16] AT&T, thus, seeks an increase of three per cent per year for four years in the flexibility to load cable facilities, although it does not guarantee that it will exercise that flexibilty. AT&T also states that its proposal for a three-per-cent limit should apply to the North Atlantic region as a whole and that no specific country-by-country loading requirement would be imposed. (*i.e.*, although it would have a three-per-cent regional cap it would have total flexiblity in negotiating country-by-country loading plans).

18. AT&T argues that its approach would increase reliance on marketplace forces and represents a more economic use of cable and satellite facilities than does balanced loading. It would, notes AT&T, also encourage Comsat to enter the competitive market to develop its own customer base. AT&T also states that its plan would allow us to continue to monitor its loading decisions to assure compliance with its commitments. Finally, AT&T assures us that its plan will not adversely affect service quality or reliability, and that service reliability will be "comparable" to that now achieved under balanced loading.[17]

19. AT&T emphasizes that allowing it the requested greater freedom will not threaten the INTELSAT satellite system. AT&T notes that its foreign correspondents have a substantial economic and political investment in INTELSAT and are not interested in jeopardizing those commitments. Additionally, AT&T states that it does not anticipate a wholesale abandonment of satellite facilities; that its plan is a

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international cable facilities are now owned. U.S. entities and foreign correspondents own undivided half interests in circuits. ARINC requests us to change cable ownership to an arrangement where U.S. entities and their correspondents would each separately purchase their own whole circuits (the whole-circuit policy). We note that ARINC first raised its whole circuit ownership argument in connection with our consideration of the U.S. carriers' application for authorization to construct the TAT–8 cable. File No. I–T–C–84–072. ARINC requested us to condition our grant of authority upon the carriers agreeing to modify the TAT–8 agreement to require whole-circuit ownership. We denied ARINC's request as having been presented too late in the TAT–8 matter and suggested that it might better pursue the question in the facilities-planning process, particularly the North Atlantic Consultative Process. *See* FCC 84–240 a para. 51, note 21. ——— FCC 2d ———. ARINC argues, however, that we should address the question in the instant proceeding.

[13] SBS notes that it particualry needs to be assured of access to international cable circuits, since it distributes its traffic domestically via satellite. SBS notes that "double hops" (that is using two satellite links in tandem for the same transmission) are technically undesirable.

[14] TRT and GTE Service Corporation did not address the question of AT&T loading.

[15] SBS states that it might be "advisable" to give AT&T greater flexibility, and states that it favors a gradual relaxing of loading restrictions on AT&T, but does not define any particular plan by which this might be accomplished.

[16] While AT&T's proposal is for a loading ratio of 40/60 for either facility, it is clear that what it really seeks is the ability to use more cable circuits. Under its proposal, AT&T would increase its cable use from a 48 per cent to 51 per cent in 1986, to 54 per cent in 1987, to 57 per cent in 1988 and to 60 per cent in 1989. At the end of the four-year period, AT&T filings indicate that it would increase its cable usage to 66 per cent in 1990 and 71 per cent in 1991.

[17] AT&T acknowledges that, because its methodology would place more circuits on cable, a failure of a cable would interrupt more circuits than would be the case under balanced loading and that service reliability would be adversely affected. However, AT&T argues that improved networking techniques (restoration and network management) will reduce the impact of service interruptions.

gradual "phase-in" over a four-year period. Finally, AT&T states that its plan applies only to growth traffic and that it will not deload any satellite or cable facility.

20. *Comsat Proposal.* Comsat argues that any loading methodology we adopt should achieve four objectives. First, such a methodology should provide a framework which encourages intermodal competition. Second, it should be flexible enough to accommodate deviations (shortfalls or overages) from forecasted traffic levels as well as the requirements of new entrants. Third, it should facilitate the planning of international facilities. Fourth, it should lessen the Commission's regulatory involvement. Comsat believes that the loading mechanism which best meets these criteria is balanced loading. Comsat argues that balanced loading assures efficient use of existing cable and satellite facilities, minimizes the effects of the failure of a facility, is easily understood by all parties, can be implemented relatively automatically, and will automatically accomodate traffic fluctuations and new entrants. As a result, Comsat argues that use of balanced loading will minimize Commission involvement in the question of loading. Comsat also asserts that, by assuring that traffic is directed to both cable and satellite facilities, balanced loading will give all parties a firm basis on which they can base their facilities plans—since it believes that facilities owners cannot plan facilities or their timing unless they know how they will be used.

21. *GTE Sprint Proposal.* GTE Sprint also supports a transitional approach which would gradually allow AT&T more loading flexiblity. GTE Sprint, however, notes that, due to the lead time needed to design and construct new cable and satellite facilities, no benefit would result from freeing AT&T from balanced loading until the TAT–8 cable is introduced in 1988. From 1988 until 1992, when GTE Sprint states that TAT–9 cable is scheduled to be introduced, its plan would allow AT&T the flexibility to place between 45 to 55 per cent on either cable or satellite. From 1992 to 1994, the GTE Sprint plan would allow AT&T to place 35 to 65 per cent of circuits on either cable or satellite facilities. Beyond 1994, GTE Sprint would free AT&T from loading requirements, but states that we must nonetheless continue to monitor facilities loading to protect against efforts of overseas telecommunications entities to dictate facility options to U.S. entities of such dictation were contrary to U.S. interests.

22. *ITTWC Proposal.* ITTWC advocates a transitional approach which would permit AT&T over the period 1986–1991 to move away from balanced loading at a rate of two per cent per year (at that rate AT&T would reach its proposed 60/40 ratio in six years).[18] Even after 1991, ITTWC does not recommend freeing AT&T from all loading restrictions. Rather, it would require AT&T to submit distribution plans in which the levels of cable and satellite use are determined by "the cost of available and proposed facilities" in which the lower-cost facility would receive proportionately larger levels of traffic. ITTWC states that its proposed cost-based loading mechanism should apply only to growth traffic (that is, AT&T should not deload any facilities) to avoid disruption of existing investments. ITTWC believes its methodology would increase intermodal competition and lower facilities costs (the only way for a cable or satellite owner to increase its traffic would be to lower the relative cost of its facility) and could lead to the ultimate withdrawal of the Commission from loading decisions. ITTWC recognizes that its approach, like that of NTIA, requires the gathering of cost information not now availale, but notes that the 1986–1991 period could and should be used to gather that information.

23. *NTIA Proposal.* NTIA identifies four options for an alternative loading methodology.[19] The first would be to base cable and satellite loading on their respective revenue requirements. The second option is what NTIA describes as a "transition" to option 1 in which, recognizing that the information necessary to calculate a *regional* revenue requirement for satellite facilities is not now available, would use Comsat's tariff lease charges as a short-term substitute for the satellite revenue requirement. The third option would be to allow customers to decide, for all services, including IMTS, the type of facility to be used. The forth option is what NTIA calls a *laissez faire* approach which is essentially identical to our option of immediate withdrawal from loading decisions.

24. NTIA asserts that Options 3 and 4 (customer choice and *laissez faire*) are not now workable and recommends Option 2 (the transitional approach) which will lead ultimately to Option 1, which it views as the best solution. NTIA argues that Commission withdrawal from loading decisions is not feasible, since the international market is not truly competitive, and that, without such a competitive market, the potential for anticompetitive abuses is too great. With respect to relying upon customer choice, option three, it states that this might also be a good long-term goal, but concedes that it cannot now be implemented since the international dialing system does not permit IMTS customers to select the type of transoceanic facility.[20]

25. NTIA states that Options 1 and 2 should be viewed together, as Option 2 is merely a transitional step toward Option 1, and that they represent the best and most workable approach to achieve our overall goal of the least-cost mix of facilities and least amount of governmental involvement in facilities-loading decisions, while preserving our ability to protect the public interest. The NTIA plan would base loading upon the relative revenue requirements of cable and satellite facilities. That is, NTIA would require the cable and satellite owners to submit the per-circuit revenue requirement of their respective mediums. From these, we would calculate a "composite" facilities revenue requirement for the region. The medium with the lower per-circuit revenue requirement would receive a share of circuits inversely proportional to the relation of its revenue requirement to the average revenue requirements for both mediums. That is, the facility with the lower revenue requirement would receive a proportionately larger share of traffic.

26. NTIA explained the operation of its methodology through a hypothetical example: NTIA assumed that the per-circuit revenue requirement for cable is $9,000 and the satellite revenue requirement (lease charge) is $6,000. The composite would be $15,000 ($9000 + $6000). The ratio of the cable

[18] During the 1986–1991 period, ITTWC advocated actually the continuation of what it called an "equitable loading methodology." In its September 14 comments ITTWC did not define what it meant by the term "equitable," but in its November 2 Final Comments, it stated that it did not mean thereby balanced loading and stated that it believed allowing AT&T to increase cable use by up to two per cent per year would be "equitable."

[19] NTIA first raised its proposed methodology in comments filed in the Pacific Planning Process (CC Docket No. 81–343), but raises them again in its comments in this proceeding. NTIA specifically incorporates its prior pleading by reference. The description of the NTIA proposal which follows in from its Pacific Planning Comments.

[20] NTIA notes that there are a number of technological, institutional, and economic problems, many of which have not yet been identified, which must be solved before customers could be permitted to choose their own routing. For example, NTIA notes that in the case of IMTS service these problems include planning, switching, accounting and coordination. NTIA also notes that the necessity to obtain the agreement of overseas PTTs could raise political problems.

revenue requirement to the composite would be .60 [$9000/$15000] and the satellite ratio woud be .40 [$6000/$15000]. Using an inverse ratio, the satellite (the cheaper facility under this hypothetical) would receive 60 percent of the traffic.[21] So as to "normalize" facilities and not "give an apparent advantage to either medium," NTIA would base the initial revenue-requirement calculation upon as assumption that traffic in each region is divided equally between cable and satellite facilities.[22] Recognizing that the cost information needed to calculate a revenue requirement for specific satellite configurations on a regional basis is not now available, NTIA would employ Comsat's bundled monthly lease charges (now $1060 per voice-grade circuit) as a surrogate.[23]

27. NTIA states that the benefit of its methodology is that it would put the cable and satellite mediums into competition, since the only way for a cable owner or for Comsat to increase its share of traffic would be for it to lower the revenue requirement of its facilities. His, in turn, would require such an owner to lower rates for end-user service, introduce innovative pricing policies, introduce new services, keep a tighter rein on variable costs (such as operating and maintenance costs), retire inefficient facilities, use cable facilities to restore satellite facilities instead of having a spare satellite and use satellite to restore cable instead of having excess cable capacity, and use more circuit-multiplication equipment such as TASI or TDMA/DSI. The net effects of these measures, according to NTIA, will be a more efficient use of facilities and lower prices for end users. NTIA notes that its methodology would also shift the risk of facilities investment from users to the shareholders of the carriers.[24]

28. NTIA recognizes that its plan need further exploration and refinement before it could be implemented. One problem area NTIA identifies is the fact that Comsat's lease charges ae not a perfect substitue for the satellite medium's regional revenue requirement. NTIA notes that INTELSAT's costs are averaged worldwide and that Comsat's rates are averaged for the regions (Atlantic and Pacific) that it serves. Further, NTIA notes that, since conditions vary from ocean basin to ocean basin the fully-allocated costs for a particular region may be either above or below INTELSAT's average costs. Still, NTIA notes that these figues are available and can serve as a close, if not perfect, approximation of the regional revenue requirement. NTIA further notes that the INTELSAT costs are only part of Comsat's total costs and argues that any skewing effect of INTELSAT's worldwide cost averaging should be relatively minor. NTIA also recognizes that cable revenue-requirement figures are not now available either and that there may be some dispute as to what elements should be included in their calculation. NTIA, however, believes these issues are manageable. Even though its plan may require substantial Commission involvement in calculating the revenue requirements, NTIA alleges that it will reduce Commission effort in facilities planning and licensing and, after implementation, will largely be self-executing.[25]

C. AT&T/Comsat Joint Proposal

29. The issue of loading mechanisms has also been under examination in the North Atlantic Consultative Process. In a joint submission to a meeting of the North Atlantic Consultative Working group in Orlando, Florida, January 8–11, 1985, AT&T and Comsat submitted a "coordinated plan" which the authors state would "allow a greater degree of flexibility than is present in the current [*i.e.*, balanced-loading] plan while preserving the advantages of a coordinated plan." United States Submission to NACWG, at p. 30. The proposed plan represents a version of the proposal AT&T had submitted in its comments: to allow beginning in 1986 a gradual increase each year in cable/satellite loading flexibility up to a maximum of 60 per cent on either cable or satellite. The joint proposal, however, does not specify the number of years in the "phase-in" period (AT&T had proposed four years) or the percentage of change to be allowed each year (AT&T had proposed 3 per cent per year). These issues were left to future negotiation.

30. Like the AT&T plan, the joint proposal would allow the loading plans for individual countries to differ from the agreed upon percentages, so long as the regional total for the North Atlantic remains within the agreed ceilings each year. The proponents note that this approach would grant service carriers greater flexibility, while giving "due regard to such considerations as the level of existing INTELSAT investments, the need to preserve adequate restoration alternatives, and the economics and preferences of individual carriers and correspondents." *Id.*, at 31. The proponents also state that it is difficult to predict how the market will develop into the 1990's and therefore suggest that the proposed plan apply "for some interim period," with all parties continuing to monitor cable/satellite loading and to exchange views concerning policies for the future.

D. CEPT View

31. Also at the January, 1985, North Atlantic Consultative Working Group meeting, the representatives of the CEPT entities expressed their view that distribution decisions in the North Atlantic region should be left solely to the telecommunications entities which have invested in the cable and satellite facilities used to provide service. The CEPT entities oppose the use of any rigid distribution formulas and support a flexible circuit-distribution methodology based entirely upon bilateral discussions between correspondent pairs. In the CEPT's view any circuit-distribution methodology adopted should:

1. Recognize that satellites and cables are complementary transmission mediums and, thus, allow for an overall network optimization;

2. Take into account the need for media and path diversity;

3. Recognize the different characteristics of different mediums and the impact this may have on planning;

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[21] NTIA also recognizes that foreign correspondents may not agree to the loading percentages thus derived. However, since proportions would represent the optimal levels for U.S. interests, NTIA argues that the U.S. carriers could use the calculated usage levels as the starting point in negotiating a mutually-acceptable level.

[22] NTIA notes that, since the cost effectiveness of either medium increases with use, if one facility receives more traffic over a substantial period, its cost per circuit would go down relative to the other facility which was not so heavily used. To avoid imbalances in use caused by carrier choice, balanced loading, or other past practices, and the attendant distortion of cost figures, NTIA would ignore actual, past use levels at the inception of its loading mechanism.

[23] On February 1, 1985, Comsat, pursuant to the requirement in our *Earth Station Ownership* rulemaking, FCC 84-605, 49 FR 50030 (December 26, 1984), filed revisions to its tariff to unbundle its tariff charges into separate charges for space segment and earth station services.

[24] NTIA's approach would also call for us to shift our regulatory review away from the facilities-authorization stage. That is, the NTIA plan calls for us to approve requests by the carriers and Comsat to build any facilities they want, but to make clear to them that the use of the facilities would be determined objectively by relative costs. As a result, NTIA argues, the facilities owners would be required to keep costs low and to avoid excess capacity, since excess facilities would increase their costs and reduce the number of circuits they could use.

[25] NTIA proposes that the carriers be allowed to apply for blanket authorization of all the cable and satellite facilities they will need in a given period which would automatically be granted unless we rejected it within a specified time.

4. Allow activation of capacities so as to make the best economic use of committed investments;

5. Not include any rigid formulas which would impede flexible planning; and

6. Leave sufficient freedom for bilateral discussions between individual traffic partners.

32. The CEPT representatives stated that they view the joint proposal of AT&T and Comsat as a move in the right direction and that it could serve as a basis for further discussion when further information became available as to the size of the increase in flexibility to be allowed each year and the period over which the proposal would extend. The CEPT entities questioned the imposition of a 60-per-cent limitation on the loading of a given medium. The CEPT representatives also stated their view that the NTIA proposal does not provide the required degree of flexibility and is, therefore, unacceptable to them as a circuit-distribution methodology.

II. Discussion

33. Our goal is to rely on market forces to establish the optimal mix of services, rates and facilities. We believe that a competitive environment best balances the need for high-quality service, diverse routes and sufficient capacity with the desire to minimize rates for users. We further believe that market forces can be used to encourage the efficient use of existing facilities and the development and deployment of the most efficient facilities in the future. After reviewing the comments and information filed in this proceeding, we agree with those filing comments that the market is not now sufficiently competitive to allow us immediately to remove ourselves from circuit distribution decisions with respect to AT&T's international MTS circuits. We also agree with most parties that balanced loading, although providing certain service-reliability benefits, is too rigid a methodology, does not promote intermodal competition, and will not significantly move us toward a greater reliance on market forces.

34. We are entering a transitional period during which carrier and facility competition will develop. In such an environment, it is necessary to fashion a new methodology which will permit AT&T more flexibility than allowed under the current balanced-loading methodology. However, this flexibility should reflect the nascent state of competition while at the same time encourage Comsat and other service providers to compete vigorously. As a result, we tentatively conclude that we should adopt a transitional loading mechanism which will allow AT&T over the next six years to increase by two per cent per year the number of circuits it places on either cable or satellite facilities from the 52 per cent satellite and 48 per cent cable level which will obtain at year-end 1985 up to a maximum of 60 per cent on either medium. During this transitional period, Comsat and other providers will have an opportunity to increase their shares of the international MTS market. We do not, however, see any need to impose circuit-distribution restrictions upon providers of record services, upon new entrants into the international record or MTS markets, or upon providers of IMTS other that AT&T. Such services account for a relatively small number of circuits as compared with IMTS and thus will not significantly affect the efficiency of overall facilities use. As a result, we tentatively conclude to continue to exempt circuits used by these carriers from facilities-use requirements. In the discussion which follows we shall first consider the three broad methodologies we outlined in our Notice: Balanced loading, immediate elimination of guidelines for AT&T and non-imposition of guidelines for other carriers, and phase-in alternatives. We shall then discussion under the alternatives phase-in approach the various proposals presented by the parties for AT&T's IMTS circuits. We shall also describe a staff proposal which ties flexibility for AT&T to increased market entry for other providers of IMTS. Finally, we shall consider an ancillary issue raised by one of the parties outside the issues designated in our Third Notice of Inquiry.

A. Balanced Loading

35. Based upon our analysis of balanced loading and its effect upon our overall policy goals, we have tentatively concluded that we should no longer base circuit use upon that methodology. We do not mean by this that we no longer see benefits in the balanced-loading methodology. It continues to provide the service quality benefits we have previously detailed: It helps service reliability by reducing to a minimum the number of circuits interrupted by the failure of a major transmission facility. It also provides a predictable and automatic technique by which to handle sharp deviations of actual demand from forecasted traffic levels. As indicated by the table appended to this Second Notice of Proposed Rulemaking, the percentage of circuits placed on satellites resulting from application of balanced loading during the 1986–1991 period would range between 45.9 and 53.5 percent. The corresponding range for cable circuits would be 46.5 to 54.1 per cent. This range of percentages should not produce undue adverse effects on AT&T, Comsat, INTELSAT or new entrants. Balanced loading, however, by guaranteeing Comsat essentially one-half of all growth traffic during the 1986-1991 period, provides it with little incentive to enter the IMTS market and to compete for its own customer base. Additionally, it fails to provide Comsat, INTELSAT or AT&T with incentives to build and operate efficient, low-cost facilities. The lack of such incentives would slow the development of a marketplace mechanism for the cost-based distribution of circuits between cable and satellite. We must, therefore, tentatively conclude to reject a continuation of balanced loading.

B. Immediate Elimination of Loading Guidelines

36. As we have indicated, none of the parties to this proceeding argues for the imposition of loading requirements upon providers of record services, upon new entrants in either the record or IMTS markets, or upon IMTS service providers other than AT&T. As discussed below, we see no reason to impose such restrictions on such a relatively small percentage of circuits, where customers frequently designate a medium, where competition appears to be developing, and where no entity has substantial market power.

37. *Record Services.* We tentatively conclude that we should continue to exempt circuits used for record services from any specific circuit-distribution guidelines. The total number circuits in the North Atlantic used for record services is relatively small (less than 11 per cent of total circuits) and thus could have little effect on the overall use of cable and satellite facilities. Further, the vast majority (approxiamtely 87 per cent) of total record circuits are used for leased-channel services, services for which customers often have a specific need for either a cable or a satellite circuit. Additionally, leased-channel and switched record services are offered by multiple international carriers, none of which appears to have an overwhelming market share or to wield market power, and the number of such carriers is likely to increase. Thus, we tentatively conclude that there continues to be a viable marketplace mechanism for distributing leased-channel and switched record circuits between the cable and satellite mediums and that

such circuits should be exempt from any loading requirements.[26]

38. We wish to make it clear that our proposal to exempt record circuits from a specific circuit-distribution methodology would apply to any U.S. international carrier providing such services, including AT&T. At present, the major international record service AT&T provides is leased-channel service. AT&T's leased channels are subject to the same marketplace distribution mechanism as applies to other U.S. carriers. Moreover, AT&T is, in effect, a new entrant into the leased-channel market, inasmuch as we had prohibited AT&T between 1964 and 1982 from providing leased record channels.[27] AT&T does not have a significant share of the record leased-channel market. As of the end of 1984, for example, AT&T provided only 90 of the approximately 1442 leased channels in service between the U.S. and the CEPT countries (6.2 percent). Given the strength of the marketplace mechanism for allocating leased circuits between the cable and satellite mediums and AT&T's relatively small share, we find no public-interest reason to impose greater restrictions upon AT&T's distribution of leased-channel circuits than upon that of other carriers. We thus propose also to exempt AT&T from specific distribution guidelines for leased-channel and other record services.

39. *New Entrants.* We also tentatively conclude that we should not subject new entrants into the international record or MTS service markets to any specific circuit-distribution guidelines. We note, again, that none of those filing comments opposed giving new entrants total loading flexibility. Just as we tentatively concluded that circuits used for the provision of international record services should be exempted from specific circuit-distribution quidelines, we believe the same considerations generally apply to circuits used for such services by new entrants. New providers of leased channels will be subject to the same customer-choice, marketplace mechnanism for distributing such circuits between cable and satellite facilities that we discussed above. New providers of switched record services will employ relatively few circuits and be subject to competition from existing suppliers. Moreover, at least initially, the new entrants will account for only a relatively small portion of the total number of circuits in use and will, thus, have little impact upon the overall use of cable and satellite facilities.

40. New entrants into the IMTS and other international voice-services markets can be expected to use more circuits initially than those providing only record services. However, for the foreseeable future, the number of circuits used by new entrants such as GTE Sprint and MCI will be considerally smalller than the number of circuits AT&T will use for such services. Again, exempting circuits used by new entrants for international MTS is likely to have only a small impact upon the relative use of the cable and satellite mediums and provide these entities with additional economic and technical flexibility to assist them in gaining entry.[28] Similarly, established IMTS providers other than AT&T, such as Hawaiian Telephone, should also be exempt from loading guidelines since they employ few circuits and would benefit from maximum flexibility.

41. *IMTS by AT&T.* No party argues for the immediate elimination of circuit-distribution guidelines for AT&T's provision of IMTS. The problem with such a course, as they view it, is that AT&T has too much market power in the IMTS market and that market forces will not assure that facilities-use decisions will be based on cost. We agree with the parties to this proceeding that the international MTS market is not now competitive, that certain biases exist, and that AT&T has significant market power. To illustrate the parties' concern, at year-end 1984, out of a total of approximately 14,617 voice circuits in use between the U.S. and the CEPT countries for the provision of all international services,[29] approximately 12,965 (88.7 per cent) were used for IMTS. Of these, approximately 12,944 (99.8 per cent) were used by AT&T.[30] International MTS users do not have the ability to select whether their calls will be placed on cable or satellite facilities; that decision is made by AT&T. As a result, in large measure, the distribution of AT&T's IMTS circuits determines the relative use of cable and satellite facilities. AT&T downplays its market power and takes exception to any idea that it would engage in anticompetitive conduct, but even AT&T does not argue for us to remove ourselves from the circuit-distribution question. AT&T, rather, recognizes Comsat's dependency on it for traffic and acknowledges a need for continued Commission oversight for a transitional period, but argues for flexibility which will encourage Comsat to become more competitive.

42. While the distribution of competition into the provision of IMTS can be expected to aid in the development of a marketplace mechanism for determining cost-based circuit distribution, it is unlikely that such a mechanism will be adequately developed by the end of 1985. Moreover, because of delays occasioned by the court stay and remand of our *Authorized User II* policy, Comsat was only afforded the opportunity to offer IMTS and other end-to-end services directly to users in January of this year. Thus, the entity with the strongest incentive to promote the use of satellite circuits as a counter to AT&T's preference for use of cable circuits has not yet been able to enter the IMTS and other end-to-end services markets. These factors lead us tentatively to conclude that the immediate elimination of loading guidelines would not serve the public interest. We do not mean by this that our withdrawal depends only on Comsat's ability to penetrate the IMTS market as a service or facility provider. If this was our only criterion, Comsat would have an incentive not to enter that market or to lower its charges for circuits employed by other carriers for IMTS. It is, however, our intention to give Comsat an adequate opportunity to enter various end-to-end service markets and to make all its operations more efficient. The corollary to this tentative conclusion is that there is a need for us to develop guidelines for the distributon of circuits used by AT&T for

[26] The effectiveness of existing market forces will be further enhanced by several recent events. First, the introduction of INTELSAT Business Service (IBS) will provide users with an additional choice of service and may increase competition in the international leased-channel market. IBS allows the location of smaller, cheaper earth-stations on or near customer premises and can save customers the cost of domestic tail circuits. Further, because we have authorized a number of entities to provide the earth-station portion of IBS, most of whom have no ownership of cable facilities, IBS may introduce price competition between cable and satellite facilities. Price competition should also be stimulated by our recent decision in *Earth Station Ownership* to allow competitive earth-station services in connection with regular INTELSAT satellite services, and our decision in *Authorized User II* to allow Comsat to provide space segment directly to users.

[27] *See* Overseas Communications (TAT-4 Revisited), 92 FCC 2d 641 (1982).

[28] This technical flexibility should satisfy SBS's concern with double satellite hops. *See* note 12, *supra.*

[29] There may be minor errors in the calculation of the total number of voice circuits used for all U.S.-CEPT services at the end of 1984. These data are derived from the monthly circuit reports and a number of the international record carriers are late in filing their reports for December 1984. Thus it was necessary to use the reports for earlier months of 1984 for those carriers.

[30] At the end of 1984 HTC operated 21 voice circuits for the provision of IMTS between Hawaii and the United Kingdom and Germany. In addition, MCII has been authorized to lease 24 satellite circuits for the provision of IMTS between the United States and Belgium.

the provision of IMTS in the North Atlantic region for a transitional period until an effective marketplace for distributing circuits between the cable and satellite mediums develops.

C. Alternative Proposals

43. The major issue in this proceeding is what methodology should be established to govern AT&T's loading of its IMTS traffic. All of the commenters addressed this point in depth. Having rejected both a continuation of balanced loading and an immediate withdrawal of guidelines for AT&T circuitry employed for IMTS, we now turn to the various proposals submitted by NTIA and the carriers. We believe that an alternative methodology can be fashioned which spurs intermodal competition, while recognizing AT&T's dominant position in the international marketplace.

44. In response to our Notice the respondents suggested four phase-in methodologies. AT&T proposes a four-year phase-in which would allow it to increase, on a regional basis, cable use by three per cent per year. On the other hand, GTE Sprint argues for a much slower transition. GTE would allow no increase use over balanced loading until the TAT–8 cable is introduced in 1988. Over the following four years until 1992 (the possible introduction date of TAT–9), GTE would allow AT&T to increase cable loading up to 55 per cent. From 1992 to 1994 a further 5 per cent per year to 65 per cent when GTE would free AT&T entirely. ITTWC proposes that AT&T be allowed to increase cable loading at two per cent per year over six years to 1991. After 1991 ITTWC advocates a relative-cost loading methodology which appears to be similar to the NTIA methodology (although not all spelled out at this stage). Finally, the joint proposal of AT&T and Comsat also suggests a transition to a 60/40 cable/satellite ratio, but does not specify the length of the transitional period or the degree of flexibility to be allowed AT&T each year. Rather, it leaves these questions to future negotiation.

45. Our analysis of the various proposals before us causes us tentatively to conclude that we should adopt a phase-in approach which would permit AT&T a moderate annual increase in the number of circuits it can place on either cable or satellite facilities for international MTS between the U.S. and CEPT up to a maximum of 60 per cent of such circuits on either medium. More specifically, we propose to permit, but not require, AT&T to increase the number of IMTS growth circuits it places on satellite or cable facilities up to two per cent per year for six years, without deloading any facility, until it reaches a maximum of 60 per cent of all U.S.-CEPT IMTS circuits on either medium. As we have stated, AT&T projects that, at the end of 1985, balanced loading will place 52 per cent of AT&T's international MTS circuits on satellite and 48 per cent on cable facilities. If AT&T were to increase its cable loading at a rate of two per cent per year, it would reach the 60 per cent maximum for cable in six years—or by year-end 1991. We believe that this proposal, not dissimilar to the one presented by ITTWC, will provide all entities the proper incentive to become more efficient and to compete vigorously for customers, while protecting the investment of cable and satellite owners against too-rapid change.[31] We also agree with the consensus of the parties that the relative use levels of 60 per cent/40 per cent on either cable or satellite medium represents a useful and beneficial standard for the 1986–1991 period.[32]

46. In opting for a phase-in proposal, we emphasize that we are not necessarily rejecting the NTIA proposal to simulate the market. NTIA's proposal does have some appeal but remains at this time too undefined. As NTIA acknowledges, the costing process is not simple and the variables are many. Further, we note CEPT's generally negative response to this proposal and a need to implement a new methodology in a short period of time. We discuss the various alternative proposals below, including a staff proposal.

47. *NTIA Proposal.* The NTIA proposal to base circuit distribution upon the relative cost of cable and satellite circuit has a number of advantages. Its use could, through regulatory actions, encourage the development of marketplace forces and lead to the least-cost mix of cable and satellite circuits. It could also encourage the development of an unbiased market for cable and satellite circuits. As NTIA recognizes, its proposal can be modified to accommodate other considerations, such as the differing loading preferences of the carriers' foreign correspondents.

48. However, NTIA also recognizes that its proposal is not yet fully defined. There is no universally accepted mechanism for determining the per-circuit revenue requirement for either the cable or satellite medium. Further, as NTIA notes, determination of per-circuit revenue requirements for satellite circuits on a regional basis is a complex task because, among other things, the revenue requirement will vary depending upon the cost and capacity of a given satellite design, changes in the methods used for access to the satellite, and the number and characteristics of the earth stations used with the satellite. Determination of the per-circuit revenue requirements for cable circuits is also complex. Such a determination would include not only the cost of the cables themselves, but would also have to take into consideration the cost of overseas connecting circuits used to extend the cable circuits from the overseas terminals to the countries of final destination.

49. The rapid improvements in circuit-multiplication equipment and satellite-access methods we are now experiencing will further complicate the process of developing accurate determinations of per-circuit revenue requirements. The digital circuit-multiplication equipment which will be used with the TAT–8 cable is still under development, as indeed are some types of access and circuit-multiplication equipment which will be used with the INTELSAT V, V–A and VI satellites. The nature of the equipment which will actually be used has not yet been fully defined, either as to the maximum effective capacity it can be used to generate or as to its cost. Both types of information are required for an accurate calculation of the revenue requirement.

50. We do not believe these difficulties are insurmountable. The process for developing such revenue requirements on a per-circuit basis is not wholly dissimilar from the cost analyses we used in our Docket No. 18875, the earlier phases of this docket and other planning proceedings. Our experience in those proceedings, however, indicates that the determination of the per-circuit revenue requirements will require considerable effort on the part of the carriers, Comsat and the concerned governmental entities. The definition of the elements to be included in the revenue-requirement comparision as well as the methodology to be used in calculating such requirements are likely to be a source of contention among the various parties.

51. We also perceive some potential implementation problems with the NTIA proposal. The proposal appears to

[31] The ITTWC proposal calls for imposition in 1992 of a cost-based loading formula conceptually similar to the NTIA proposal. As we make clear elsewhere, we shall not now commit to any loading criterion in the post-1991 period, but will review that issue at a later date as competition becomes established in the market.

[32] Comsat's agreement to the joint proposal represents an apparent change from Comsat's prior insistence upon balanced loading as the only acceptable facilities-use methodology. Comsat appears to have accepted the possibility of a phased-in approach.

require substantial regulatory examination of the relative cost efficiencies of cable and satellite facilities and frequent regulatory adjustments to the circuit distributions permitted between those facilities. Our overall goal is to move as rapidly as prudent from regulatory to marketplace determination of circuit distribution. By creating a regulatory substitute for a marketplace mechanism for the cost-based distribution of circuits, the NTIA plan could delay our exit. Further, NTIA's year-by-year approach would complicate the facilities-planning efforts by Comsat, INTELSAT, AT&T and overseas administrations. Such uncertainties could create disequilibrium in facilty capacity and adversely affect service quality.

52. We must, therefore, tentatively conclude that the NTIA proposal is not sufficiently defined at present to permit us to adopt it. However, we do not rule out the possibility of its use if it can be more fully defined and if the questions we identified above can be resolved. The NTIA approach would appear to provide a strong incentive for cable and satellite owners to lower costs and could indeed yield lower user costs. Therefore, in responding to this Second Notice of Proposed Rulemaking, we request the parties to address fully the NTIA proposal. Specifically, we seek comments on the types of cost categories which should be included in developing a revenue requirement for cable and for satellite circuits as well as specific methods by which the revenue requirements should be calculated. We also request the parties to address how a transition from NTIA's proposed methodology for circuit distribution to a marketplace distributon might be accomplished. In this connection, comments should take into account such factors as how to accommodate a foreign correspondent's circuit-distribution preferences and how to account for increasing competition in the provision of international MTS. We will carefully consider this information in making our final determination in our Second Report and Order in this proceeding.

53. *Phase-Ins.* In reaching our tentative conclusion to implement a phase-in methodology, we have considered AT&T's original proposal, the proposals submitted by other carriers and alternative guidelines which would permit increases in loading flexibility at annual rates of 2, 2.5 and 3 per cent per year. All of the proposed guidelines we analyzed, other than AT&T's original proposal, imposed a 60 percent ceiling on the loading of either medium throughout the 1986–1991 period. Our analysis assumed that the flexibility granted by our tentative guidelines was used to increase the percentage of total circuits carried by the cable medium by the maximum allowed annual percentage. We then compared the number of circuits placed on each medium that would result from each of the four alternative guidelines with the distribution of circuits that would have resulted from the continued use of the balanced loading.[33] We then calculated the difference in the revenues Comsat and INTELSAT would receive from the numbers of circuits on satellite each year called for by each of these guidelines compared to those which Comsat would have received under balanced loading.[34] The results of this analysis are set forth in the table appended to this Second Notice of Proposed Rulemaking.

54. As may be seen from that table, the effect of AT&T's proposed guidelines would be to reduce Comsat's revenues by a total of approximately $218.2 million over the six-year period from what it would have received under balanced loading. INTELSAT would receive approximately $160.6 million less over the same period. During the six-year period (1986–91), of the 24,853 growth circuits AT&T projects that it will need for IMTS, it would under its preferred plan place 21,133 (85.0 per cent) on cable facilities and 3,720 (15.0 per cent) on satellite facilities. The majority of this traffic and revenue "diversion" would occur in 1990 and 1991, when AT&T seeks complete freedom in circuit distribution. We calculate that Comsat's revenue loss for 1990 and 1991 would be approximately $58.7 million and $102.0 million, respectively. The corresponding revenue losses for INTELSAT would be approximately $43.2 million and $75.1 million. Under AT&T's proposal, it would activate only 12 additional satellite circuits in 1990 and 15 additional satellite circuits in 1991; all other growth would be on cable facilities.

55. Under the proposed guidelines allowing an annual two percent increase in loading flexibility over the six year period, Comsat and INTELSAT would receive approximately $90.1 and $66.3 million less, respectively, than they would have received under balanced loading. Of the 24,853 growth circuits AT&T projects during that period, AT&T would place 16,691 (67.2 per cent) on cable and 8,162 (32.8 per cent) on satellites. Continuation of balanced loading would require AT&T to place 13,115 circuits (52.8 per cent) on cables and 11,738 (47.2 per cent) on satellite facilities. The revenue and circuit-use figures for the guidelines allowing increased loading flexibility at rates of 2.5 and 3 per cent per year fall between the figures calculated for the 2 per cent annual increase and the those calculated for AT&T's proposed guidelines. The table appended to this document shows the specific figures.

56. From the foregoing, we tentatively find that AT&T's proposed guidelines, if implemented as proposed by AT&T, are not likely to afford a transition period of sufficient length to offset existing biases or to permit development of a marketplace mechanism for distribution of IMTS circuits. While competing carriers are now entering the U.S.–CEPT IMTS market, they are unlikely to make substantial inroads into AT&T's market dominance in the four-year period envisioned by AT&T's proposed guidelines. Moreover, Comsat, the entity with the greatest incentive to use satellite circuits for the provision of international MTS, has only been free to enter that market since January, 1985. We believe that the public interest will not be served by attempted reliance upon market mechanisms until the

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[33] In performing our analyses, we utilized only the traffic forecast which AT&T submitted on August 31, 1984 and the displays of circuit distributions and other analyses that AT&T submitted based on that forecast. AT&T submitted an updated forecast on November 1, 1984, in connection with preparations for the meeting of the North Atlantic Consultative Working Group held January 8–11, 1985. However, AT&T did not update its circuit distribution and analyses to indicate the effect of the new forecast thereon. In addition, AT&T submitted its updated forecast too late to permit the other parties to revise their analyses of AT&T's distributions. Because we believe this information is needed to develop proper distribution guidelines and to allow the other parties and our staff to assess the effect of the changed forecast, we shall require AT&T to include in its comments in response to this Second Notice of Proposed Rulemaking revised circuit distributions for each year of the planning period and revised analyses based on the updated forecast.

[34] Our revenue calculations are based on the assumption that Comsat's existing tariff rate of $1000 per month for voice circuits remains in effect throughout the 1986–1991 period. Changes in this assumption, such as AT&T's providing its own earth stations, or variations in Comsat's tariff, would alter the results or our analysis. Our calculation of INTELSAT revenues is based upon the assumption that the current INTELSAT unit charge of $390 per voice-grade circuit per month remains in effect throughout the 1986–1991 period. It should be noted that INTELSAT'S unit charge for voice circuits provided by means of TDMA/DSI will be 12.5 per cent lower than the current $390 unit charge. Since some of AT&T's circuits may be provided by use of TDMA/DSI, our calculations of the differences in INTELSAT's revenues may be larger than that which will actually occur. Similarly, assuming Comsat's tariff rate reflects the 12.5 per cent lower INTELSAT unit charge for TDMA/DSI circuits, the differences in revenues we calculated for Comsat may also be higher than those which will actually occur.

market has become competitive. That is not likely to be the case by year-end 1989.

57. We are also concerned with the comparatively small percentage (15.0 per cent) of growth circuits AT&T's proposal would place on already procured or planned satellite facilities during the 1986–1991 period. Such comparatively low levels of use could exert undue upward pressure on Comsat's and INTELSAT's per-circuit costs, and hence Comsat's rates for satellite circuits, and thus inhibit the development of intermodal competition. The cable and satellite facilities which will be used to provide service in the North Atlantic region during this period are either already in service or are under construction pursuant to binding procurement contracts. As a result, both INTELSAT's and other cable owners' capital costs for their respective facilities which will be used during this period are, for the most part, sunk.[35] Because this is so, owners will be forced to recover their total revenue requirements from the revenues generated by the number of circuits in each medium which are actually used to provide service. Consequently, activating more circuits in a given medium will have the effect of reducing the actual per-circuit revenue requirements of that transmission medium and, conversely, activating fewer circuits will increase the per-circuit revenue requirement for the other medium.

58. In this connection, we note that the service carriers have reduced the forecast of the number of circuits which will be needed in 1990 by approximately 26 per cent as compared with their June, 1980, forecast, (the forecast on which we relied in planning the TAT–8 and INTELSAT VI projects). Further, again subsequent to the planning of the TAT–8 and INTELSAT VI projects, it appears that technological developments have occurred which have either increased, or which may increase, the effective voice-circuit capacity of the TAT–8 cable and the INTELSAT satellites which will be in use during the 1986–1991 period. As a result, it now appears that there will be substantial excess capacity available throughout the 1986-1991 period. It seems apparent that creation of effective intermodal competition will not be facilitated by adoption of circuit-distribution guidelines which allow a disproportionate portion of the burden of this excess capacity to fall upon the satellite medium. We believe that adoption of the AT&T proposal, which would place 85 per cent of all of AT&T's international MTS growth circuits during the 1986-1991 period on cable facilities would have such a result. We thus do not believe that AT&T's suggested methodology proposes a reasonable use of facilities or that the public interest would be advanced by its implementation.

59. We tentatively conclude that allowing AT&T an annual two-per-cent increase in cable use (up to 60 per cent) represents a fair compromise which will stimulate the development of intermodal competition while not allowing the burden of excess capacity to fall too much on either medium. The approximately $90.1 million reduction in Comsat's revenues which would result from such an approach should give Comsat a strong incentive to enter the international MTS and other markets to try to offset that loss. Similarly, the approximately $66.3 million reduction in INTELSAT's revenues which would result from such an approach should spur that organization to greater construction and operational efficiencies. On the other hand, the amount of revenue loss to Comsat and INTELSAT, while signalling our clear intention to stimulate intermodal competition and to move away from any rigid methodology, is relatively manageable and should not result in any undue upward pressure on satellite tariff rates.

60. The two-percent-per-year guidelines should also provide AT&T with sufficient flexibility to adjust its facilities use to meet increasing competition during the transition period. Under these guidelines, AT&T can place up to 67.2 percent of its IMTS growth circuits on its owned cable facilities. This is a greater percentage of cable-circuit use than we have permitted under any of our previous circuit-distribution guidelines.

61. We also tentatively conclude that these guidelines should remain in place during the entire 1986–1991 period. As we have indicated, our preference is at that time to remove ourselves from circuit-distribution decisions altogether. However, as pointed out by a number of the parties to this proceeding, we cannot now predict with certainty how competition will develop and whether in 1991 there will be a basis for reliance upon a marketplace distribution of circuits.[36] Consequently, we cannot now commit ourselves absolutely to withdraw. As new entrants obtain operating agreements, and competition develops, our willingness to grant AT&T greater flexibility will increase.

62. *Alternative Proposal.* The creation of downward pressures on rates, the reduction of existing biases in the market, the encouragement of the efficient use of existing facilities, the promotion of the construction and use of efficient facilities in the future and the facilitation of our eventual withdrawal from loading decisions and perhaps the facility planning process may be directly related to the degree of competition in the provision of IMTS. Because the provision of international service is a joint undertaking between sovereign states or their carriers, competition tends to develop on a country-by-country basis rather than on a region-by-region basis. Thus, methodology which permits greater flexibility on a regional basis, rather than on a country-by-country basis, may do little to satisfy our long term objectives. However, a methodology which ties flexibility to the acquisition of operating agreements and the establishment of an environment which enhances carrier and facility competition may more closely satisfy these objectives.

63. We therefore request comment on a multi-tiered methodology which would permit AT&T, on a country-by-country basis, less flexibility on routes characterized by little or no competitive entry and greater flexibility on routes characterized by greater competitive entry. While the number of tiers and degrees of flexibility are almost limitless, we specifically request comment on the following example in order to stimulate discussion and facilitate our analysis of this complex issue. Under this proposal, AT&T would be permitted to increase its loading flexibility by 1 percent per year (Tier 1) to all countries and by 3 percent per year (Tier 2) to countries where the administration had entered into operating agreements with additional IMTS providers and where competition was developing.[37] There would be no

[35] Comsat's investment in INTELSAT space segment is not as rigidly fixed. The investment in INTELSAT space segment of Comsat and other INTELSAT signatories is determined by the use each signatory makes of that space segment. The signatories' investment shares are adjusted annually to reflect current use; thus, the investment of Comsat and the CEPT signatories could be reduced, to a degree, by the use of fewer satellite circuits on North Atlantic routes.

[36] Of course, if competition develops rapidly, we may revisit this issue prior to the end of the 1986-1991 period. In such a revisitation we could grant AT&T greater flexibility on a regional basis or on a country-by-country basis if competitive forces so warranted.

[37] Comments are solicited on whether the trigger mechanism should be the number of operating agreements, the terms of the operating agreements or other factors. We also seek comments on whether an increase in loading flexibility of greater than 3 percent should be permitted.

upper limit although the loading methodology would be re-examined by the end of 1991. To the extent that a more competitive IMTS market is encouraged and to the extent such a market stimulates a greater reliance on market forces, this proposal may not be dissimilar to the principles underlying the methodology submitted by NTIA. Of course, interested parties are also invited to submit and discuss any other specific methodologies which would relate relaxation of loading guidelines to increased competition in the provision of IMTS on a country-by-country basis.

64. We are, of course, aware that knowledge of the circuit-distribution mechanism which will be in use after 1991 would be of significant assistance to the planning effects of the carriers, Comsat and INTELSAT in selecting new facilities needed during the 1991–1995 portion of the planning period. For this reason we shall soon begin to examine the facilities requirements and options available during that period, as well as the effect of various potential circuit distributions. While gathering the necessary information for that process, we shall also monitor the development of intermodal competition, competition in the provision of international MTS and the development of a marketplace circuit-distribution mechanism. The Office of Plans and Policy will also conduct a study of these issues. The extent to which effective competition develops will determine how much we need involve ourselves in developing formal guidelines for the construction of facilities and the distribution of circuits for the 1991–1995 period.

D. ARINC's Whole-Circuit Proposal

65. We tentatively conclude that ARINC's proposal that we require ownership in TAT–8 and future cables to be on a whole-circuit basis should not be considered in this phase of this docket. ARINC's proposal is not germane to the question of the circuit-distribution guidelines which should be adopted for use in the post-1985 period; nor will those guidelines affect ARINC's proposal. ARINC's proposal, however, if adopted, would effect major changes in the present structure of international facilities ownership and in the established operating relationships between the U.S. carriers and their overseas correspondents. We denied ARINC's request to require a whole-circuit-ownership policy with respect to TAT–8. More recently, ARINC raised its request at a meeting of the North Atlantic Consultative Process. That is the proper forum in which to address ARINC's proposal.

III. Ordering Clauses

66. Accordingly, pursuant to sections 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 403 (1976), it is ordered that a rulemaking is hereby instituted into the above-described issues.

67. It is further ordered that Aeronautical Radio, Inc. American Telephone and Telegraph Company, Communications Satellite Corporation, FTC Communications, Inc., GTE Service Corporation, GTE Sprint Communications Corporation, ITT World Communications Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, Western Union International, Inc., and The Western Union Telegraph Company are MADE PARTIES to the rulemaking initiated herein;

68. It is further ordered, pursuant to applicable procedures set forth in §§ 1.410 and 1.415 of the Commission's Rules and Regulations, 47 CFR §§ 1.410 and 1.415 (1983), that, on or before May 10, 1985, all parties to this proceeding must file,[38] and other interested persons may file, comments on the issues in this proceeding and that, on or before May 28, 1985, interested persons may file reply comments. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching decision on this matter, we may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is place in the public file, and provided that the fact of our reliance upon such information is noted in our Report and Order. Participants must file an original and five copies of all comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Those filing comments in this proceeding should serve copies thereof upon the persons named as parties in the preceding paragraph, *supra*. They should serve reply comments upon all those who file comments in this rulemaking. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

69. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time it issues a public notice stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. 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 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 coy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in public file, with a copy of 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* § 1.1231 of the Commission's rules, 47 CFR 1.1231 (1983).

70. It is further ordered that the motions of the Communications Satellite Corporation for late acceptance of its Comments and Final Comments are granted.

71. It is further ordered that the request of Aeronautical Radio, Inc. to include the question of whole-circuit ownership in the issues to be considered in this second notice of proposed rulemaking in denied.

72. Pursuant to section 605(b) of the Regulatory Flexibility Act (P.L. 96–354), it is certified, that sections 603 and 604 of that Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603, 604, 605(b) (1976). In addition, the Regulatory Flexibility Act does not apply to this proceeding because that Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages,

[38] AT&T shall also file the circuit distributions and analysis required by footnote 33, *supra*.

corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances." 5 U.S.C. 601(2).

Note.—The attachments to this document (Comparisons of the Application of Circuit Distributions Guidelines) will not be published due to the ongoing efforts to minimize printing costs. However, they are filed with the original at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. They may also be reviewed in the FCC Dockets Branch, Room 239 and the FCC Library, Room 639, both located at 1919 M Street, NW., Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-10817 Filed 5-3-85; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 87
Monday, May 6, 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.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of ATBCB Meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB) has scheduled a meeting to be held from 9:00 AM to 1:00 PM, on Wednesday, May 15, 1985, to take place in the Department of Transportation's Conference Room 2230, 400 7th Street, SW., Washington, D.C.

Items on the agenda: Election of ATBCB Chairperson, Vice Chairperson, and Members of the ATBCB Executive Committee; proposed Federal Advisory Committee; final decision on the award of the boarding chairs contract; approval of the final comments on the ANSI proposed revisions and the endorsement of the accreditation status; request for Board comments on DOT's revised Notice of Proposed Rulemaking (NPRM) to amend the former Civil Aeronautics Board section 504 rule; and the ATBCB Retreat.

DATE: Wednesday, May 15, 1985—9:00 AM–1:00 PM.

ADDRESS: Department of Transportation's Conference Room 2230, 400 7th Street, SW., Washington, D.C.

The Communications and Attitudinal Barriers Committee and the Transportation Committee will meet with the National Transportation Facilitation Committee Sub-group on Air Travel Accessibility at 1:00–4:00 PM, Monday, May 13. For location and other information, contact Sally Free at (202) 472–2700.

All other committees of the ATBCB will meet on Tuesday, May 14, in the Hubert Humphrey Building, Room 425A, 200 Independence Avenue, SW., or Room 1137 of the HHS North Building, 300 Independence Ave., SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Larry Allison, Special Assistant for External Affairs (202) 245–1591 (voice or TDD).

Robert M. Johnson,

Executive Director.

[FR Doc. 85–10944 Filed 5–3–85; 8:45 am]

BILLING CODE 6820–BP–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–588–047]

Chain of Iron or Steel From Japan; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by the Government of Japan, the International Trade Commission began an investigation under section 104(b) of the Trade Agreements Act of 1979 regarding chain of iron or steel from Japan. Because of the withdrawal of the petition, the International Trade Commission terminated its investigation. Termination has the same effect as a determination that no industry in the United States would be materially injured, or threatened with material injury, if the countervailing duty order were revoked. The Department of Commerce, consequently is revoking the countervailing duty order. All shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: On August 24, 1978, the Treasury Department published in the **Federal Register** a countervailing duty order on chain of iron or steel from Japan (43 FR 37685).

On November 17, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Japanese government had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification from the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On February 17, 1985, the ITC notified the Department of its termination of the investigation (50 FR 9139, March 6, 1985), based on withdrawal of the petition by the National Association of Chain Manufacturers. This termination has the same effect as a determination that an industry in the United States would not be materially injured, or threatened with material injury, nor would the establishment of such an industry be materially retarded, by reason of imports of chain of iron or steel from Japan if the countervailing duty order were revoked. As a result, the Department is revoking the countervailing duty order concerning chain of iron or steel from Japan with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 17, 1982, without regard to countervailing duties, and to refund any estimated countervailing duties collected with respect to these entries.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: April 29, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–10949 Filed 5–3–85; 8:45 am]

BILLING CODE 3510–DS–M

Short Supply Determinations on Steel Pipe and Tube; Request for Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of requests for short supply determinations under Article 8 of the U.S.-EEC Pipe and Tube Arrangement with respect to double submerged arc welded pipe, API 5L, grade B, without girth weld, in the following outside diameters and wall thicknesses:

A. 26" x 1.125"
B. 26" x 1.250"
C. 36" x 1.75"
D. 36" x 2"
E. 48" x 1.75"
F. 48" x 2"

EFFECTIVE DATE: Comments must be submitted no later than May 16, 1985.

ADDRESS: Send all comments to Joseph A. Spetrini, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Agreements of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, Room 3087B, (202) 377-4036.

SUPPLEMENTARY INFORMATION: On January 10, 1985, the United States (U.S.) and European Economic Community (EEC) concluded a clarification of the Pipe and Tube Arrangement agreed to on October 21, 1982. The January 10 clarification provides in Article 8 that ". . . the U.S. shall accept exports of pipes and tubes in addition to those permitted under sections 1 and 2 where a shortage of supply is identified, i.e., where the U.S. industry is unable to meet demand in the United States for a particular product." Under the terms of Article 8 the Department "* * * shall make a decision under this section on the basis of objective evidence from all relevant sources."

We have received requests for acceptance under short supply provisions for the following products:

Double submerged arc welded pipe, API 5L, grade B, without girth weld, in the following outside diameters and wall thicknesses:

A. 26" x 1.125"
B. 26" x 1.250"
C. 36" x 1.75"
D. 36" x 2"
E. 48" x 1.75"
F. 48" x 2"

Any party interested in commenting on these requests should send written comments as soon as possible, and no later than ten days following the publication of this notice. Comments should focus on the economic factors involved in granting or denying these requests.

Commerce will maintain these requests and all comments in a public file. Anyone submitting business propriatary information should clearly so label the business proprietary portion of their submission and also submit with it a submission not containing such business proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department of Commerce, Room B-099 at the above address.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 1, 1985.

[FR Doc. 85-10959 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-002]

Wool From Argentina; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of preliminary results of administrative review of countervailing duty order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on wool from Argentina. The review covers the period July 1, 1983, through June 30, 1984.

As a result of the review, the Department has preliminary determined the total bounty or grant for the period to be 6.98 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 24, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 17559) the final results of its last administrative review of the countervailing duty order on wool from Argentina (48 FR 14423, April 4, 1983) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through June 30, 1984, and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3) preferential pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Analysis of Programs

(1) Incentives for Exports From Southern Ports

This program provides a payment for goods shipped from the southern ports of Argentina. This payment is not a rebate of taxes but rather an incentive to promote economic development in the regions south of the Rio Colorado and to develop the southern ports as the primary means of transportation from the southern regions of the country.

Under resolution M.E. No. 88/83, effective from January 28, 1983, through December 20, 1983, the payments ranged from 8 to 11 percent of the f.o.b. price depending on the port used. Law 23.018/83, effective December 21, 1983, changes the rates to between 8 percent and 13 percent depending on the port used. The law provided for a reduction of 1 percentage point for all ports as of January 1, 1984.

The questionnaire response provided no information on the amount of exports from specific ports. Therefore, we used information from the original investigation as best information for the calculation of the total bounty or grant.

In the original investigation, we found that 93 percent of all wool shipped from

Argentina went through the port of Madryn. The original investigation also found that virtually all the remaining wool was shipped from Buenos Aires, a port not covered by this program. Based on this information, we preliminarily determine the total bounty or grant provided by this program during the review period to be 6.98 percent *ad valorem*.

(2) Reembolso, a Cash Rebate of Taxes

On May 5, 1982, Resolution 437 abolished the 5 percent reembolso for washed wool. There is no reembolso for wool in the grease, the only other merchandise included in the order. Therefore, we preliminarily determine the total benefit from this program during the review period to be zero.

(3) Preferential Pre-export Financing

Exports of wool ineligible for this program. Therefore, we preliminarily determine that there was no benefit.

(4) Other Programs

In the original investigation, the following programs were found to be terminated or suspended. They have not been reinstated during the period of this review.

A. Multiple exchange rates.

B. Government assistance to wool growers in Patagonia.

C. Financial reorganization aids.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the total bounty or grant to be 6.98 percent *ad valorem* for the period of review. Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 6.98 percent of the f.o.b. invoice price on any shipments exported on or after July 1, 1983, and on or before June 30, 1984.

The Department intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 6.98 percent of the entered value on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: April 29, 1985.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-10958 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-471-502]

Initiation of Countervailing Duty Investigation; Carbon Steel Wire Rod From Portugal

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Portugal of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this act, so that it may determine whether imports of the subject merchandise from Portugal materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before May 23, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Laura Winfrey or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 377-0160 or 377-3464.

SUPPLEMENTARY INFORMATION:

Petition

On April 8, 1985, we received a petition in proper form from Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Portugal of carbon steel wire rod receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since Portugal is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Portugal materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Portugal, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Portugal of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Portugal of carbon steel wire rod receive benefits under the following

programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Export financing at preferential rates.
- Export tax incentives.
- Integrated investment incentives system:

—General regime
—Regional/sectoral priority regime
—Extraordinary regime of capital donations
—Contractual regime for projects of high economic and social impact
—subsidy regime for research and technical development

- Domestic business incentives:

—Ruling 316/78 (November 30, 1978)
—Decree 353-E/77 (August 29, 1977)
—Decree 24/77 (April 1, 1977)

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of carbon steel wire rod from Portugal are causing material injury, or threaten material injury, to a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10960 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-307-506]

Initiation of Contervailing Duty Investigation; Carbon Steel Wire Rod From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper from with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before May 23, 1985. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: Terry Link or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-0189 or 377-1785.

SUPPLEMENTARY INFORMATION:

Petition

On April 8, 1985, we received a petition in proper form from Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co. filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CR 355.26), the petition alleges that manufacturers, producers, or exporters in Venezuela of carbon steel wire rod receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). Since Venezuela is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and the ITC is required to determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on carbon steel wire rod from Venezuela, and we have found that the petition meets these requirements. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of carbon steel wire rod, as described in the "Scope of the Investigation" section of this notice, receive subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before July 2, 1985.

Scope of the Investigation

The merchandise covered by this investigation is carbon steel wire rod, is a coiled semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound. Wire rod is currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS)

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Venezuela of carbon steel wire rod receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Preferential Government Loans.
- Government Equity Infusions.
- Sales Tax Exemption.
- Tax Contributions to Cover Debt Service Costs.
- Export Subsidies:

—Preferential Exchange Rates
—Export Certificates for Credit Against Income Taxes

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action, and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information in our files. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 23, 1985, whether there is a reasonable indication that imports of carbon steel wire rod from Venezuela are causing

material injury, or threaten material injury, to a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 29, 1985.

[FR Doc. 85-10961 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board 1985 Summer Study Panel on Practical Functional Performance Requirements; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1985 Summer Study Panel on Practical Functional Performance Requirements will meet in closed session on 28–29 May and 19 June 1985 in Washington, D.C., and 16 July 1985 in Sunnyvale, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Panel will receive classified briefings and hold classified discussions on performance requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 1, 1985.

[FR Doc. 85-10954 Filed 5-3-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Special Operations; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Special Operations will meet in closed session on 29–30 May, 24–25 June, 20–21 August, 9 September, and 29 October 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings and hold discussions about Special Operations.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 1, 1985.

[FR Doc. 85-10953 Filed 5-3-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Air Force Reserve Officer Training Corps Advisory Committee; Meeting

April 10, 1985.

The Air Force Reserve Officer Training Corps Advisory Committee will meet on August 13th and 14th from 8:30 a.m. to 4:00 p.m. and on August 15th from 8:00 to 11:30. a.m., at Air Training Command Headquarters, Building 905, Randolph Air Force Base (AFB), Texas 78150–5000.

Meeting is open to the public.

The committee reviews the programs, policies and objectives of the Air Force Reserve Training Corps, recommends policies to the Commander, Air Training Command, and provides external views, advice, expertise, and influence on policy and operational matters.

For further information, contact John D. Pickett, Jr., AFROTC/XRX, Maxwell AFB AL 36112–6663, Telephone (205) 293–7856.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-10940 Filed 5-3-85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

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, 21 May 1985.

Times of meeting: 0830–1700 hours (Closed).

Place: TRW, Redondo Beach, California.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Research and Technology Laboratories Effectiveness Review will meet in an Executive Session to discuss the findings and conclusions as a result of the on-site visits and to prepare materials for the final report. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., 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. 85-10946 Filed 5-3-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Open 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–Thursday, 21–23 May 1985.

Times: 0900–1630 hours (Open) and 21–22 May and 0900–1300 hours (Open) on 23 May.

Place: Headquarters, U.S. Army Training and Doctrine Command (TRADOC), Fort Monroe, Virginia.

Agenda: The Doctrine and Training Integration Subpanel of the Army Science Board 1985 Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts/Army 21 will meet for briefings and discussions on integrating Army and Air Force operational concepts and doctrine, and to identify elements of doctrine to be trained and methodologies to support the training. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 85-10947 Filed 5-3-85; 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: Wednesday & Thursday, 29 & 30 May 1985.

Times of meeting: 0830–1700 hours on both days (Closed).

Place: U.S. Army Atmospheric Sciences Laboratory (ASL), White Sands Missile Range, New Mexico.

Agenda: The Army Science Board Ad Hoc Subgroup on U.S. Army Atmospheric Sciences Laboratory (ASL) Effectiveness Review will meet for a follow-up visit of ASL. The study purpose is to ensure the laboratory's 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, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., 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. 85–10948 Filed 5–3–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the Massachusetts State Department of Education Funds Recovered as a Result of a Final Audit Determination (ACN: 01–30001)

AGENCY: Department of Education.

ACTION: Notice of Intent to Award Grantback Funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Massachusetts State Department of Education an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination issued on March 17, 1983 by the Assistant Secretary for Elementary and Secondary Education. This notice describes the State educational agency's (SEA's) plan, submitted on behalf of the Boston Public Schools (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before June 5, 1985.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3616, ROB–3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245–9846.

SUPPLEMENTARY INFORMATION:

A. Background

On March 17, 1983, the Assistant Secretary for Elementary and Secondary Education issued a final audit determination against the SEA, finding that the LEA had improperly spent $88,487 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA during Fiscal Year 1982 conducted by the Department's Office of Inspector General.

The Assistant Secretary concluded in his final audit determination that although effective administrative practices prevailed in the LEA's Title I program, an amount of $88,487 was expended improperly by the LEA.

In particular, the Assistant Secretary determined that a total of $76,006 of Title I funds was used to provide Title I services for ineligible students. These services were provided in five private schools to 96 children who were ineligible because they did not reside in Title I project areas, as required by 34 CFR 201.80 and 201.81 (1981).

The Assistant Secretary also determined that the LEA had used $5,572 for unallowable costs for excess noninstructional duties. Specifically, Title I teachers and aides in 13 project schools had performed noninstructional duties in excess of the 10 percent allowed by 34 CFR 200.61 (1981) and section 134 of Title I (20 U.S.C. 2754).

Finally, the Assistant Secretary concluded that $6,909 in Title I funds was expended for Title I teachers performing regular homeroom supervision and substitute teaching in non-Title I classes in violation of 34 CFR 200.61(a)(3) (1981).

The SEA submitted a check dated July 29, 1983 to the Department in the amount of $88,487 owed as a result of the final audit determination.

B. Authority for Awarding a Grantback.

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were orginally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On January 31, 1985, the SEA formally requested in writing repayment of $66,365 (75 percent of the $88,487 returned to the Department as a result of the final audit determination) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEA that resulted in the final audit determination have been corrected and that the LEA is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a detailed budget prepared by LEA for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA, in its January 31, 1985 request, submitted a plan on behalf of the LEA outlining the LEA's intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1).

The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the

SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The plan demonstrates that the LEA proposes to use the grantback funds to augment the regular Chapter 1 program during school year 1985–86. Two additional teachers will be hired to expand the Chapter 1 basic skills instructional programs so that a larger number of the eligible children can be served. Funds are also budgeted for materials and fixed charges. Services will be provided to students in grades 6 through 12, and to the extent possible, to those eligible children who were affected by the misexpenditures that resulted in the final audit determination.

Equitable math and reading services will be provided with the grantback funds to eligible children in private schools.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under section 456 of GEPA, including the SEA's discharge of its payment obligation to the Department in July 1983, the SEA's assurances described in Part C of this notice, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The LEA has corrected the practices and procedures that resulted in the final audit determination, and the LEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEA for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the children who were affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $66,365, which is 75 percent of the funds the Department has recovered as a result of the Assistant Secretary's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by June 30, 1986.

(3) The SEA, on behalf of the LEA, must submit not later than January 1, 1987, a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Massachusetts SEA on behalf of the Boston Public Schools. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before June 5, 1985.

(Catalog of Federal Domestic Assistance No. 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: May 1, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–10933 Filed 5–3–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85–03–NG]

Dome Petroleum Corp.; Order Granting Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration.

ACTION: Notice of Issuance of opinion and order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 29, 1985, the ERA Administrator issued an Opinion and Order granting Dome Petroleum Corporation (Dome Corp.) authority to import natural gas for resale to St. Regis Corporation (St. Regis). The approval authorizes Dome to import up to 3,300 Mcf of natural gas per day and up to 1 Bcf per year from Dome Petroleum Limited of Calgary, Alberta, Canada, for a two-year period beginning on the date of first delivery. The initial price of natural gas delivered to St. Regis will be $4.00 (U.S.) per MMBtu, subject to monthly adjustment; the price at the border will be $3.20 (U.S.) per MMBtu. The imported gas is intended to displace No. 6 fuel oil at St. Regis' Tacoma, Washington, pulp and paper mill.

The text of the Opinion and Order follows:

FOR FURTHER INFORMATION CONTACT:

Robert McCann (Natural Gas Division, Office of the Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA–007, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252–6600.

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6667.

Issued in Washington, D.C., on April 30, 1985.

James W. Workman,

Director, Office of Fuels Program Economic Regulatory Administration

United States of America, Department of Energy, Economic Regulatory Administration

[ERA Docket No. 85-03-NG; DOE/ERA Opinion and Order No. 78]

Dome Petroleum Corp.; Order Granting Authorization To Import Natural Gas From Canada and Granting Intervention

April 29, 1985.

I. Background

On January 16, 1985, Dome Petroleum Corporation (Dome Corp.) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for authorization to import up to 3,300 Mcf per day and up to 1 Bcf per year of Canadian natural gas from Dome Petroleum Limited (Dome Ltd.). The applicant is a wholly-owned U.S. subsidiary of Dome Ltd., a Canadian natural gas producer and corporation. Under the import proposal, Dome Corp. would purchase the gas for resale to St. Regis Corporation (St. Regis) over a period of two years commencing on the date of first delivery. The imported gas is intended to displace No. 6 fuel oil used at St. Regis' Tacoma, Washington, pulp and paper mill.

The imported volumes would enter the U.S. at a point near Sumas, Washington, by means of existing pipeline facilities owned and operated by Northwest Pipeline Corporation (Northwest). Northwest would then transport the gas to the distribution facilities of Washington Natural Gas Company (Washington Natural), which would complete ultimate delivery to St. Regis' facility. According to the application, no new facilities will be required to implement the proposed import. Dome Corp. indicates that it is currently negotiating with Northwest and Washington Natural for transportation services.

The gas purchase contract executed by St. Regis and Dome Ltd. on October 17, 1984, entitles St. Regis to purchase up to the maximum daily and annual volumes requested for authorization but imposes no minimum purchase obligation or take-or-pay requirement. Deliveries will be on a "reasonable efforts" basis by Dome Ltd., as requested by St. Regis in monthly volume nominations. Dome Corp. has indicated that an agreement assigning this contract to it currently is being prepared, as well as an import agreement between it and Dome Ltd. Both agreements will be submitted as supplementary filings upon execution.

Under the purchase agreement, the price Dome Ltd. would be paid for the gas at the international border will be the price charged by the applicant to St. Regis, less the sum of the distribution tariff of Washington Natural, included associated taxes, the transmission tariff of Northwest, and the margin to be retained by the applicant. Dome Corp. estimated the initial price paid at the border would be $3.20 (U.S.) per MMBtu. The initial delivered price to St. Regis under the purchase agreement would be $4.00 (U.S.) per MMBtu. The price St. Regis would pay for the gas would be adjusted on a monthly basis to reflect any fluctuation in the price of No. 6 high sulfur residual fuel oil in the Seattle-Tacoma area.

In support of its application, Dome Corp. stated that the import arrangement it proposes would be competitive and not inconsistent with the public interest. The applicant maintained that it has negotiated an arrangement that is designed to serve a carefully and specifically defined incremental market at market-oriented and flexible price and volume terms. Therefore, it asserted that this import conforms with the DOE's gas import policy guidelines.[1] Dome Corp. further asserted that the purchase price for the gas would be sufficiently attractive to encourage St. Regis to convert from high sulfur fuel oil to cleaner burning natural gas with attendant positive impact upon the environment.

II. Interventions and Comments

A notice of the application was issued on February 6, 1985.[2] The notice invited protests and petitions to intervene, which were to be filed by March 18, 1985. The ERA received one motion to intervene from Washington Natural, the aforementioned gas distribution company which serves customers in the State of Washington from supplies purchased mainly from Northwest. This order grants intervention to Washington Natural.

Washington Natural does not expressly oppose the application but does express certain reservations regarding the proposal. Washington Natural's concern is that "[t]he Dome-St. Regis sale erodes Northwest's potential natural market base, and impedes its [Northwest's] ability to meet take and pay for requirements under its Westcoast [Transmission Company Ltd.] contract." Washington Natural contends that this would adversely affect it as a distribution customer of Northwest.[3] In order to mitigate this anticipated effect, Washington Natural requests that ERA condition any order approving the proposed import on a requirement that the volumes sold to St. Regis be credited against Northwest's annual obligations to purchase gas from Westcoast.

Washington Natural also asserts that there have been no negotiations between Washington Natural and the applicant or Washington Natural and St. Regis concerning transportation of the St. Regis gas through Washington Natural's distribution facilities, and Washington Natural claims that it does not have any existing tariff for such service. Washington Natural also alleges that there are no negotiations pending between Northwest and the applicant for transportation from the border to the point of connection with Washington Natural's distribution systems. Washington Natural contends that after backing our taxes, the proposed border price of $3.20, and Northwest's proposed transportation charge from the $4.00 delivery price to St. Regis, a balance of only 33 cents per MMBtu remains, which falls far short of covering Washington Natural's fixed costs associated with such service.

III. Decision

Dome Corp.'s application has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest."[5]

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[1] 49 FR 6684, February 22, 1984.

[2] 50 FR 6237, February 14, 1985.

[3] In the context, Washington Natural also comments on proceedings pending before the Federal Energy Regulatory Commission (FERC). Northwest has filed a general rate increase application (Docket No. RP85-13-000) that includes a special incentive rate. The rate filing would enable Northwest to transport gas, on an interruptible basis, on behalf of an end-user, local distribution company, interstate pipeline company or intrastate pipeline. Washington Natural believes a proposed settlement of the case, if approved, would enable it to compete with the price of No. 6 fuel oil and the services offered to St. Regis by Dome Corp. In addition, Washington Natural indicates the FERC staff recently took a position against the passthrough of the demand-commodity pricing rates contained in Northwest's recently renegotiated contract with Westcoast. If the new rate structure is not approved by the FERC, Washington Natural predicts further limitations on the ability of Northwest to price its gas competitively.

[4] Footnote omitted.

[5] 15 U.S.C. 717b.

The Administrator is guided by the DOE's policy relating to the regulation of natural gas imports.[6] Under these policy guidelines, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

Washington Natural states it does not challenge the competitiveness of the applicant's import proposal but argues other factors warrant consideration in the public interest. However, its principal concern is that the applicant proposes a sale to a market Northwest and Washington Natural would like to occupy. It is particularly concerned about the impact of the proposed sale on Northwest's take-or-pay obligations and the ramifications of this impact on its own operations. Washington Natural wants insulation from this competition, and to this end requests that the ERA impose restrictions on the Dome Corp. import arrangement.

We understand Washington Natural's desire to protect and expand its market. Nevertheless, the policy of this agency is to promote competition and not to limit it. Washington Natural and Northwest must utilize the tools and options available to them to adjust and respond to the market, rather than rely on government regulation for protection. One of the options may be to negotiate with other affected parties concerning Northwest's and Westcoast's minimum take agreement. However, this proceeding is not the appropriate place for such negotiation to occur. We note, moreover, that there is no contractual relationship between this import arrangement and the Northwest-Westcoast arrangement. The intervenor is requesting an adjustment for a take-or-pay obligation in a commercial relationship to which the applicant and its supplier are not parties. The ERA strongly encourages the parties to work out their concerns with each other rather than seek to have the government impose a solution. The ERA will not impose such a condition on Dome Corp., and Washington Natural's request that such a condition be imposed is denied.

The ERA does not have jurisdiction over the interstate transportation rates and tariff matters raised by the intervenor. The appropriate place for Washington Natural to express its concerns is in presently pending or other relevant proceedings before the FERC.[7] Furthermore, the existence of firm transportation contracts is not germane to the decision of whether to approve an import authorization.

The ERA finds that the applicant's arrangement fully comports with the public interest test. No one has challenged the competitiveness of the proposed import. The terms and conditions of the contract between Dome Ltd. and St. Regis (to be assigned to the applicant by Dome Ltd.) are flexible and provide assurance that the imported gas will remain competitive over the contract period. The volumes will be imported on a short-term basis and at a proposed rate competitive with the natural gas available to St. Regis and less expensive than the No. 6 fuel oil it currently uses. Deliveries will be on a reasonable efforts basis as requested by St. Regis in daily and annual volume nominations; there is no minimum purchase or take-or-pay obligation. Furthermore, the agreement permits the parties to adjust the initial purchase price of the gas on a monthly basis to reflect market conditions at the time. These and the other contract terms and conditions, taken together, demonstrate that the arrangement is flexible and that the gas will only be imported when it is fully competitive.[8]

Moreover, the gas import policy guidelines recognize that the need for an import is a function of competitiveness. Under the competitive arrangement described above, it is presumed that St. Regis will purchase the gas only to the extent it needs such volumes for its plant operations. The security of the import supply is not a major issue because the gas is to be purchased on a best-efforts, interruptible basis.

After taking into consideration all information in the record of this proceeding, I find the authorization requested by Dome Corp. is not inconsistent with the public interest and should be granted.

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Dome Petroleum Corporation (Dome Corp.) is authorized to import up to 3.3 MMcf per day and up to a maximum annual volume of 1 Bcf of Canadian natural gas for a two-year period beginning on the date of first delivery for resale to St. Regis Corporation in accordance with the pricing and other provisions established in the contract submitted as part of its application.

B. Dome Corp. shall notify the ERA in writing of the date of first delivery within two weeks after deliveries begin.

C. Dome Corp. shall file with the ERA in the month following each quarter, quarterly reports showing by month the quantities of gas imported and the average price on an MMBtu basis paid for such gas.

D. The motion to intervene, as set forth in this opinion and order, is hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenor shall be limited to matters affecting asserted rights and intersts specifically denied, and that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., April 29, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-10888 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 84-20-NG]

Southeastern Michigan Gas Co.; Natural Gas Imports

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 29, 1985, the ERA issued an opinion and order approving Southeastern Michigan Gas Company's (Southeastern) application to import Canadian natural gas from Northridge Petroleum Marketing, Inc. The approval authorizes Southeastern to import at a price of $2.99 (U.S.) up to 20 MMcf per day of natural gas on a best-efforts, interruptible basis for a period beginning on the date of issuance, and ending February 28, 1987.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Clifford Tomaszewski (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9760.

Diane Stubbs (Office of General Counsel, Natural Gas and Mineral

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[6] *See supra* note 1.

[7] FERC Docket Nos. RP81-47-000, RP85-1-1000, and RP85-13-000.

[8] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Leasing), Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on April 30, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

United States of America, Department of Energy, Economic Regulatory Administration

[ERA Docket No. 84-20-NG; DOE/ERA Opinion and Order No. 79]

April 29, 1985.

Southeastern Michigan Gas Co.; Order Authorizing the Importation of Natural Gas from Canada

I. Background

On December 21, 1984, Southeastern Michigan Gas Company (Southeastern) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to section 3 of the Natural Gas Act, for authorization to import up to 9 Bcf of Canadian gas over a two-year period that would begin on March 1, 1985, and end on February 28, 1987. The gas would be purchased from Northridge Petroleum Marketing, Inc. (Northridge) on a best-efforts, interruptible basis pursuant to a gas purchase contract dated November 7, 1984, and a contract amendment filed April 1, 1985. The contract would be extended automatically in two-year increments.

Under the agreement, up to 20 MMcf of gas per day could be purchased with an annual limitation of 3 Bcf. Because the requested two-year authorization period (Mar. 1, 1985–Feb. 28, 1987) overlaps three complete or partial contract years,[1] the applicant is seeking authorization of up to 9 Bcf, the total possible amount available to Southeastern under the contract during the authorization period.

For the initial contract period ending November 1, 1985, the price of the gas would be $2.99 (U.S.) per Mcf. Sixty days before the end of the initial contract year, Southeastern and Northridge would meet to redetermine the purchase price, taking into consideration the prevailing market conditions of alternative sources of supply available to Southeastern. The parties, by mutual agreement, may redetermine the purchase price at any other time in response to market conditions.

Southeastern proposes to purchase the imported gas supplies for its general system supply for the benefit of all consumers receiving retail gas service in its service areas. It asserts that there is a need for the imported supplies to achieve the lowest reasonable cost of gas for consumers in its service areas, and to exert competitive pressure on its interstate domestic suppliers.

The imported gas would be produced in Alberta, Canada, from fields owned or controlled by five natural gas producing companies (Calco Resources Ltd., Lac Minerals Ltd., Paramount Resources Ltd., Signalta Resources Ltd., and Maynard Energy Inc.), or would be acquired by Northridge from such other sources within Canada as may be required from time to time. It is contemplated that Northridge would enter into agreements with NOVA, an Alberta Corporation, and TransCanada PipeLines Limited (TransCanada) for the transportation of the gas from points of production through existing facilities to a point of delivery on the international boundary near Emerson, Manitoba, Canada. Southeastern proposes to enter into agreements with Great Lakes Gas Transmission Company (Great Lakes) and ANR Pipeline Company (ANR) for the receipt and redelivery of the gas to Southeastern at a new delivery point under construction by ANR in Columbus Township, Michigan. The new delivery point in Columbus Township is already under construction for purposes unrelated to this import. No final transportation agreements had been reached by the parties to the proposed arrangement at the time of filing.

Southeastern and Northridge executed an amending agreement to the gas purchase contract on March 28, 1985. The amending agreement, filed on April 1, 1985, as an amendment to Southeastern's pending application, modified the gas purchase contract (1) to lower the purchase price for the gas from $3.10 (U.S.) to $2.99 (U.S.) per Mcf during the first contract year; (2) to expand Southeastern's ability to renegotiate price in response to market conditions; and (3) to make contract termination an option at Southeastern's election, rather than automatic, in the event Southeastern loses its status as a Rate Schedule G-1 customer of Panhandle.

II. Procedural History

A notice of Southeastern's application was issued on January 11, 1985.[2] The notice invited protests and motions to intervene which were to be filed by February 19, 1985. Motions to intervene were filed by Central Illinois Light Company (CILCO), Pan-Alberta Gas Limited (Pan-Alberta), and Panhandle Eastern Pipeline Company (Panhandle).

CILCO, an Illinois electric and gas distributor who purchases 97 percent of its natural gas from Panhandle, supported Southeastern's application. Pan-Alberta, a Canadian supplier to Panhandle via Northwest Alaskan Pipeline Company (Northwest Alaskan) through the probuild portion of the Alaska Natural Gas Transportation System (ANGTS), intervened in opposition to the application and stated that it has opposed the arrangement before the Canadian National Energy Board (NEB). Panhandle, Southeastern's primary gas supplier who purchases gas from both domestic sources and from Canada through the prebuild, opposed the application and requested additional procedures, including a trial-type hearing, to determine the impact of the proposed import on the public interest and the adverse consequences to Panhandle's import arrangements, system operations, and Michigan consumers.

On February 27, 1985, Southeastern filed an answer in opposition to Panhandle's comments and request for additional procedures, and to Pan-Alberta's motion to intervene.

Because of the concerns raised by the parties and the request for additional procedures, a procedural order was issued on March 20, 1985, which allowed additional written comments to be submitted by March 29, 1985, scheduled a conference at which oral presentations could be made on April 3, 1985, and granted all motions to intervene.

Additional written comments were submitted by Panhandle and Southeastern on March 29, 1985. Panhandle reiterated its requests for a full trial-type hearing and related proceedings to permit evidence to be submitted and addressed by Panhandle.

Panhandle and Southeastern participated in the conference on April 3, 1985. Pan-Alberta attended the conference but did not participate in the proceeding. Both Panhandle and Southeastern made oral presentations. At the conference, Panhandle reiterated its request for a trial-type hearing. No new issues were raised in the additional written comments or at the conference. Panhandle acknowledged being served with the amendment to the purchase

[1] A contract year is defined as the 12-month period ending at 8:00 a.m. on November 1st of any calender year, except the initial period which will be the eight-month period starting on March 1, 1985, and ending on November 1, 1985.

[2] 50 FR 2711, January 18, 1985.

contract and expressed no concern over it.[3]

III. Decision

Southeastern's application has been reviewed to determine if it conforms with section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest."[4] In making this finding, the Administrator of the ERA is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.[5] Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

During the course of this proceeding, the parties opposing the proposed import raised a number of issues, both as a basis for challenging the project's consistency with the public interest and as a basis for Panhandle's request for a trial-type hearing.

While professing that it is not adverse to competition, the major issue that Panhandle, and in part Pan-Alberta, raised is that previously approved long-term imports should not have to compete with short-term imports in the same market area. Panhandle is concerned that its sales to Southeastern will be displaced by the proposed import and it will then have to cut back its long-term supplies, including those from Pan-Alberta. Panhandle maintains that Southeastern is opportunistically taking advantage of a lower priced short-term import to displace its purchases from Panhandle, while at the same time continuing to rely on Panhandle as a long-term supply source. Panhandle feels that its other General Service customers may follow Southeastern's example and seek imports of their own to replace their purchases from Panhandle and the cumulative impact would result in a cutback of Panhandle's long-term supply sources.[6]

Southeastern responded to Panhandle's allegations by stating that the "primary issue is not whether the Administration should avoid authorizing short-term imports of gas that is lower priced to protect long-term imports from competition. * * * Instead, we believe that ERA has often said that the primary issue is the competitiveness of the import. * * * Southeastern has shown that the proposed import is competitive today, and it is competitive in the future.[7]

Southeastern has indicated that if the Northridge import were not available it would seek supplies from sources other than Panhandle, as long as those supplies were cheaper than Panhandle's incremental costs. Southeastern is determined to diversify its supplies, and to that extent Panhandle will lose the sales represented by the Northridge import, whether or not the import is approved by the ERA.

The ERA concurs with Southeastern's response, that the competitiveness of the import is the prime concern. The policy of this agency is to promote competition, and the applicant's import brings new and positive competitive forces to its marketplace. Purchasers will avail themselves of short-term arrangements when they are competitive with available long-term arrangements. Panhandle has options available to it to meet competition, as do other pipelines. Panhandle has indicated that it is in fact pursuing an option to become more competitive. It "has begun a concerted effort to reduce its gas supply costs."[8]

Panhandle alleged that the proposed import will discourage Canadian suppliers from renegotiating existing contracts and negotiating new ones. However, the ERA is unpersuaded by this argument. The Canadian government and gas industry are moving to correct price disparities that have existed for the past several years between U.S. and Candaian supplies serving U.S. markets. There has been no sign of reluctance by Canadian exporters to negotiate in response to competition, and it is unlikely that the competition from the Southeastern/Northridge arrangement will change this.

Panhandle claimed that, since neither Northridge nor Southeastern have firm transportation contracts in place, the import cannot be reliable. Southeastern responded that Panhandle had not explained how the lack of transportation contracts is relevant to a decision on whether the import is in the public interest. Further, it indicated that it expected to have transportation contracts in place by April 14, 1985.[9] It is the ERA's position that contracts for transportation of imported gas do not represent a relevant issue in deciding whether to approve import authorizations, since the ERA only authorizes the import of the gas and not the means of transporting that gas to market. Clearly, the gas will not flow under any arrangement or authorization if all the supply and transportation contracts are not in place.

Panhandle questioned the security of the import since there had been no showing that Northridge had entered into contracts to purchase the gas from the producers. Panhandle alleged that this lack of producer contracts makes the source of supply unreliable.

The ERA has in past orders[10] indicated that the security of the import supply is not a major issue when the gas is to be purchased on a short-term, best-efforts basis. Nothing that Panhandle has alleged leads the ERA to believe that this import it different from other short-term imports is has approved with regard to the issue of the security of supply.

Panhandle has contended that there is no need for this import which it cannot meet. As set forth in the gas import policy statement, the question of the need for an import is a function of its competitiveness, and Panhandle has not challenged the competitiveness of the proposed import, nor demonstrated why some criteria other than competitiveness should be used to evaluate need in this case.

Panhandle has indicated that because of this import and other purchases that Southeastern has made from suppliers other than Panhandle, Southeastern may lose its status as a General Service customer under Panhandle's interstate transportation tariff. This issue, to the extent it may have merit, is a matter for the Federal Energy Regulatory Commission rather than the ERA.

Southeastern's import arrangement fully comports with the public interest test established in the DOE's policy guidelines. The volumes will be imported on a best-efforts, interruptible basis and the only take-or-pay obligation occurs in the event that the gas purchase contract is terminated when Southeastern has nominated volumes which Northridge has delivered to the intervening transporters. The flexibility of the import arrangement, along with the provisions for adjustment of the purchase price contained in the amended gas purchase contract, ensure that the gas will only be imported when

[3] Transcript of Proceedings at 39, Application of Southeastern Michigan's Gas Company, April 3, 1985.

[4] 15 U.S.C. 717b.

[5] 49 FR 6684, February 22, 1984.

[6] Transcript at 23.

[7] Transcript at 7.

[8] Transcript at 22.

[9] Transcript at 33.

[10] See *Northwest natural Gas Company*, DOE/ERA Opinion and Order No. 65, issued December 10, 1984 (1 ERA ¶70,577); *Cascade Natural Gas Corporation*, DOE/ERA Opinion and Order No. 66, issued December 10, 1984 (1 ERA ¶70,578); *Southwest Gas Corporation*, DOE/ERA Opinion and Order No. 69, issued December 18, 1984 (1 ERA ¶70,581); and *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 28, 1985 (1 ERA ¶70,585).

the price is competitive in Southeastern's markets. The pricing flexibility and the other contract terms and conditions, taken together, demonstrate that the import arrangement will be sufficiently flexible to allow Southeastern to respond to its markets over the length of the contract.

In its written submission of March 29, 1985, and during the conference held on April 3, 1985, Panhandle renewed its request for a full trial-type hearing and related proceedings. It alleged that the ERA had no basis in the present record for granting this import authorization. Further, it maintained that the issues of the lack of transportation contracts and reliability of supply were still in dispute. As stated above, the existence or lack of contracts for transportation or contracted producer gas reserves are not relevant to the approval of this import authorization. Instead, the competitiveness of the import is the prime concern, and Panhandle failed to challenge the competitiveness of Southeastern's proposal. As Panhandle failed to demonstrate, in accordance with ERA's procedural rules, that there are factual issues which are genuinely in dispute, relevant and material to the decision, and further failed to show that a trial-type hearing is necessary for a full and true disclosure of the facts, Panhandle's request for a trial-type hearing is denied.

After taking into consideration all of the information in the record of this proceeding, I find that the authorization requested by Southeastern is not inconsistent with the public interest and should be granted.[11]

Order

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act, it is ordered that:

A. Southeastern Michigan Gas Company is authorized to import up to 9 Bcf of Canadian gas during the period beginning on the date of issuance, and ending February 28, 1987, in accordance with the provisions of the contract between Soutneastern and Northridge submitted as a part of the application filed by Southeastern on December 21, 1984, and amended on April 1, 1985.

B. Southeastern shall notify the ERA in writing of the date of the first delivery of gas authorized in ordering paragraph A within two weeks after deliveries begin.

C. Southeastern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of natural gas imported under this authorization, and the price paid for those volumes.

Issued in Washington, D.C., April 29, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-10889 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

[11] The Doe has determined that because existing pipeline facilities will be used and no new construction is being undertaken specifically for this import, granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Federal Energy Regulatory Commission

[Docket Nos. ER85-445-000 et al.]

Pennsylvania Power Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. ER85-445-000]

April 29, 1985.

Take notice that on April 19, 1985, Pennsylvania Power Company (PP&L) tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The proposed changes would increase revenues from jurisdiction sales and service by $346,468 or 6.7 percent based on the 12-month period ending June 30, 1985. This increase is composed of an increase in base rate test year revenues of $131,185 effective March 15, 1985 and an increase in the fuel adjustment charge test year revenues of $256,924 effective April 1, 1985. In addition, three changes in the tax adjustment surcharge are included in the filing: (1) A decrease from 5.4 percent to 5.22 effective January 1, 1985; (2) an increase from 5.22 percent to 5.23 percent effective March 15, 1985; and (3) a decrease from 5.23 percent to 4.37 percent effective April 1, 1985. The net effect of these changes in the tax surcharge results in a decrease in test year revenues of $41,642.

PP&L states that the five municipal resale customers served by PP&L entered into settlement agreements effective as of September 1, 1984. These agreements provided that these customers will be charged applicable retail rates as may be in effect during the seven-year terms of the agreements. Changes in rates were agreed to become effective as of these customers simultaneously with changes approved by the PPUC. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER77-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served upon PP&L's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: May 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. New York Electric & Gas Corporation

[Docket No. ER85-426-000]

April 26, 1985.

Take notice that on April 1, 1985, New York State Electric & Gas Corporation (NYSEG) submitted for filing a Certificate of Concurrence for the rate schedule and supplements listed below:

An agreement dated December 1, 1976, designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 97 and the supplements thereto:

Supplement No. 1 dated July 24, 1978
Supplement No. 2 and Supplement No. 1 to Supplement dated January 8, 1982
Supplement No. 3 dated May 6, 1982
Supplement No. 4 dated October 28, 1983

Comment date: May 7, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

[Docket No. ER85-444-000]

April 29, 1985.

Take notice that on April 19, 1985, Puget Sound Power & Light Company (Puget) tendered for filing Notices of Termination of Puget's Rate Schedule Nos. 23 and 24, such schedules having terminated by their own terms.

Copies of this filing were served upon the Bonneville Power Administration and the Western Area Power Administration.

Comment date: May 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Corporation

[Docket No. ER85-436-000]

April 26, 1985.

Take notice that on April 15, 1985, Florida Power & Light Company (FP&L) tendered for filing a document entitled Amendment Number Three to Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of

Tallahassee, Florida (Rate Schedule FERC No. 47).

FP&L states that under Amendment Number Three, FP&L will transmit power and energy for the City of Tallahassee as is required in the implementation of its interchange agreement with Jacksonville Electric Authority.

FP&L requests waiver of the Commission's regulations be granted and that the proposed Amendment be made effective immediately.

Copies of this failing were served on the Electric Department, City of Tallahassee, Florida.

Comment date: May 9, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Illinois Power Company

[Docket No. ER85-443-000]

April 29, 1985.

Take notice that on April 18, 1985, Illinois Power Company (Illinois Power) tendered for filing proposed Amendment No. 9, dated April 9, 1985, to the Interchange Agreement, dated March 15, 1973, between Iowa-Illinois Gas and Electric Company (IIGE) and Illinois Power.

Illinois Power indicates that this filing is made for the principal purpose of incorporating language for Third-Party Purchase & Resale Transactions, pursuant to FERC Order No. 84, into various related and restated schedules which otherwise do not reflect rate increases.

Illinois Power requests an effective date of July 1, 1985.

Copies of this filing has been served upon IIGE, the Illinois Commerce Commission, and the Iowa State Commerce Commission.

Comment date: May 13, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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. 85-10955 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-25-000]

Applied Energy Services, Inc. v. Oklahoma Corporation Commisson; Extension of Time

April 30, 1985.

On April 29, 1985, the Oklahoma Corporation Commission (OCC) filed a motion requesting an extension of ten days to and including May 9, 1985, for the filing of answers, protests, and additional interventions in this proceeding. It states that Applied Energy Services, Inc. (AES) does not consent to the extension. it further states that counsel for Oklahoma Gas and Electric Corp. and Public Service Company of Oklahoma, who have filed petitions to intervene, do not oppose the extension and that counsel for Smith Cogeneration, Inc., who has also filed a petition to intervene, takes no position with respect to the motion.

The National Association of Regulatory Utility Commissioners (NARUC) filed a motion to intervene and requests that NARUC be permitted to file an answer to the complaint when the OCC's answer is due. International Paper Company, Stone Container Corporation, Potlatch Corporation, Simpson Paper Company, Hammerville Paper Company, Federal Paper Board, Inc., Hollingsworth and Use Company, U.S. Energy Corp., and Ultrapower, Inc. also filed motions to intervene. They note they intend to file further comments in several days, but do not request an extension of time.

In view of the importance of the question raised by the complaint, the importance of the views of the OCC and other Commissions who wish to participate in this proceeding, and the fact that some parties indicate they intend to file comments in a few days, an extension of time, for filing answers, protests and interventions is granted for seven days to and including May 6, 1985. The full ten day extension requested will not be granted because of the 60 day time period provided in section 210(h) of the Public Utility Regulatory Policies Act, after which AES may bring an action in United States District Court. Moreover, in light of this provision, all answers to motions to intervene shall be filed by May 13, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10918 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP80-209-005, et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP80-209-005]

Take notice that on April 16, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP80-209-005, a petition to amend the order issued August 21, 1981, in Docket Nos. CP80-209-000, *et al.*, pursuant to Section 7(c) of the Natural Gas Act so as to authorize a new delivery point in addition to those already specified in the August 21, 1981, order, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

It is stated that the order of August 21, 1981, authorized, *inter alia*, ANR to transport and deliver gas on behalf of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern). The two delivery points authorized by the order were the proposed interconnection between ANR and Northern in Kiowa County, Kansas, and the existing interconnection between and ANR and United Gas Pipe Line in St. Mary Parish, Louisiana.

It is explained that Northern and Texas Eastern Transmission Corporation (Texas Eastern) have entered into a contract whereby Northern would sell gas to Texas Eastern for system supply.[1] ANR states that a proposed delivery point for this sale would be the existing interconnection between ANR and Texas Eastern in St. Landry Parish, Louisiana (St. Landry). ANR herein requests amendment of the order of August 21, 1981, pursuant to a December 12, 1984, amendment to the agreement between ANR and Northern so as to allow ANR to deliver Northern's gas to Texas Eastern at the St. Landry interconnection.

Comment date: May 20, 1985, in accordance with the first subparagraph

[1] An applicaton for authorization to make this sale is pending in Docket No. CP85-183-000.

of Standard Paragraph F at the end of this notice.

2. International Paper Company

[Docket No. CP81-323-001]

April 30, 1985.

Take notice that on April 4, 1985, International Paper Company (IPCO), International Paper Plaza, 77 West 45th Street, New York, New York 10036, filed in Docket No. CP81-323-001 a petition to amend the order issued November 26, 1982, in Docket No. CP81-323-000 pursuant to Section 7(c) of the Natural Gas Act to increase the transportation from 600 Mcf of natural gas per day up to 2,510 Mcf of natural gas per day through its Springhill pipeline, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

IPCO states that it purchases gas at the wellhead in the Lake Erling Field, from Superior Oil Company, in LaFayette County, Arkansas, and transports this gas to Springhill, Webster Parish, Louisiana, for use as boiler fuel and space heating in its paper mill and chemical plant. By order issued November 26, 1982, in Docket No. CP81-323-000, the Commission authorized IPCO to transport up to 600 Mcf of natural gas per day for such purposes.

IPCO requests the Commission to amend its order of November 26, 1982, by authorizing IPCO to increase the amount of gas it transports from a maximum of 600 Mcf of gas per day to a maximum of 2,510 Mcf of gas per day. It is stated that no new or additional facilities are required for the transportation of gas, as requested, as the Springhill pipeline has a capacity in excess of 8,000 Mcf per day.

Comment date: May 21, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP85-433-000]

April 30, 1985.

Take notice that on April 12, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-433-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate one small volume measurement station to accommodate natural gas deliveries to the community of Mayhew Lake, Minnestoa, through Peoples Natural Gas Company (Peoples) under the blanket certificate issued in Docket No. CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to construct and operate one small volume measurement station on its 12-inch Brainerd line in Benton County, Minnesota. Applicant states that the facilities would be used for the delivery of up to 44 Mcf of natural gas per day to Mayhew Lake through Peoples, the local distribution company, for residential and commercial uses. Applicant further states that the sale would be made under its Rate Schedule CD 1, Rate Zone B, Group EF and that the required volumes would be served from the firm entitlement designated by Peoples for delivery to Mora, Minnesota. It is indicated that the total estimated cost of the facilities would be $3,286.

Comment date: June 14,1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP85-426-000]

April 30, 1985.

Take notice that on April 10, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-426-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct, interruptible sale of natural gas to H.S. Ausherman (Ausherman), in Reno County, Kansas, for use in irrigation operations under the certificate issued Docket Nos. CP82-479-000 and CP82-479-001 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.

Northwest Central proposes to tap its transmission pipeline in Reno County, Kansas, and construct measuring, regulating and appurtenant facilities for the direct interruptible sale of natural gas to Ausherman. Northwest Central estimates the cost of these facilities to be $6,030 which it proposes to pay for from available funds.

Northwest Central states that the projected volume of delivery through this point is approximately 5,500 Mcf of gas annually and 132 Mcf on a peak day. Northwest Central states it would not need ot acquire any new gas supply to make this sale and that this sale would not have a detrimental effect on any of Northwest Central's existing customers.

Northwest Central states it would change Mr. Ausherman $1.3330 per Mcf of natural gas delivered plus or minus such monthly adjustments made in accordance with the provisions of their gas sales contract.

Comment date: June 14,1985, in accordance with Standard Paragraph G at the end of this notice.

5. Mountain Fuel Resources, Inc.

[Docket No. CP85-439-000]

April 29, 1985.

Take notice that on April 16, 1985, Mountain Fuel Resources, Inc. (Applicant), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP85-439-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to operate in accordance with an amended gas transportation and exchange agreement between Colorado Interstate Gas Company (CIG) and Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant explains that on December 8, 1980, a gas transportation and exchange agreement (Agreement) was entered into between CIG and Mountain Fuel Supply Company (Mountain Fuel), Applicant's predecessor in interest to the agreement. It is stated that the agreement provides for concurrent deliveries of natural gas between the parties at specified points on their respective interstate transmission pipeline systems and limits deliveries to certain areas of interest in which gas supplies are owned or controlled by the parties. Applicant asserts that only gas from sources of supply which are within the specified areas of interest is exchanged and transported pursuant to the agreement.

Applicant states that on December 31, 1984, Applicant and CIG entered in to an amendment to the agreement to incorporate new sources of supply which lie outside the areas of interest originally specified in the agreement and to delete areas of interest that are no longer producing or have never produced natural gas. Applicant requests certificate authority to operate in accordance with the amended agreement.

Comment date: May 20, 1985, in accordance with 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 unnecesary 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 Section 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. 85-10917 Filed 5-3-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-441-003, and G-962-003]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Amendment and Petition to Amend

April 29, 1985.

Take notice that on April 17, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84-441-003, 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 (NGA) so as (1) to reduce delivery obligations to Columbia Gas Transmission Corporation (Columbia) under Tennessee's Rate Schedule CD-3 by 136,000 Mcf of gas per day, (2) to transfer 30,000 Mcf of gas per day from Tennessee's authorized sales level to Columbia under Rate Schedule CD-3 to Rate Schedule CD-4, (3) to increase certificated sales obligations on a daily and on an annual basis for various customers of Tennessee, (4) to construct and operate facilities necessary to render the revised sales services, and (5) to revise sales delivery obligations to all customers from a Mcf basis to a dekatherm (dt) basis. Tennessee also filed on April 17, 1985, in Docket No. G-962-003 a petition to amend the order issued on March 21, 1985, in Docket No. G-962-000 pursuant to Section 7(c) of the NGA so as to authorize Tennessee to revise its Rate Schedule T-20 transportation service with Columbia to change a delivery point to Columbia. The proposals are more fully set forth in the petition to amend and amendment which are on file with the Commission and open to public inspection.

In Docket No. CP84-441-003 Tennessee proposes to increase the maximum daily quantities (MDQ), annual volume limitations (AVL), and delivery point daily volume limits (DVL) for various customers, and revise sales delivery obligations to all customers from an Mcf basis to a dt basis, as detailed in Appendix A to this notice. Tennessee also requires abandonment authorization, effective February 1, 1986, for a 136,000 Mcf per day or 139,400 dt equivalent of gas per day sales reductions to Columbia; and a transfer of 30,000 Mcf of gas per day (30,750 dt per day) from Tennessee's authorized sales level to Columbia under Rate Schedule CD-3 to Rate Schedule CD-4. Tennessee states that the sales delivery obligation revisions would result in a daily contractual delivery obligation of 4,061,872 dt equivalent of gas and an annual sales delivery obligation of 1,304,196,259 dt. Further, Tennessee states that the revised sales delivery obligations would require an additional 18,000,000 Mcf of storage capacity together with 119,000 Mcf per day of withdrawal capability. Tennessee states that it has reached agreement with Consolidated Gas Transmission Corporation (Con Gas) for 12,000,000 dt equivalent of storage service and that it is currently negotiating for the remainder of the storage service required.

To accomplish the revised sales delivery obligations, Tennessee alleges that approximately 260,000 Mcf per day of additional capacity on its pipeline system is required. As a result, Tennessee proposes to construct and operate approximately $194,960,000 in facilities detailed in Appendix B to this notice to expand its system capacity. Tennessee states in its amendment that the facilities originally proposed in Tennessee's Docket No. CP84-441-000 are entirely superseded by the facilities proposed in Docket No. CP84-441-002 and those proposed herein. It is indicated that the proposed facilities would initially be financed with funds on hand, funds generated internally, and borrowings under revolving credit agreements or short-term financing which will be rolled in to permanent financing.

Tennessee indicates in its amendment that the pending Niagara Interstate Pipeline System's (NIPS) proposals in Docket No. CP83-170-000 when authorized by the Commission, would provide Tennessee with approximately 329,000 Mcf per day of new gas supplies at the border between Canada and the U.S. near Niagara Falls, New York. In the interim, prior to authorization of NIPS and construction of facilities proposed therein, Tennessee states that it contracted with Con Gas for the sales of not less than 80,000 dt equivalent per day and not more than 100,000 dt equivalent per day on a firm basis. Tennessee states that this gas supply would be available to it beginning on the in-service date of facilities proposed in this amended application at the interconnection between Tennessee and Con Gas near Morrisville, New York.

In Docket No. G-962-003, Tennessee proposes a revision to Rate Schedule T-20 which would change on February 1, 1986, Tennessee's current delivery point to Columbia from existing points of delivery in Tennessee's northern rate zone to a point of interconnection with Columbia Gulf Transmission Company near Egan, Louisiana. As a result of this change in delivery point, Tennessee also proposes to revise its Rate Schedule T-

20 transportation charge to Columbia to take effect on February 1, 1986. Tennessee proposes no other changes to its Rate Schedule T–20 transportation service.

Tennessee states in its amendment that Exhibits G through G–2 (system flow diagrams), Exhibit H (gas supply data), and Exhibit I (market data) of its amendment would be submitted as supplements to the amendment when they become available.

Any person desiring to be heard or to make any protest with reference to said amendment and petition to amend should on or before May 20, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed in Docket No. CP84–441–000 need not file again.

Kenneth F. Plumb,

Secretary.

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84–441)

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed MDQ	Proposed AVL	Proposed DVL
Texas Zone						
Hemphill	Hemphill	1,020	100,400	1,046	102,910	1,046
Kountze	Kountze	2,142	287,000	2,196	294,175	2,196
Southwest Gas	Dolen	1,020	60,000	1,046	61,500	1,046
Woodville	Woodville	1,700	359,500	2,462	368,847	2,462
Total Texas Zone		5,882	806,900	6,750	827,432	
Southern Zone						
Adamsville	Milledgeville	1,290	178,280	1,324	184,003	1,324
Alabama-Tennessee		129,144	42,752,600	158,142	48,931,965	
	Corinth					
	Barton					
	Selmar Emergency					
	Florence					
Arkansas-Louisiana	Chicot County	1,394	115,555	1,430	118,560	1,430
Ashland	Ashland	370	40,417	380	43,683	380
Baldwyn	Baldwyn	1,500	196,916	1,622	208,546	1,622
Batesville	Batesville	2,787	501,087	4,268	527,995	4,268
Bolivar	Bolivar	4,716	1,126,711	7,500	1,156,006	7,500
Booneville	Booneville	3,000	601,336	4,771	616,971	4,771
Centerville	Centerville Only	1,900	252,480	5,125	470,496	
Central Gas	Florence	2,023	429,610	4,920	852,966	4,920
Clarksville	Clarksville	22,730	4,130,992	24,121	4,034,288,366	24,121
Collinwood	Collinwood	410	76,519	675	78,819	675
Corinth	Corinth	7,100	1,183,695	12,000	1,507,904	12,000
Dickson	Dickson	4,025	1,158,678	7,500	1,188,904	7,500
East Tennessee		325,719	102,564,658	333,862	99,063,785	
	Greenbrier No. 1					243,630
	Greenbrier No. 2					
	Lobelville					
Elizabeth	Elizabeth	500	50,00	985	112,861	985
Entex						
	Coffeeville	350	45,946	554	60,057	554
	Crowder	1,000	153,347	1,731	183,920	1,731
	Drew-Jacquith	800	161,888	1,628	191,420	1,628
	Ruleville	800	144,913	1,905	206,434	1,905
	Shaw	700	111,667	995	131,367	995
	Sumner	850	120,645	1,606	150,134	1,606
	Lambert	4,817	927,033	4,942	1,058,448	4,942
	Oxford	11,015	1,579,003	11,301	1,772,398	11,301
Forest Hill	Forest Hill	190	36,738	195	37,656	195
Grand Isle	Continental Oil	1,020	64,164	1,200	80,000	1,200
Greenbrier	Greenbrier	528	79,546	1,088	96,445	1,088
Hardeman-Fayette	Moscow	1,050	345,017	1,724	353,987	1,724
Harrisonburg	Harrisonburg	727	67,000	1,182	141,690	1,182
Henderson	Henderson	1,750	272,741	2,309	279,830	2,309
Hohenwald	Hohenwald	1,652	432,978	2,206	444,237	2,206
Holly Springs	Holly Springs	4,800	1,171,400	7,500	1,200,685	7,500
Humphreys County		19,299	5,164,193	19,781	5,293,298	
	McEwen					
	Waverly					
Lexington	Lexington	2,901	443,206	7,500	12,173,625	7,500
Linden	Linden	540	90,010	1,284	141,302	1,284
Lobelville	Perry County	406	66,681	416	68,348	416
Louisiana Gas		305	34,700	313	35,600	
	Transylvania					210
Midwestern	Crownville					103
		600,780	219,284,700	615,800	224,767,000	
	Portland					
	Will County					
Mississippi Valley	Holcomb	160	17,300	164	17,733	
Nashville		154,575	38,242,900	162,610	39,237,216	
	Nashville No. 1					156,633
	Nashville No. 2					3,899
	Ashland City					1,539
	White House					1,539
	Fairview					

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)—Continued

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed MDQ	Proposed AVL	Proposed DVL
New Albany		4,664	825,850	7,500	870,199	
	New Albany					
	Cotton Plant					
North Alabama	Colbert	2,040	744,600	2,091	763,215	2,091
Northwest Alabama	Lamar County	686	250,390	1,100	401,500	1,100
Parsons	Parsons	1,876	302,184	2,565	310,041	2,565
Pontotoc	Pontotoc	2,849	611,979	5,000	630,338	5,000
Portland	Portland	1,954	376,493	3,116	457,030	3,116
Provencal	Provencal	285	26,377	292	27,036	292
Ridgetop	Ridgetop	227	21,769	387	22,334	387
Ripley	Ripley	4,249	1,538,886	7,500	1,621,552	7,500
Sam Houston	Burns	1,802	300,500	2,155	306,312	2,155
Savannah	Savannah	2,941	330,000	3,591	338,580	3,591
Senatobia	Sardis	4,410	745,789	6,500	776,203	6,500
Shuqualak	Shuqualak	1,530	508,196	1,568	521,408	1,568
Springfield	Springfield	4,895	897,624	7,500	1,380,000	7,500
Texas Gas		26,520	9,679,800	27,210	9,931,650	
	Greenville					27,183
	Greenwood					18,401
	Hardy Springs					10,978
	Mitchellville					21,956
Trans Louisiana	Robeline	140	15,100	144	15,478	144
Vernon Parish	Pitkin	306	26,129	410	31,349	410
Vina	Vina	151	13,657	1,151	300,000	1,151
Walnut	Walnut	539	67,413	616	69,166	616
Waynesboro	Wayne County	807	121,223	1,250	150,000	1,250
West Tennessee	Sardis	10,840	1,740,00	12,500	2,070,000	12,500
Total Southern Zone		1,393,334	443,561,409	1,512,705	457,215,404	
Kerr-McGee		3,570	1,303,050	3,659	1,335,535	3,659
Central Zones						
Columbia		76,500	27,922,500	78,413	28,620,745	
	North Means					
	Kenova					
	Greenup					
	Richmond					
Delta		10,420	2,139,247	15,648	2,117,585	
	Nicholasville					7,500
	Berea					6,000
	Salt Lick					1,611
	Jeffersonville					537
Grayson	Grayson	1,730	216,932	1,819	222,574	1,819
Inland		51,000	18,615,000	21,500	7,847,500	
	Straight Creek					
	Manity					
Morehead	Rowan County	3,366	491,433	3,450	503,719	3,450
Olive Hill	Olive Hill	1,225	189,787	1,539	194,722	1,539
Texas Gas		3,060	1,116,900	3,140	1,146,100	
	Glasgow					
	Scottsville					
Western Kentucky		39,158	7,436,300	40,515	7,614,771	
	Danville					13,978
	Campbellsville					6,862
	Lebanon					5,778
	Harrodsville					5,607
	Greensburg					
	Hustonville					8,290
	Lancaster					
	Perryville					
Total Central Zone		186,459	58,128,099	166,024	48,267,716	
Eastern Zone						
Cabot		9,180	3,350,700	16,000	4,525,000	
	Lane Branch					
	institute					
	Salt Rock					
Columbia		466,180	170,155,700	205,185	74,892,525	
	North Ceredo					
	Charleston					
	Frame					
	Broad Run—Cobb					
Consolidated	Broad Run—Cornwell	222,000	81,030,000	227,550	83,055,750	227,550
Cumberland	Salt Rock	1,530	558,450	1,582	577,442	1,582
Total Eastern Zone		698,890	255,094,850	450,317	163,050,717	
Northern Zone						
Columbia		93,800	34,237,000	126,895	46,316,675	
	R-501 Emergency					20,400
	Cambridge					
	Dungannon					
	Brinker					
	New Castle					
	Koppel					106,495
	Unionville					
	Bradford Woods					

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)—Continued

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed MDQ	Proposed AVL	Proposed DVL
	Highland					
	Milford					46,433
Consolidated		310,398	113,295,270	318,158	116,127,670	
	Gilmore					
	Leesville					
	Augusta					
	Petersburg					104,550
	Homewood					52,275
	Pittsburg Terminal					36,593
	Pulaski					7,175
	Cochranton					41,620
	Harrison					160,925
	Ellisburg					160,925
	Ellisburg Emergency					99,323
Equitable	Pittsburg Terminal	75,863	27,689,995	65,325	23,843,625	65,325
Honesdale	Honesdale	4,787	1,025,946	4,907	1,051,583	4,907
	Milford	964	232,910	988	[1]238,732	988
Ellis T. Myers	Carol County	964	170,000	1,009	190,650	1,009
National Fuel		175,440	64,035,600	179,626	65,636,490	
	Mercer					
	Clark Mills					
	Cochranton					
	Pettis					
	Townville					
	Union City					
	Wattsburg					109,799
	Oil City					
	Russel City					26,138
	Lamont					158,875
	Condersport					
	Ellisburg					112,750
	Sharon					
National Gas & Oil	Muskingum County	5,100	1,861,500	5,228	1,908,220	
North Penn		41,820	15,264,300	37,249	13,595,885	
	Coal Hill					
	Marienville					
	Port Allegheny					
	West Bingham					37,249
	Wellsboro					
	Mansfield					10,455
	Troy					
Penn gas & Water		33,864	12,360,360	38,000	13,870,000	
	Uniondale					
	Auburn					
Penn & Southern	Towanda	12,470	2,866,900	12,782	3,587,500	12,782
T.W. Phillips	Pittsburg Terminal	5,100	1,861,500	5,228	1,908,220	5,228
Pike Natural	Pike	5,100	829,400	6,500	850,136	6,500
Total Northern Zone		765,690	275,730,681	802,095	289,125,386	
New York Zone						
Brooklyn Union	White Plains	20,400	7,446,000	20,910	7,632,150	20,910
Central Hudson		15,810	5,770,650	16,205	5,914,825	
	Cedar Hill					25,092
	Mahwah					8,364
Con Edison	White Plains	30,600	11,169,000	31,365	11,448,225	
	Knollwood					
	Rye					12,300
	Mahwah					9,045
Consolidated		63,640	30,528,600	85,731	31,291,815	
	Marilla					
	Craigs Emergency					
	Phelps Emergency					
	Niagara Mohawk					
	Cazenovia					
	Morrisville					
	Albany					26,139
	Brookview					
Elizabethtown		2,610	373,500	3,300	440,238	
	Sussex					2,500
	Vernon					800
ULCO	White Plains	5,100	1,861,500	10,444	3,812,060	10,444
National Fuel		114,240	41,697,600	117,096	42,740,040	
	Sherman					
	Mayville					
	Nashville					
	Hamburg					
	East Aurora					
	Clarence					
	Pekin					
	Lewiston					
	Wyoming					
	East Eden					117,096
NYSEG	Lockport	31,901	7,783,100	28,000	6,733,000	28,000
Orange & Rockland		54,802	20,002,730	61,200	22,338,000	
	Pearl River					
	Tappan					
Public Service		35,700	13,030,500	88,271	24,972,357	
	West Millford					

APPENDIX A.—TENNESSEE GAS PIPELINE COMPANY PROPOSED AVL/MCQ CHANGES (DOCKET NO. CP84-441)—Continued

Zone and customer	Delivery point	MCF at 14.73 psia		Dekatherms		
		Existing MDQ	Existing AVL	Proposed MDQ	Proposed AVL	Proposed DVL
	Ramsey					
	Rivervale					
Total New York zone		394,803	139,563,180	462,522	157,322,710	
New England Zone						
Berkshire		19,948	5,256,650	25,572	5,602,985	
	Pittsfield					12,310
	North Adams					10,250
	Stockbridge					6,125
	Greenfield					8,713
Blackstone	Blackstone	505	145,105	675	194,000	675
Boston Gas		93,912	23,784,605	135,999	34,424,000	
	Southbridge					7,750
	Spencer					4,300
	Clinton					3,450
	Leominster					7,100
	Lexington					5,200
	Burlington					16,200
	Arlington					39,767
	Reading					16,500
	Lynnfield					4,300
	Lynn					14,321
	Revere					5,911
	West Peabody					3,050
	Beverly Salem					25,500
	Gloucester					6,895
Colonial		34,680	10,732,000	40,000	14,600,000	
	Tewksburg					40,000
	Wilmington					12,000
	Dracut					12,000
Commonwealth		55,386	16,858,000	64,155	18,431,216	
	Worcester					54,400
	Farnumsville					6,000
	Hopkinton					30,000
	Hudson					11,000
Concord		5,441	1,468,056	10,100	2,345,520	
	Concord					7,500
	Suncook					2,600
Connecticut Light & Power		44,133	10,465,779	59,000	17,051,000	
	Torrington					5,135
	Winsted					2,500
	Long Ridge Road					26,000
	Norwalk					12,000
	Derby					15,507
	Danbury					14,200
	Wallingford					11,200
	Stamford Emergency					
Connecticut Natural		36,794	11,616,068	37,787	11,929,702	
	Greenwich					11,300
	Putnam Lake					15,900
	New Britain					25,700
	Farmington					10,100
	Bloomfield					5,900
	North bloomfield					8,200
Energy North		23,697	5,491,800	34,953	7,687,500	
	Nashua					23,081
	Manchester					16,000
	Hooksett					1,322
	Laconia					7,176
	Londenderry					5,228
Essex County		14,519	4,100,200	20,682	5,487,790	
	Wenham					5,000
	Essex					2,500
	Haverhill					20,000
Fitchburg	Fitchburg	7,506	2,734,215	10,246	2,799,834	10,246
Granite State		83,921	25,223,808	127,391	35,922,237	
	Northampton					6,567
	Agawam					48,000
	East Longmeadow					40,000
	Lawrence					37,849
	Pleasant Street					25,000
Holyoke	Holyoke	7,875	2,767,000	10,200	3,287,875	10,200
Southern Connecticut		38,178	10,674,700	47,040	17,169,600	
	Westport					15,000
	Bridgeport					30,000
	Trumbull					20,000
Valley	Pawtucket	19,985	6,112,800	27,550	8,575,216	27,550
Westfield	Westfield	5,079	1,852,655	6,250	1,342,884	6,250
Total New England Zone		491,569	139,303,441	657,800	187,051,359	
Total System		3,940,197	[1]1,313,591,610	4,061,872	1,304,196,259	

[1] Including North Penn Rate Schedule SO 4 service, the total system AVL is 1,319,089,410 Mcf.

APPENDIX B.—TENNESSEE GAS PIPELINE COMPANY CONSTRUCTION COST ESTIMATE

(Project Summary: AVL/MDO Facilities)

Schedule No. and description	Unit	Quantity	Unit cost	Amount	Total dollars
2—30" pipeline ldop from MLV 242 + 8.8 to MLV 243, Madison County, New York	Mile	2.5	$630,800.00	$1,577,000	
3—30" pipeline loop from MLV 246 + 6.9 to MLV 246 + 11.4, Otsego County, New York	Mile	4.5	578,222.23	2,602,000	
4—30" pipeline loop from MLV 251 + 3.5 to MLV 252, Albany County, New York	Mile	5.2	629,615.38	3,274,000	
5—30" pipeline loop from MLV 253 to MLV 253 + 4.0, Rensselaer County, New York	Mile	4.0	671,750.00	2,687,000	
6—30" pipeline loop from MLV 254 to MLV 254 + 4.1, Columbia County, New York	Mile	4.1	692,439.02	2,839,000	
7—30" pipeline loop from MLV 259 + 4.2 to MLV 259 + 9.2, Hampden County, Massachusetts	Mile	5.0	848,000.00	4,240,000	
8—30" pipeline loop from MLV 261 + 10.8 to MLV 262 + 6.8, Hampden County, Massachusetts	Mile	9.0	833,000.00	7,497,000	
9—30" pipeline loop from MLV 264 + 3.8 to MLV 265, Worcester County, Massachusetts	Mile	7.4	928,918.92	6,874,000	
10—30" pipeline loop from MLV 314 to MLV 314 + 6.9, Potter and Tioga Counties, Pennsylvania	Mile	6.9	611,014.49	4,216,000	
11—30" pipeline loop from MLV 315–1A to MLV 315–1A + 8.0, Tioga County, Pennsylvania	Mile	8.0	619,000.00	4,952,000	
12—30" pipeline loop from MLV 318 + 3.2 to MLV 319, Bradford County, Pennsylvania	Mile	11.2	641,875.00	7,189,000	
13—30" pipeline loop from MLV 320 + 7.9 to MLV 320 + 12.2, Susquehanna County, Pennsylvania	Mile	4.3	662,558.14	2,849,000	
14—30" pipeline loop from MLV 321 to MLV 322 + 3.8, Susquehanna and Wayne Counties, Pennsylvania	Mile	18.0	641,277.78	11,543,000	
15—30" pipeline loop from MLV 325 + 4.3 to MLV 326 + 3.3, Sussex County, New Jersey	Mile	7.0	1,016,857.10	7,118,000	
16—30" pipeline loop from MLV 329 to MLV 329 + 5.0, Bergen County, New Jersey	Mile	5.0	1,067,400.00	5,337,000	
17—Engine/compressor addition at station 249, Schoharie County, New York	H.P.	3,000	1,999.67	5,999,000	
18—Engine/compressor addition at station 254, Columbia County, New York	H.P.	2,800	2,360.36	6,609,000	
19—Engine/compressor addition at station 261, Hampden County, Massachusetts	H.P.	2,000	2,554.50	5,109,000	
20—Turbine/compressor addition at station 264, Worcester County, Massachusetts	H.P.	3,165	1,311.53	4,151,000	
21—Turbine/compressor addition at station 267, Middlesex County, Massachusetts	H.P.	3,000	1,371.00	4,113,000	
22—Engine/compressor addition at station 313, Potter County, Pennsylvania	H.P.	2,000	2,938.50	5,877,000	
23—Turbine/compressor addition at station 315, Tioga County, Pennsylvania	H.P.	3,000	1,426.00	4,278,000	
24—Turbine/compressor addition at station 317, Bradford County, Pennsylvania	H.P.	3,165	1,511.85	4,785,000	
25—Turbine/compressor addition at station 321, Susquehanna County, Pennsylvania	H.P.	3,500	1,100.29	3,851,000	
26—Turbine/compressor addition at station 325, Sussex County, New Jersey	H.P.	3,500	1,087.43	3,806,000	
27—10" pipeline replacement, Torrington lateral, from valve 259A–102 to valve 259A–103, Litchfield County, Connecticut	Mile	7.4	355,810.81	2,633,000	
28—10" pipeline loop, Adams lateral, from valve 256A–101.1 + 3.8 to valve 256A–102, Berkshire County, Massachusetts	Mile	6.0	338,656.67	2,032,000	
29—12" pipeline loop, Northampton lateral, from valve 260A–101.1 to valve 260A–103, Hampden and Hampshire Counties, Massachusetts	Mile	12.4	342,903.23	4,252,000	
30—12" pipeline loop, Blackstone lateral, from valve 266C–102 + 4.8 to valve 266A–103, Norfolk County, Massachusetts	Mile	0.9	617,777.78	556,000	
31—8" pipeline replacement, Spencer delivery, from valve 264B–101 to valve 264B–102, Worcester County, Massachusetts	Mile	8.6	345,116.28	2,968,000	
32—10" pipeline loop, Fitchburg lateral, from valve 268A–102 to valve 268A–103, Worcester County, Massachusetts	Mile	7.0	406,428.57	2,845,000	
33—12" pipeline loop, Haverhill lateral, from valve 270B–302 to valve 270B–302 + 3.0, Essex County, Massachusetts	Mile	3.0	461,000.00	1,383,000	
34—10" pipeline loop, Concord lateral, from valve 270B–105 to valve 270B–105 + 15.1, Hillboro and Merrimack Counties, New Hampshire	Mile	15.1	320,529.80	4,840,000	
35—10" pipeline replacement, reading delivery, from valve 270C–201 to valve 270C–201 + 0.7, Middlesex County, Massachusetts	Mile	0.7	757,142.86	530,000	
36—24" pipeline loop, Beverly-Salem lateral, from valve 270C–101.1 + 1.6 to valve 270C–101.1 + 9.0, Middlesex County, Massachusetts	Mile	7.4	825,135.14	6,106,000	
37—12" pipeline loop, Beverly-Salem lateral, from valve 270C–102 + 0.8 to valve 270C–103, Essex County, Massachusetts	Mile	1.6	586,250.00	938,000	
38—10" pipeline replacement, Pittsfield delivery, from valve 256A–201 to valve 256A–201 + 0.6, Berkshire County, Massachusetts	Mile	0.6	693,333.33	416,000	
39—8" pipeline replacement, Winsted delivery, from valve 259A–201 to valve 259A–201 + 0.6, Litchfield County, Connecticut	Mile	0.6	588,333.33	353,000	
40—8" pipeline replacement, Westfield delivery, from valve 260A–201 to valve 260–201 + 1.2, Hampden County, Massachusetts	Mile	1.2	401,666.67	482,000	
41—8" pipeline replacement, Clinton delivery, from valve 268A–201 to valve 268–201 + 3.6, Worcester County, Massachusetts	Mile	3.6	342,500.00	1,233,000	
42—8" pipeline replacement, Leominster delivery, from valve 268A–301 to valve 268A–301 + 2.2, Worcester County, Massachusetts	Mile	2.2	456,818.18	1,005,000	
43—Modify and/or repalce thirty-one (31) existing meter facilities, systemwide, to handle increased capacities	Lot	1		6,749,000	
Total direct cost—1986					$162,693,000
Overhead	Lot	1			24,404,000
Allowance for funds used during construction	Lot	1			7,484,000
Regulatory fee	Lot	1			379,000
Total project cost—1986					194,960,000

[FR Doc. 85–10920 Filed 5–3–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $7,914.90 (plus accrued interest) obtained as the result of a Memorandum and Order issued to Glen Martin Heller by the United States District Court in Massachusetts. The funds will be available to customers who purchased motor gasoline from Heller during the period August 1, 1979 through December 1, 1979.

DATE AND ADDRESS: Applications for refund of a portion of the Heller refund amount must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Heller Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All applications should conspicuously display a reference to Case Number HEF–0088.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the

procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Memorandum and Order issued to Glen Martin Heller (Heller) by the United States District Court in Massachusetts. The Memorandum and Order adjudicated pricing violations with respect to the firm's sales of motor gasoline during the period August 1, 1979 through December 1, 1979. Under the terms of the Memorandum and Order, $7,914.90 has been remitted by Heller to the DOE and is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the Heller refund amount. The Proposed Decision and Order discussing the distribution of the Heller refund amount was issued on February 20, 1985 (50 FR 8188, February 28, 1985).

As the Heller Decision and Order indicates, applications for refunds from the refund amount may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased motor gasoline from Heller during the period August 1, 1979 through December 1, 1980. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: April 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy, Special Refund Procedures

April 25, 1985.

Name of Firm: Glen Martin Heller.

Date of Filing: October 13, 1983.

Case Number: HEF-0088.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received from Glen Martin Heller (Heller) of Boston, Massachusetts, pursuant to a federal district court order.

I. Background

Heller is a "retailer" of "motor gasoline," as these terms were defined in 10 CFR 212.31. An ERA audit of Heller's operations during the period August 1, 1979 through December 1, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations.[1] In a Memorandum and Order issued on December 29, 1981, the United States District Court in Massachusetts found that Heller had overcharged his customers by $6,577.76 in sales of motor gasoline at this Beacon Hill Gulf Station during the audit period. *United States v. Heller*, 542 F. Supp. 154 (D Mass. 1981), *aff'd*, DKT. No. 1-12 (Temp. Emer. Ct. App. June 9, 1982).[2] Accordingly, the court orderd Heller to pay a total of $7,914.90 (the overcharge amount plus interest of $1,337.14) into an interest-bearing escrow account under the control of the DOE.

On February 20, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the refund amount. 50 FR 8188 (February 28, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any overcharges made by Heller during the audit period.

A copy of the PD&O was published in the **Federal Register** on February 28, 1985, and comments were solicited regarding the proposed refund procedures. While one of Heller's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Lousiana, North Dakota, Rhode Island, and West Virginia. These comments, however, discuss the distribution of any residual funds in a subsequent proceeding. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. This Decision sets forth the information that a purchaser of motor gasoline from Heller should submit in an Application for Refund in order to establish eligibility for a portion of the refund amount. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid.[3] Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as a result of settlement agreements or judicial or administrative orders, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as Vickers). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Heller refund amount. We will therefore grant the ERA's petition and assume jurisdiction over distribution of these funds.

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[1] In an enforcement proceeding involving an earlier audit period, December 1, 1976, through June 14, 1979, the DOE has issued a Remedial Order (RO) to Heller, which requires him to refund overcharges of $54,347.98. *Glenn Martin Heller*, 11 DOE ¶ 83,005 (1983). This Order was recently affirmed, with modifications, by a Hearing Officer of the Federal Energy Regulatory Commission. *Glen Martin Heller*, 30 FERC ¶ 62,231 (1985).

[2] In the Memorandum and Order, the court found that Heller had overcharged his motor gasoline customers by a total of $11,359.47, but had refunded $4,781.71 to the market. The court therefore ordered Heller to refund the balance of $6,577.76, plus interest, to the DOE. The court also imposed a civil penalty of 25 percent of the overcharge amount and interest, which the firm paid in full on June 23, 1982.

[3] It is not clear, however, that these states and their citizens have a legitimate interest in the present proceeding, since all of the sales involved were made in Massachusets.

III. Determination of Refund Procedures

As proposed in the PD&O, we will adopt a presumption that the overcharges were dispersed equally in all sales of motor gasoline made during the audit period. The OHA has referred to this presumption in the past as a volumetric refund amount. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The volumetric refund presumption is designed to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged or adjudicated overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[4]

In the PD&O, we noted that the audit records do not identify any purchasers of motor gasoline from Heller's Beacon Hill Gulf Station or list any overcharge amounts by customer. Consequently, we find that the available information is insufficient to base refunds on the amount each individual customer was overcharged. Accordingly, as proposed in the PD&O, we will use the volumetric method to allocate the refund amount. To determine the volumetric factor, the refund amount ($7,914.90) will be divided by the estimated total volume of gasoline sold by Heller during the audit period (176,208 gallons), resulting in a per gallon refund amount of $0.04492.[5] The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

In addition to the volumetric refund presumption, we are making a finding that Heller's customers, all of whom were end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the overcharges adjudicated in the Memorandum and Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the audit period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *See also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of motor gasoline purchased from Heller during the audit period need only document their purchase volumes from Beacon Hill Gulf to make a sufficient showing that they were injured by the overcharges.

We shall also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

In the present case, an end-user must have purchased at least 333 gallons of motor gasoline from Heller during the four month audit period in order to be eligible for a refund amount at or above the minimum level of $15. While many motorists will therefore be ineligible for refunds in this proceeding, we recognize that there may have been persons or firms who purchased relatively large volumes of motor gasoline from Heller during the audit period. In the course of evaluating numerous Applications for Exception from the Mandatory Petroleum Allocation Regulations during the period of price and allocation controls, we learned that it was not unusual for local governmental entities and small businesses regularly to patronize one retail service station, often on a contractual basis. This was particularly true for governmental entities and businesses with multiple vehicles (buses, police and fire vehicles, delivery vans, taxis, etc.) which required a dependable supply of motor gasoline, but did not have bulk storage facilities of their own. It is possible that Heller had such customers during the audit period. In order that these customers may be notified of their opportunity to apply for a refund, we intend to publicize this proceeding in local newspapers in the area where Heller conducted business.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Heller refund amount. Accordingly, we shall now accept applications for refunds from customers who purchased motor gasoline from Heller during the audit period.

In order to receive a refund, each applicant will be required to report the monthly volume of motor gasoline purchased from Heller for which it is claiming a refund. In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund.

All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. Each application must be in writing, signed by the applicant, and specify that it pertains to the Heller Consent Order Fund, Case No. HEF-0088. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional

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[4] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Heller's pricing practices during the adult period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1948); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[5] Because our records do not list the volumes of motor gasoline sold by heller during the entire four months of the audit period, we have extrapolated sales figures from the available data. In the PD&O, we calculated a volumetric refund factor of $0.05320 on the basis of an extrapolated total volume figure of 148,777 gallons. Upon closer examination of our records, we have determined that an extrapolated total volume figure of 176,208 gallons is more accurate. Accordingly, we have adjusted the volumetric refund factor to $0.04492.

copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for refunds from funds remitted to the Department of Energy by Glen Martin Heller pursuant to the Memorandum and Order issued by the United States District Court for the District of Massachusetts on December 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: April 25, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-10902 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Period of March 25 Through April 5, 1985

During the period of March 25 through April 5, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director Office of Hearings and Appeals.

April 26, 1985.

C&B Warehouse Distributing, Inc., Virginia, Minnesota; HEE-0122, Reporting Requirements

C&B Warehouse Distributing, Inc. filed an Application for Exception which, if granted, would relieve C&B of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 3, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 85-10903Filed 5-3-85: 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Week of April 8 Through April 12, 1985

During the week of April 8 through April 12, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

April 26, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Formby Oil Company, Pawhuska, Oklahoma, HEE-0123, Reporting Requirements

Formby Oil Co. filed an Application for Exception which, if granted, would relieve Formby of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 8, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Franklin Oil Company, Creston, Iowa, HEE-0121, Reporting Requirements

Franklin Oil Co. filed an Application for Exception which, if granted, would relieve Franklin of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 9, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

Petro Products, Inc., Anchorage, Alaska, HEE-0125, Reporting Requirements

Petro Products, Inc. filed an Application for Exception which, if granted, would relieve Petro Products of its obligation to file EIA Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On April 9, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 85-10904 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of March 25 Through March 29, 1985

During the week of March 25 through March 29, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1985.

Port Petroleum Co., Shreveport, Louisiana, HRO-0282, Crude Oil

On March 27, 1985, Port Petroleum, Inc. (Port), P.O. Box 1837, Shreveport, Louisiana, filed a Notice of Objection to a Proposed Remedial Order which the Dallas Office of Field Operations of the Economic Regulatory Administration issued to the firm on February 15, 1985. In the PRO, the Dallas Office found that during the period from October 1978 to December 1980, Port resold crude oil at prices in excess of those permitted under 10 CFR Part 212, Subpart L. According to the PRO, the Port violation resulted in approximately $12,500,000 of overcharges.

Shell Oil Company, Houston, Texas, HRO-0277, Petroleum Products

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO, the ERA found that during the period August 1973 through January 1981, Shell unlawfully revised and altered calculations of its unrecouped costs and its maximum allowable prices by changing the reallocation of costs it had previously made from one product category to another. According to the PRO, Shell is liable for any overcharges resulting from these recalculations.

Shell Oil Company, Houston, Texas, HRO-0278, Petroleum Products

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period February 1, 1975 through December 31, 1976, Shell incorrectly calculated non-product cost increases for its interest, refinery fuel, marketing, pollution control and utility cost categories resulting in overstatements of increased non-product costs available for passthrough in prices charged for covered petroleum products. According to the PRO, Shell must recalculate its non-product costs and refund any resulting overcharges.

Shell Oil Company, Houston, Texas, HRO-0279, Aviation Jet Fuel

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period September 1973 through January 1981, Shell failed to establish a lawful class of purchaser system for its sales of aviation jet fuel. The PRO also alleges that the firm failed to establish lawful May 15, 1973 prices for aviation jet fuel based on actual transactions. The PRO offers two alternative methods for the calculation of overcharges.

Shell Oil Company, Houston, Texas, HRO-0280, Petroleum Products

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period August 1973 through January 1981, Shell assigned improper and excessive May 15, 1973 selling prices to consumers, retailers, and resellers of gasoline and distillates, as well as to consumers and resellers of propane. The PRO proposes three possible alternative methods for the calculation of overcharges.

Shell Oil Company, Houston, Texas, HRO-0281, Motor Gasoline

On March 25, 1985, Shell Oil Company, P.O. Box 576, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on February 15, 1985. In the PRO the ERA found that during the period October 1974 through December 1976, Shell incorrectly calculated and reported its increased costs of motor gasoline and therefore overstated its unrecouped increased costs available for passthrough in sales of motor gasoline. The PRO proposes remedies which would require recalculation of Shell's maximum lawful selling prices for the period October 1974 through January 1981.

[FR Doc. 85-10900 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of April 1 Through April 5, 1985

During the Week of April 1 through April 5, 1985, the notice of objection to the proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 26, 1985.

CPI Crude, Inc., Houston, Texas, HRO-0283, Crude Oil

On April 4, 1985, CPI Crude, Inc., 4352 Post Oak Lane, Suite 204, Houston, Texas 77001, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on February 28, 1985. In the PRO the Dallas District found that during the period February 1976 through December 1977, CPI illegally charged prices for crude oil in excess of its maximum lawful selling price (MLSP). In addition, the PRO alleges that CPI's markup in its sales of crude oil during the months of February, June, July, August, and October 1978, was in excess of its permissible average markup.

According to the PRO the violation resulted in $10,092,903 of overcharges.

[FR Doc. 85-10901 Filed 5-3-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Agency Information Collection Activities Under OMB Review

[OPPE FRL-2830-4]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Information Requirements for New Source Review and Prevention of Significant Deterioration Permitting Programs (EPA #1230). (This is a revision to an existing information collection.)

Abstract: New or modified major stationary air pollution sources must apply for preconstruction permits. States determine from the applications whether potential emissions would adversely affect the National Ambient Air Quality Standard. In clean air areas prevention of significant air quality deterioration must be achieved by best available control technology; in dirty areas new source reviews require lowest achievable emissions rates.

Respondents: New or modified major stationary air pollution sources.

Office of Pesticides and Toxic Substances

Title: Applications for PCB Disposal Permits (EPA #1012). (This is a renewal of an existing information collection request.)

Abstract: EPA requires applicants for PCB disposal permits to provide a sampling and quality assurance plan as well as an environmental impact assessment. EPA will use this information in evaluating the ability of the facility to dispose of PCBs safely.

Respondents: Toxic waste disposal facilities.

Agency PRA Clearance Requests Completed by OMB

EPA #0824; Ocean Dumping Applications and Reporting (renewal of existing requirements), was approved April 5, 1985 (OMB #2040-0008; expires April 30, 1987).

EPA #0909/1195; Information Requirements for Construction Grants—Delegation to States, was approved April 11, 1985 (OMB #2040-0095; expires June 30, 1986).

EPA #0940; NAAQS: Precision and Accuracy Data—Reporting and Recordkeeping, was approved April 17, 1985 (OMB #2060-0084; expires May 31, 1987).

EPA #0979; CERCLA (Superfund) Natural Resource Claims Procedures and CERCLA Arbitration Procedures, was approved April 19, 1985 (OMB #2050-0043; expires April 30, 1988).

EPA #1013; Request for Discharge Authorization—Ore Recovery Mills, was approved April 4, 1985 (OMB #2040-0093; expires April 30, 1986).

EPA #1100; National Emission Standards for Hazardous Air Pollutants, Standards for Radon-222 Emission from Underground Uranium Mines, was approved April 11, 1985 (OMB #2060-0115; expires April 30, 1988).

EPA #1174; Leaking Underground Storage Tank Survey, was approved April 16, 1985 (OMB #2070-0037; expires April 30, 1988).

* * * * *

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

Wayne Leiss (for #1230)

or

Carlos Tellez (for #1012)

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: April 29, 1985.

David Schwarz,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-10792 Filed 5-3-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-000061; FRL-2831-3]

Health Effects Testing Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces the availability of certain proposed health effects testing guidelines for genotoxicity which have been developed by the Organization for Economic Cooperation and Development (OECD). Interested persons are requested to review these guidelines and provide to EPA comments on the need for such guidelines, their relevance to hazard assessment, and their technical content. Comments will be considered in determining the need for these guidelines and in redrafting into OECD guidelines the proposed guidelines judged to be necessary.

DATE: Comments should be received by June 30, 1985.

ADDRESS: Written comments should be addressed to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should bear the identifying Document Control Number OPTS-00061. All written comments filed in response to this notice will be available for public inspection in the OTS Reading Rm., E-107, at the above address, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The reports will be available for review in the OTS Reading Room at the address given above and in all EPA Regional Offices. See Supplementary Information below for a list of those locations.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460.

Toll Free: (800-424-9065),
In Washington: (554-1404),
Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: An initial goal of the Chemicals Program of the OECD was the mutual acceptability of testing data, which depends on consistency in testing methodology or agreed-upon testing guidelines. Already an initial series of guidelines as developed by OECD Expert Groups, an Updating Panel, and a national review process have been agreed upon. Data developed in one country in accordance with OECD Test Guidelines and Good Laboratory Practices will be acceptable in other OECD member states for assessment purposes. Those Test Guidelines can be purchased from the OECD Publication Center, Suite 1207, 1705 Pennsylvania Ave., NW., Washington, D.C. 20006 (202-724-1857).

Additional guidelines are currently being developed and submitted to the OECD Updating Panel by member countries. After an initial review by the Updating Panel, these guidelines are made available for member country comment. The proposed guidelines now available for comment are: "Gene Mutation, *Aspergillus nidulans*"; "Somatic Segregation, *Aspergillus nidulans*"; "Gene Mutation, *Schizosaccaromyces pombe*"; "DNA Damage and Repair, Unscheduled DNA Synthesis, Mammalian Cells *in vitro*"; "Mammalian Germ-Cell Cytogenetics"; Mouse Spot Test"; "Mouse Heritable Translocation." Proposed guidelines

(including these announced today) and revisions to previous guidelines are to be managed via the OECD Updating Program.

The EPA, as the U.S. lead for interaction with the OECD Updating Panel, has established an Ad Hoc Review and Editing Group to coordinate U.S. input for such activities. The group is currently chaired by Dr. William Farland, Deputy Director, Health and Environmental Review Division, Office of Toxic Substances, USEPA. Members of the group include Dr. Robert Moolenaar, Dow Chemical, representing the U.S. Business and Industry Advisory Committee (BIAC) chemical subcommittee; Dr. Ellen Silbergeld, Environmental Defense Fund, representing the public interest group perspective; Dr. Thomas Shellenberger, National Association of Life Sciences Industries (NALSI) representing contract testing laboratory perspective; Dr. Dorothy Canter, National Toxicology Program, representing the Federal toxicology testing program perspective; a representative from the Food and Drug Administration; and others from interested EPA program offices.

This Ad Hoc Group is responsible for assuring that the guidelines are distributed for comment to their constituencies in the United States. Members of the Group may be contacted directly for copies of guidelines under review. The Group will also review and summarize the comments into a report to the OECD. If deemed necessary by the Group, a panel of U.S. experts will be convened and will be asked to provide input for the formulation of the coordinated U.S. comments to be submitted to the OECD, a copy of which will be filed in the public record. Similar reviews will take place in other countries. Based on the national comments, the OECD Updating Panel may convene an ad hoc International Expert Group to conduct a final revision and resubmit to the Updating Program in early 1986. If necessary, further public reviews can be held. When considered ready, guidelines will then be submitted to the Chemicals Program and OECD Council for adoption. Finalization of these guidelines, if appropriate, is expected in late 1986.

EPA headquarters in Washington, D.C., and the following locations will have copies of the guidelines available for public inspection:

1. Environmental Protection Agency, Region I Library, John F. Kennedy Federal Bldg., 22d Floor, Government Center, Boston, MA 02203, (617–223–7210).

2. Environmental Protection Agency, Region II Library, Federal Bldg., Rm. 900, 26 Federal Plaza, New York, NY 10278, (212–264–2525).

3. Environmental Protection Agency, Region III Library, Curtis Bldg., 2d Floor, Sixth and Walnut Sts., Philadelphia, PA 19106, (215–597–9800).

4. Environmental Protection Agency, Region IV Library, 2d Floor, Courtland St. Entrance, 345 Courtland St., NE., Atlanta, GA 30365, (404–881–4727).

5. Environmental Protection Agency, Region V Library, Kluczynski Bldg., 14th Floor, 230 South Dearborn St., Chicago, IL 60604, (312–353–2000).

6. Environmental Protection Agency, Region VI Library, First International Bldg., 1201 Elm St., Dallas, TX 75207, (214–767–2600).

7. Environmental Protection Agency, Region VII Library, 1st Floor, 324 East Eleventh St., Kansas City, MO 64106, (214–374–5493).

8. Environmental Protection Agency, Region VIII Library, 1st Floor, 1860 Lincoln St., Denver, CO 80295, (303–837–3895).

9. Environmental Protection Agency, Region IX Library, 6th Floor, The Fremont Center, 215 Fremont St., San Francisco, CA 94105, (415–974–8153).

10. Environmental Protection Agency, Region X Library, 11th Floor, Park Place Bldg., 1200 Sixth Ave., Seattle, WA 98101, (206–442–5810).

It is suggested that interested persons telephone ahead to be certain of the visiting hours at those locations.

(Sec. 4, 90 Stat., 2006 (15 U.S.C. 2603))

Dated: April 27, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-10914 Filed 5-3-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. DS-401]

Advisory Committee on Reduced Orbital spacing; Meeting

May 1, 1985.

A meeting of the full FCC Advisory Committee on Reduced Orbital Spacing will take place on Monday, May 20, and Tuesday, May 21, 1985. The purpose of this advisory committee is to obtain expert technical and operational recommendations on how to better implement 2° spacing between satellites in the 4/6 GHz and 12/14 GHz frequency bands. The May 20–21 meetings will be extremely important. Working group chairmen will present specific recommendations for inclusion in Phase I of the Committee's Report. The full Committee will then attempt to reach a consensus on recommendations to be made to the FCC.

Date: May 20–21, 1985.

Time: 9:30 a.m.

Place: Room 856, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

AGENDA

1. Adoption of Agenda.
2. Adoption of Minutes from last meeting.
3. Report from Chairman on schedule for final committee report.
4. Presentation from each of the three working group chairmen on draft working group reports, and discussion of draft reports.
5. Other Business.

This meeting is open to the public. For additional information contact Roger Herbstritt at the FCC at (202) 634–1624.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-10936 Filed 5-3-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Market Discipline for FDIC-Insured Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has been concerned that bank depositors and other creditors of insured banks do not impose sufficient discipline on the risk-taking activities of banks. As the industry has become more deregulated, the importance of market discipline has become more important. In considering ways in which to increase market discipline and thereby increase the safe and sound operation of banks and decrease risks to the deposit insurance fund, the FDIC has considered two alternatives. One approach would be to modify the deposit payoff procedure when a bank fails so that some of the advantages of a purchase and assumption transaction could be retained, while uninsured depositors and other general creditors would still be exposed to potential loss. The other approach would be to raise capital requirements substantially, allowing subordinated debt to satisfy a significant portion of the increased requirement. Because of the impact on the banking industry and the public that would occur if the modified payoff procedure were used in every bank failure or the required capital level were increased significantly, comment is

being requested in order to help the FDIC evaluate whether one or both of these approaches would be effective and should be utilized.

DATE: Comments must be received by July 5, 1985.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429. Comments may be hand-delivered to room 6108 between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, and will be available for public inspection during that time.

FOR FURTHER INFORMATION CONTACT: John J. Quinn III, Financial Economist, Division of Research and Strategic Planning, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429, at (202) 389-4547.

SUPPLEMENTARY INFORMATION: For some time the Board of Directors of the FDIC has been concerned that bank depositors and other creditors do not impose sufficient discipline on the risk-taking activities of banks. At the present time more than 80 percent of the dollar volume of domestic deposits in insured banks is insured by the FDIC and, for a substantial majority of banks, insurance coverage is in excess of 90 percent. While insurance coverage is lower for larger commercial banks, most large bank failures have been handled by the FDIC through purchase and assumption transactions (P&As) so that all depositors and other general creditors have had their claims assumed by the acquiring bank.

Generally, P&As have had certain advantages over deposit payoffs: they are less disruptive to the community; the payments process is not interrupted; some of the franchise value of the failing institution is preserved; and the cost of a P&A to the FDIC is generally less than the cost of a deposit payoff. However, if depositors perceive that they will not be exposed to loss if their bank fails, they have no incentive to be concerned about risk taking by their banks. In a deregulated deposit environment, riskier depository institutions can outbid sound institutions for deposits and rely on deposit insurance to assuage any depositor concerns about risk or loss. This may impose a cost on the banking system and the insurance fund that is not readily apparent in determining how to handle an individual bank failure.

If the public perception is that large banks will not be paid off, large banks will have an advantage in competing for uninsured funds that may not be reflective of their financial strength. This is an additional matter of concern about the impact of the deposit insurance system.

The problems cited above have existed for several decades. However, as long as banks were heavily regulated and the economic environment was very forgiving of mistakes, shortcomings in the deposit insurance system seemed largely academic. Changes that have occurred in the economic and competitive environment in recent years have exposed problems in the way the insurance system operates. Last year 79 FDIC-insured banks failed, surpassing the number of insured bank failures in any of the previous 50 years of the FDIC's existence. In recent years failures and near-failures have included some of the nation's largest banks.

Supervisory efforts of the federal banking agencies have been upgraded in recent years and will continue to be improved. However, the FDIC's Board believes that it is important to supplement these efforts through greater reliance on market forces. The FDIC is considerling two alternative approaches to enhance market discipline. One approach would be to do an insured deposit payoff on virtually all failed banks in the future, but to modify the payoff procedure so that some of the advantages of the P&A could be retained. The other approach would be to raise capital requirements substantially, but to allow subordinated debt to satisfy a significant portion of the increased requirement. In this way, suppliers of "capital," and particularly subordinated lenders, would supply enhanced market discipline.

These two approaches (which are not necessarily mutually exclusive) are discussed below. The FDIC is seeking public comment on these.

Modified Payoff

The FDIC paid off several banks in March and April of 1984, using a "modified" payoff transaction. In the transaction a failing bank is closed and a receivership is created in the same manner as in a standard payoff. However, instead of paying insured deposits by check, payment is made by transferring these accounts to another bank.

Prior to or at the time of a closing, potential acquiring banks are contacted in much the same manner as in a P&A. They are asked to bid on a package which includes selected nonproblem assets of the failed bank (generally, physical facilities, cash assets, securities priced at market, performing consumer loans and, possibly, other performing loans). They are asked to assume insured deposits, whereas in a P&A they would assume all deposits and other liabilities of general creditors.

Deposit accounts that are fully insured are transferred to an acquiring bank, and when the transaction is effected over a weekend, there is no service interruption for holder of these accounts. Insofar as a premium is paid for the acquired franchise and accounts, that advantage of the P&A is preserved.

In most deposit payoffs uninsured creditors receive no payment on their claims until the funds are collected by the receiver. Periodically, the proceeds of receivership collections on failed bank assets are distributed to uninsured creditors. Initial payments rarely occur within the first year and, typically, future payments are spread over several years.

In the modified payoff, the FDIC promptly estimates the present value of net receivership collections and, on the basis of this estimate, makes a cash advance to uninsured depositors and other general creditors. If receivership collections subsequently exceed initial estimates, the FDIC makes additional payments to uninsured creditors. However, if collections fall short of initial estimates, no attempt is made to recapture any portion of the cash advance.

The modified payoff thus softens the impact of a payoff on uninsured creditors since they obtain early access to a portion of their funds. However, they do not immediately retrieve all their funds as they would in a P&A and, even under favorable collection circumstances, uninsured creditors are likely to incur some loss. Thus, uninsured creditors would have reason to be concerned with the condition of their bank and reason to monitor its riskiness.

There are certain mechanical procedures that the FDIC would have to streamline if this transaction is to work smoothly on banks of all sizes and some potential variations on the transfer of deposit accounts and assets that could conceivably be developed over time. On the deposit side, the FDIC must quickly obtain accurate records regarding insured and uninsured deposits. In a P&A no such separation between insured and uninsured deposits is necessary. In a payoff, aggregation of accounts to determine insurance coverage is a labor-intensive process that typically requires at least a few days. Moreover, it should be noted that the FDIC has never paid off a large bank with a very large number of deposit accounts.

The FDIC's experience in the spring of 1984 suggested that if the deposit

records of the failing bank were in satisfactory condition, a modified payoff could be effected over a weekend for a moderate-sized bank. Additionally, with prescreening of records, some modifications in procedure for aggregating accounts and the development of computer programs to aggregate accounts, the failure of a much larger bank could be handled as a modified payoff over a relatively short period. This would still be a short enough period so that, in most cases, most checks in process would be paid and disruptions in banking service would be minimal. Additional preplanning, additional reporting, and other measures probably would enable the FDIC to handle even the largest banks.

The FDIC requires no additional legal authority to effect modified payoffs in individual instances or to implement a policy of using them in all failures. However, the costs of modified payoffs would be reduced and creditor discipline would be strengthened if certain changes in creditor preferences were enacted by Congress. These changes are included in H.R. 1833 and S. 760 which were recently submitted to Congress.

If the FDIC were to handle all failures through the modified payoff, additional market discipline would be achieved because uninsured creditors would face additional risk of loss if a bank fails. The FDIC is interested on public comment whether the use of modified payoffs in all failures will effectively accomplish its goal without creating other problems. Also, the FDIC is interested in whether depositors and other creditors should be given an opportunity to adjust their relationships with banks if a policy of modified payoffs were adopted universally and, if so, what would be an appropriate phase-in period for such a policy.

Increasing Capital Requirements

An alternative method of achieving market discipline and reducing FDIC risk is to raise the total requirement for FDIC-insured banks substantially over a period of several years to a level of about nine percent of assets. However, the primary capital requirement would be kept relatively constant at six percent. Regulatory capital policy would be revised so that subordinated debt could meet a substantial portion of the total capital requirement. The additional capital would provide an enhanced cushion for the deposit insurance fund and probably would result in fewer bank failures.

Banks perceived to be in a strong financial condition probably would be able to borrow on a subordinated basis to meet the additional capital requirement without materially impairing earnings. Some would be able to lend acquired funds on a sound basis at returns comparable to their borrowing cost. Even if costs exceeded rates earned on acquired funds by one or two percentage points, the overall reduction in net interest earnings would be modest. Those banks perceived to be riskier would have more difficulty borrowing. Their cost would be high or else they would have to meet the higher capital requirement through controlling growth, reducing dividend payments or by the sale of equity. Whether subordinated debt is used would be a marketplace decision. It would be the market that ultimately sets a bank's equity ratio and determines the cost of the increased capital requirement.

Investors in subordinated debt are likely to be in a better position and have greater motivation to assess risk and exercise market discipline than bank depositors. Most will be institutional investors able to devote resources to evaluating a bank's condition and the riskiness of their investment. Their time horizons will be longer than those of most depositors.

When a bank encounters difficulty, uninsured depositors generally have ample notice so that they can withdraw funds without loss and, incidentally, exacerbate the bank's problem. They generally have no incentive to leave uninsured funds with the troubled bank, even if they believe the bank will survive. They will not be sufficiently compensated for the risk and if they are managing the funds of other persons, prudence and fiduciary responsibilities dictate that funds be withdrawn.

Investors in subordinated debt will be exposed to potential market loss if the condition of a bank deteriorates, even if it never fails. Thus, they have more reason to appraise management policies. Once a bank gets into difficulty, efforts by debtholders to get out (by selling in the market) will not cause a liquidity problem for the bank except to the extent that market conditions impair future bank financing. Debtholders or potential lenders that have confidence in the ability of the troubled bank to improve its situation can hold or purchase bank debt and gain in the marketplace if their assessment of the bank proves correct.

Depositor discipline can have little impact on those institutions whose deposits are almost fully insured unless insurance coverage were reduced. However, market discipline from higher capital requirements could have a significant impact on institutions having few uninsured deposit accounts.

Any increased capital requirement would have to be phased in over a period of years. Thus, banks would have some flexibility in timing their financing and financial markets would not be overwhelmed by bank financing. However, it is contemplated that thereafter those banks relying on subordinated debt would tap the market frequently and thus be exposed to market discipline continuously. Much of the financing is apt to be intermediate-term or retired on a serial basis. However, even where longer-term debt is used, banks seeking to maintain their overall leverage would find it necessary to add to their debt periodically as their asset base increased.

For the proposed policy to be effective, capital requirements would have to be enforced by all supervisory agencies. After a bank falls below the requirement, some restrictions would come into play immediately. These might include a prohibition on new branches or acquisitions and possibly a higher insurance premium. As time and/or the capital shortfall increases, additional sanctions might come into force (possibly dividend restrictions or restrictions on some types of deposit-taking or lending). At some point, action would be taken to remove deposit insurance. In most instances, actual closings would be averted because bank management would find it in their and the bank's interest to take earlier corrective action. This might take the form of selling off branches, raising capital or merging. Under adverse circumstances the sale of capital might significantly dilute existing shareholders and, as a result, merger terms might be "unfavorable." However, actions that appear to treat shareholders adversely are apt to be better than the alternative—having the bank closed.

This is an important point of the capital alternative. By setting capital standards high enough and setting the level where sanctions come into force high enough, many bank failures are apt to be averted. They would be replaced by recapitalizations or mergers where FDIC or other supervisory involvement would be limited. From a financial standpoint there would be no FDIC involvement where the system works well.

Under present arrangements, enforcement action sometimes pressures or awakens bank management to recapitalize or merge their institution so that failure is averted. However, frequently the troubled bank is too far gone by the time management considers

recapitalizing or merging. The alternative discussed here would require significant action while the troubled bank is still likely to have value. That is likely to spur management and directors to take action to salvage some of that value.

Fewer bank failures and reduced FDIC outlays will reduce net insurance assessments. These currently run about eight basis points measured as a percentage of deposits. Prior to 1981, when FDIC insurance losses were modest, net assessments averged four to five basis points. For those banks that incur increased net interest cost through the use of subordinated debt, a portion, all, or perhaps more than all, of that increased cost could be offset by a reduction in net insurnace assessments.

If increased capital requirements are to be effective, they would have to be applied uniformly by bank regulators. However, as long as thrifts are subject to lower capital requirements they will have a competitive advantage vis-a-vis banks at the same time they expose the FDIC and the Federal Savings and Loan Insurance Corporation to significant risk. This alternative would subject FDIC-insured thrifts to the same capital requirements as banks, but a longer phase-in period may be necessary.

Invited Comment

The two alternatives outlined above both seek to increase market discipline in order to restrain risk-taking by banks. The FDIC currently has the legal authority to use and, in its discretion, may use the modified payoff in individual instances or as a policy for all bank closings. To raise capital levels uniformly will require joint action of the regulatory agencies or legislation. Comments are invited on both alternatives. The FDIC is specifically interested in comment on whether either alternative will achieve the goal of discipline and, if so, which alternative is preferred, and why. If neither is viewed as effective or desirable, is there another, preferable alternative? The FDIC is interested in general comments (many of the specifics of the two alternatives have not been set forth). However, the FDIC is also interested in any specific suggestions on how these alternatives might be best implemented.

By Order of the Board of Directors, this 30th day of April, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10962 Filed 5-3-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Competitive Challenge Grants; Solicitation of Award of Project Grants

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Civil Defense Act of 1950, will issue a Request for Assistance (RFA) EMW-85-S-2055 on or about May 7, 1985 for project grants under the Public Information Challenge Grants Program to stimulate the development of effective emergency public information strategies at state and local levels. In fiscal year 1985, FEMA will fund up to 75 percent of a project if the prospective grantee can demonstrate a 25 percent financial commitment from another source.

This program is limited to state and local agencies, public and private nonprofit organizations in FEMA Region I (Maine, Vermont, New Hampshire, Massachusetts, Rhode Island and Connecticut) and Region VII (Kansas, Nebraska, Iowa and Missouri).

The purpose of this assistance is to increase public awareness of natural and manmade hazards and to stimulate preparedness measures for communities, households, business and industry, schools, etc.

The application package will contain a set of criteria which will be used in the review and selection process. Applications for Assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street SW., Room 728, Washington, D.C. 20472, Attn: Karen Harris, Contract Specialist, EMW-85-S-2055.

Please include a self-addressed mailing label with the request.

It is anticipated that two project grants of approximately $10,000 will be awarded as a result of this request, one in each region of competition. Grant awards are expected in July or August. Proposers may request funding for a second year option, which will be subject to availability of funding, and which will require a 50 percent match.

Robert V. Mahaffey,

Director, Office of Public Affairs.

April 25, 1985.

[FR Doc. 85-10882 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-01-M

FEMA Advisory Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following FEMA Advisory Board meeting:

Name: Federal Emergency Management Advisory Board.

Date of Meeting: May 15, 1985.

Time: 9:00 a.m. to 5:00 p.m.

Place: Federal Emergency Management Agency, Emergency Information and Coordination Center, 500 C Street, SW, Washington, DC 20472.

Purpose: FEMA program office staff will provide status reports on their major activities and present issues to the Board for consideration. Work teams will be formed which will report findings back to the Board in late afternoon. Discussions will include issues that involve classified information. The Director has determined that the Board meeting should be closed to the public because discussions will involve information that is specifically authorized to be kept Secret in the interest of national defense or foreign policy and is properly classified pursuant to Executive Order.

Bernard A. Maguire,

Associate Director, National Preparedness.

[FR Doc. 85-10883 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-01-M

Senior Performance Review Board; Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Barry G. Oertel, Chief Executive Personnel Division, 500 C Street, SW, Washington, DC 20472, 202./646-4083.

The names of the members of the FEMA Senior Performance Review Board established pursuant to 5 U.S.C. 4314(c) are: John R. Lilley, William F.W. Jones, Paul Krueger, Gerald S. Martin, Joseph A. Moreland, and Robert H. Volland.

Alternates: Dennis W. Boyd, Gregg Chappell, John D. Hwang, Frank C. Sidella.

Dated: April 19, 1985.

Barry G. Oertel,

Chief, Executive Personnel Division.

[FR Doc. 85-10881 Filed 5-3-85; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0009

Title: Disaster Assistance Registration Forms

Abstract: Forms used to apply for disaster assistance benefits. Filled out by FEMA interviewers only in Presidentially-declared major disasters.

Type of Respondents: Individuals or Households

Number of Respondents: 46,000

Burden hours: 30,670

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C. Street, SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 30, 1985.

Walter A. Girstantas,

Director Administrative Support.

[FR Doc. 85–10879 Filed 5–3–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

Beverly Hills Savings & Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Beverly Hills Savings and Loan Association, Beverly Hills, California, on April 23, 1985.

Dated: May 1, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85–10952 Filed 5–3–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL MARITIME COMMISSION

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. 876) to issue rules to meet or adjust conditions which Concorde/Nopal alleges are unfavorable to shipping in the U.S./Venezuela trade. The Commission notified the Department of State and the public of its intention to issue a proposed rule to meet or adjust the apparently unfavorable conditions. That action was twice deferred, however, in response to requests by Concorde/Nopal which informed the Commission that it expected to reach an amicable resolution of the matter in consultations with the Venezuelan Ministry of Transportation and Communications.

Concorde/Nopal recently withdrew its request that the Commission defer action on its petition because it had been unable to secure a permit from the Venezuelan Government which would allow it to operate in the trade with more than one vessel designated in advance. Concorde/Nopal now again informs the Commission by letter of April 30, 1985, that it expects the matter to be resolved by the imminent issuance of a permit for it to operate in the trade with more than one designated vessel. The Commission will, accordingly, defer further action on the proposed rule and the petition until May 8, 1985. The Commission does so with the understanding that Concorde/Nopal will inform the Commission in writing by May 6, 1985 of its status in the trade.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–10929 Filed 5–3–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 30, 1985.

Background

Notice is hereby given to final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880)

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. Report title: Report of Transaction Accounts, Other Deposits and Vault Cash; Reports of Certain Eurocurrency Transactions; and Advance Report of Deposits

Agency form number: FR 2900; FR 2950/51; and FR 2000/2001

OMB Docket number: 7100–0087

Frequency: Weekly, Quarterly, Daily dependent upon report.

Reporters: Depository institutions.

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a), 461, 3105] and is given confidential treatment [5 U.S.C. 552b(4) and b(8)].

Package of reports collects information on deposit data from depository institutions that have transactions accounts or nonpersonal time deposits and are not fully exempt from reserve requirements (FR 2900); Eurocurrency deposits from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches (FR 2950, 2951); and selected items on the 2900 in advances from large commercial banks (FR 2000) and a sample of small commercial banks (FR 2001). An increase from $15 to $25 million in the deposit cutoff level used to differentiate between weekly and quarterly reporting is proposed for the FR 2900 report.

2. Report title: Quarterly Report of Selected Deposits, Vault Cash and Reservable Liabilities and Annual Report of Total Deposits and Reservable Liabilities

Agency form number: FR 2910q; FR 1290a

OMB Docket number: 7100–0175

Frequency: Quarterly; annually

Reporters: Depository Institutions

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 248(a) and 461] and is given confidential treatment [5 U.S.C. 552b(4) and b(8)].

These reports collect information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and Agreement Corporations) that are exempt from reserve

requirements under the Garn-St Germain Depository Institutions Act of 1982. Information provided by these reports is used to construct and analyze the monetary aggregates and to ensure compliance with Regulation D—Reserve Requirements of Depository Institutions. An increase from $2 million to the equivalent of the reservable liabilities exemption amount ($2.4 million in 1985) in the lower total deposit cutoff level used to determine nonreporter status versus FR 2910a reporting is proposed. An increase from $15 to $25 million is proposed for the upper total deposit cutoff level to determine quarterly versus annual reporting is also proposed.

3. Report title: Bank Holding Company Financial Supplement
Agency form number: FR Y–9
OMB Docket number: 71–0128
Frequency: semiannually, annually
Reporters: Bank Holding Companies
Small businesses are not affected.

General description of report: This information collection is mandatory [12 U.S.C. 1844] and is not given confidential treatment.

The FR Y–9 data historically has been the primary source of information for the Federal Reserve System's bank holding company (BHC) surveillance function in its on-going monitoring of the financial condition of these institutions. BHC's with consolidated assets of $150 million or more are required to file this report.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Bank Holding Company Financial Statement.
Agency form number: FR 2352
OMB Docket number: will be assigned
Frequency: semiannually
Reporters: Bank Holding Companies
Small businesses are affected.

This information collection is mandatory [12 U.S.C. 1844] and is not given confidential treatment.

The FR 2352 data is one of the primary sources of information for the Federal Reserve System's bank holding company (BHC) surveillance function in its on-going monitoring of the financial condition of these institutions. BHC's with consolidated assets of less than $150 million are required to file this report.

Board of Governors of the Federal Reserve System, April 30, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–10874 Filed 5–3–85; 8:45 am]
BILLING CODE 6210–01–M

Bank of Virginia Co.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such a greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue conentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1985.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Virginia Company*, Richmond, Virginia; to engage *de novo* through its subsidiary, Bank of Virginia Insurance Agency, Inc., Richmond, Virginia, in general insurance agency activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act, 12 U.S.C. 1843(1)(8)(6).

Board of Governors of the Federal Reserve System, April 30, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–10875 Filed 5–3–85; 8:45]
BILLING CODE 6210–01–M

Sutton Bancshares, 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 May 28, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Sutton Bancshares, Inc.*, Attica, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Sutton State Bank, Attica, Ohio.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to acquire 100 percent of the voting shares of Gulf National Bancorp, Inc., Lake Charles, Louisiana, thereby indirectly acquiring Gulf National Bank at Lake Charles, Lake Charles, Louisiana.

Board of Governors of the Federal Reserve System, April 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10876 Filed 5-3-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In FR Doc. 85-9801 beginning on page 16151 in the issue of Wednesday, April 24, 1985, make the following correction: On page 16151, in the third column, in the second line, "9:00" should read "9:30".

BILLING CODE 1505-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (**Federal Register**, Vol. 48, No. 198, pp. 46440-46441, dated Wednesday, October 12 1983, and **Federal Register**, Vol. 49, No. 133, p. 26114, dated Tuesday, July 10, 1984) is mended to reflect the reorganization of the Office of Financial Operations (OFO), Bureau of Program Operations (BPO), Office of the Associate Administrator for Operations.

—The OFO is being reorganized to streamline operations by consolidating two divisions having similar functions into one new division.

The specific amendments to Part F. are as follows:

—Section FP.20.A. Bureau of Program Operations (FPA) is amended by deleting the functional statements and organizational titles for Section FP.20.A.4.c. Division of Provider Overpayments (FPA73) and Section FP.20.A.4.d. Division of Beneficiary Appeals and Overpayments (FPA74). The abolishment of the two divisions includes deleting the division's subordinate branches in their entirety. The two abolished divisions are replaced by one new division, the Division of Overpayment Prevention.

The new divisional functional statement and organizational title (Section FP.20.A.4.c.) read as follows:

c. Division of Overpayment Prevention (FPA77)

Analyzes the capabilities of the Medicare intermediaries and carriers and Medical fiscal agents and State agencies to ascertain the most efficient application of funds available for auditing HCFA's providers and suppliers. Prepares manual instructions for regional offices, contractors, State agencies, and fiscal agents on the proper determination and recovery of overpayments of Medicare and Medicaid funds. Analyzes, controls, and monitors outstanding overpayments to assure that contractors, State agencies, and fiscal agents are timely in identifying and collecting overpayments. Advises and assists regional officers, contractors, State agencies, and fiscal agents in negotiations with providers, physicians, and suppliers relating to the acceptability of particular techniques of determining the amount of overpayments, the responsibility for repayment, and the method of recovery. Provides assistance in determining when recovery actions may be nonprofitable. Makes final determinations regarding the acceptability of compromises of beneficiary overpayments (up to $20,000). In cases for which recovery action is pursued, maintains the control system relating to the statute of limitations for filing suit and processes uncollectable overpayment cases to, and maintains liaison with, the General Accounting Office, the Office of the General Counsel, and the Department of Justice. Directs the processing of all Medicare (Part A) beneficiary appeals and beneficiary overpayments. Plans, directs, and coordinates the processing of claims submitted for reconsideration and hearings. Reviews decisions by the Social Security Administration's Office of Hearings and Appeals with respect to the liability and amount of beneficiary overpayments. Evaluates and provides input to other HCFA components on the performance of contractors with respect to the processing of beneficiary appeals and overpayments.

Dated: April 4, 1985.

Barlett S. Fleming,

Associate Administrator for Management and Support Services.

[FR Doc. 85-10893 Filed 5-3-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Powder River Regional Coal Team Meeting

April 29, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting and call for re-expressions of leasing interest.

SUMMARY: This notice is to inform the public that the Powder River Regional Coal Team Meeting will meet on June 5, 1985, to discuss issues related to round two coal activity planning in the Powder River coal region. The public is welcome to attend. The primary purposes of the meeting are to (1) review the coal market interest in the Powder River Region, (2) develop direction for making Federal coal leasing recommendations for round two coal activities, provided that the on-going National coal program review results in the continuation of round two activities, and (3) reevaluate the framework of the *Draft Environmental Impact Statement for Round II Coal Lease Sale in the Power River Region*, January 1984.

DATE: The team will meet at 8:30 a.m. on June 5, 1985.

ADDRESS: The meeting will be held at the Casper Hilton, I-25 and Rancho Road, Casper, Wyoming; telephone (303) 266-6000.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Branch of Solid Minerals, Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming 82001; telephone (307) 772-2571.

SUPPLEMENTARY INFORMATION: The Powder River Regional Coal Team is a subcommittee of the Federal-State Coal Advisory Board. This team has the duty to guide all phases of the coal activity planning process in the portions of Montana and Wyoming that are within the Powder River Coal Region. The team has not met since June 21, 1983. Since then the Bureau of Land Management published the above-referenced Round II Coal Lease Sale Draft EIS, and issued proposals to implement most recommendations of the Linowes Commission's report on *Fair Market Value Policy For Federal Coal Leasing* and the Office of Technology assessment's report on *Environmental Protection in the Federal Coal Leasing Program*, and published in the *Federal Coal Management Program, Draft Environmental Impact Statement Supplement*. Although the review of the recommendations and proposals in these reports is continuing, the Regional

Coal Team members believe that it is appropriate to review the status of the Round II leasing effort and develop a plan of action for commencing regional coal activity planning in the Powder River Region. Implementation of the plan will be contingent upon the outcome of the on-going National coal program review. If this review results in a decision that activity planning should not continue, then Powder River round two coal leasing activities will cease.

At this meeting, the team will review the basis for the round two draft EIS and the 22 potential lease tracts addressed in this draft EIS. To assist the tract review, the team requests public comments and re-expressions of leasing interest concerning any of the 22 tracts addressed in the draft EIS. Responses are requested to:

1. Describe any portion of an existing coal tract which warrants redelineation consideration and provide detailed supporting justification.

2. Indicate a three year period during which a lease offering would be appropriate and provide detailed supporting rationale for this timeframe, and

3. Provide any new geological or surface data, above and beyond that previously submitted.

This information, a data adequacy review, and an analysis of the Powder River coal market may utimately lead to recommendations for a phased leasing schedule for the 22 tracts currently under consideration for round two leasing, provided that round two coal activity planning continues. The comments and re-expressions of interest concerning the 22 tracts may be sent in advance of the team meeting to the: Chief, Branch of Solid Minerals, Bureau of Land Management (WSO-924), 2515 Warren Avenue, Cheyenne, Wyoming 82001.

A summary of all responses received on or before May 31, 1985, will be announced at the Meeting on June 5, 1985. If no re-expressions of interest are received, then the RCT will assume that leasing interest no longer exists.

The agenda for this meeting is as follows:

1. Introductions
   a. Voting members
   b. Ex-officio members
2. Status of Powder River Regional Coal Team Charter
3. Regional Coal Activity Status
   a. Current Production
   b. Round one leases
   c. Preference Right Lease Applications
   d. Exchanges
4. Market Analysis
5. Round Two Tract Status
   a. Current tract interest summary
   b. Need to expand call for expressions of interest
   c. Redelineation needs
   d. Land use planning status
   e. Tract coal drilling needs
6. Round II Draft EIS
   a. Alternative leasing level adequacy
   b. Georgraphic Information System demonstration of data base
   c. Data adequacy standards
   d. Discussion of Science Advisors
   e. Discussion of Review Council
   f. Regional Boundaries
   g. Need for Supplemental Draft EIS
   h. Schedule or steps to Final EIS

Hillary A. Oden,

State Director.

[FR Doc. 85-10919 Filed 5-3 85; 8:45 am]

BILLING CODE 4310-22-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. P-81]

Passenger Train Operation; Atchison, Topeka and Santa Fe Railway Co.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between New Orleans, Louisiana, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks near Strauss, New Mexico, are temporarily out of service because of a derailment. An alternate route is available via The Atchison, Topeka and Santa Fe Railway Company between Deming, New Mexico, and El Paso, Texas.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission served April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), The Atchison, Topeka and Santa Fe Railway Company (ATSF) is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Deming, New Mexico, and a connection with Southern Pacific Transportation Company at El Paso, Texas.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:00 a.m., (EST), March 30, 1985.

(e) Expiration date. The provisions of this order shall expire at 11:59 p.m. (EST), March 31, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon The Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., March 30, 1985.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-10922 Filed 5-3-85; 8:45 am]

BILLING CODE 7035-01-M

[I.C.C. Order No. P-82]

Passenger Train Operation; Union Pacific Railroad Co.

It appearing, that the National Railroad Passenger Corporation (Amtrack) has establihed through passenger train service between Seattle, Washington and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Small, California, are temporarily out of service because of derailment. An alternate route is available via the Union Pacific Railroad Company between Bieber, and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that

notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to the authority vested in me by order of the Commission decided April 29, 1982, and of the authority vested in the Commission by Section 402(c) of the Rail Passenger Service Act of 1970 [45 USC 562(c)], the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Bieber, California, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said tranportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:15 a.m., EST, April 1, 1985.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., EST, April 2, 1985, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 1, 1985

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 85-10821 Filed 5-3-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-28]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Task Force on the Scientific Uses of Space Station.

DATE: May 29-30, 1985, 8:30 a.m. to 5 p.m., and May 31, 1985, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 360A, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Sade, Code E, NASA Headquarters, Washington, DC 20546 (301/453-1430).

SUPPLEMENTARY INFORMATION: The Space Station Task Force was established under the NAC Space and Earth Science Advisory Committee to counsel NASA on plans for and work in progress on the scientific utilization of new capabilities which will be afforded by the Space Station, including the relationship of these plans to the existing space science program.

This meeting will be closed to the public from 8:30 a.m. to 10 a.m. on May 31 for a discussion of the qualifications of candidates for membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 60 persons including Committee members and other participants). Topics under discussion at this meeting will include data systems for Space Station, the role of humans in Space Station, microgravity and pointing, and momentum management.

Type of meeting: Open.

Agenda

May 29, 1985

8:30 a.m.—Welcome.

8:45 a.m.—Update on Space Station Program.

11 a.m.—Discussion of Task Force Concerns.

1 p.m.—Role of Humans.

3 p.m.—Data Systems for Space Station.

5 p.m.—Adjourn.

May 30, 1985

8:30 a.m.—Momentum Management.

10:30 a.m.—Discussion on Microgravity & Pointing.

1 p.m.—Discussion of Summer Study.

3 p.m.—General Discussion.

5 p.m.—Adjourn.

May 31, 1985

8:30 a.m.—Closed Discussion on Membership.

10 a.m.—General Discussion.

11 a.m.—Recommendations to NASA.

1 p.m.—Tour of Lyndon B. Johnson Space Center.

3 p.m.—Adjourn.

Dated: April 30, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-10871 Filed 5-3-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice (85-27)]

National Environmental Policy Act; Notice of Availability of Final Environmental Impact Statement

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of final Environmental Impact Statement.

SUMMARY: Notice is hereby given of the public availability of the final Environmental Impact Statement (EIS) for the National Aeronautics and Space Administration Centaur Upper Stage for Use with the Space Transportation System. This document addresses the development and use of the Centaur vehicle as an upper stage in space launch activities.

Comments on the draft EIS were previously solicited from State and local agencies and members of the public through a notice in the **Federal Register** of June 12, 1984.

Copies of the draft and final Statement have been furnished to the Environmental Protection Agency; the Departments of Air Force, Army, Navy, Commerce, Defense, Health and Human Services, Interior, Labor, and Transportation; to appropriate State and local agencies; and to numerous private organizations.

Copies of the final Statement may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue SW., Washington, DC 20546.

(b) NASA Ames Research Center (Building 201, Room 17), Moffett Field, CA 94035.

(c) NASA ARC–Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.

(D) NASA Goddard Space Flight Center (Building 8, Room 150), Greenbelt Road, Greenbelt, MD 20771.

(e) NASA Lyndon B. Johnson Space Center (Building 1, Room 136), Houston, TX 77058.

(f) NASA John F. Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.

(g) NASA Langley Research Center (Building 1219, Room 304), Hampton, VA 23665.

(h) NASA Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, OH 44135.

(i) NASA Gerge C. Marshall Space Flight Center (Building 4200, Room (G–11), Huntsville, AL 35812.

(j) NASA National Space Technology Laboratories (Building 1100, Room A–213), NSTL Station, MS 39590.

(k) Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.

(l) NASA GSFC–Wallops Flight Facility (Library Building, Room E–105), Wallops Island, VA 23337.

Dated: April 16, 1985.

C. Robert Nysmith,

Associate Administrator for Management.

[FR Doc. 85–10872 Filed 5–3–85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Materials Research Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee.

Place: George Washington University, Academic Center, Smith Hall of Art, 801 22nd Street, NW., Washington, DC 20052.

Date: Tuesday, May 21; and Wednesday, May 22, 1985.

Time: 8:30 a.m.–5:00 p.m., those days.

Type of meeting: Part Open—May 21, 8:30–1 (Open); May 21, 1–4:30 (Closed); May 21, 4:30–5:00 (Open). Part Open—May 22, 8:30–1 (Open); May 22, 1–5:00 (Closed).

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC 20550, Telephone: (202) 357–9794.

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda

Tuesday, May 21, 1985

8:30 a.m.—Introductory remarks; Overviews of the NSF, the Directorate for Mathematical and Physical Sciences (MPS), and the Division of Materials Research (DMR).

10:45 a.m.—Status Report, Synchrotron Radiation Center (SRC).

12:00 Noon—Lunch.

1:00 p.m.—Report and Discussion of the *ad hoc* Oversight of the Metallurgy, the Polymers and the Ceramics and Electronic Materials Programs (Closed).

4:30 p.m.—Role of the Department of Energy in the Support of Materials.

5:00 p.m.—Adjourn.

Wednesday, May 22, 1985

8:30 a.m.—Convene, Initial Discussion.

9:00 a.m.—Role of the Directorate for Engineering in the Support of Materials.

9:45 a.m.—The Role of the OASC in the Support of Materials.

10:30 a.m.—Discusson: MRAC Advice to DMR on (1) Aladdin, (2) DMR Budget.

12:00 Noon—Lunch.

1:00 p.m.—Continued Discussion of the *ad hoc* Oversight Reports on the Metallurgy, Polymers, and Ceramics (MPC) Section (Closed).

5:00 p.m.—Adourn.

Reasons for closing: The Oversight Reports involve discussion of proposals containing information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Directror, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

May 1, 1985.

[FR Doc. 85–10892 Filed 5–3–85; 8:45 am]

BILLING CODE 7555-01-M

NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Meeting

The Northern Mariana Islands Commission on Federal Laws, established pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241, 48 U.S.C. 1681 note), will meet on Wednesday, May 8, 1985, at 9:30 a.m., in room 7000 of the Main Interior Building, at 18th and C Streets, Northwest, in Washington, D.C. The meeting may extend into the following day, at the same location.

The purpose of the Commission is "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The intended agenda for this meeting is orientation of new Commission members, a review of the Commission's work to date on its next report to Congress, and consideration of pending staff recommendations on the application of particular federal laws in the Northern Mariana Islands.

The meeting will be open to the public. Attendance by the public will be limited to space available.

For further information about this meeting, contact Daniel H. MacMeekin, Executive Director, Northern Mariana Islands Commission on Federal Laws, 4346 Main Interior Building, Washington D.C. 20240, (202) 343–5617.

Interested persons may make oral presentations to the Commission or file written statements with respect to particular federal laws. Persons desiring to make oral presentations should make arrangements with Mr. MacMeekin at least seven days prior to the meeting.

Dated April 26,1985.

Benigno R. Fitial,

Chairman.

[FR Doc. 85–10945 Filed 5–3–85; 8:45 am]

BILLING CODE 4310-93-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co., Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power and Light Company (the licensee) to withdraw its December 2, 1980

application of the H.B. Robinson Steam Electric Plant Unit No. 2 located in Hartsville, South Carolina. The proposed amendment would have revised the provisions in the Technical Specifications for the H.B. Robinson Steam Electric Plant to add Technical Specifications for the operation of Dedicated/Alternate Shutdown System. The Commission issued a Notice of Consideration of Issuance of the Amendment in the **Federal Register** on August 23, 1983 (48 FR 38393). By letter dated July 20, 1984, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendment. The Commission has considered the licensee's July 20, 1984 request and has determined that permission to withdraw the December 2, 1980 application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated December 2, 1980; (2) the licensee's letter dated July 20, 1984, withdrawing the application for license amendment; and (3) our letter dated April 29, 1985. All of the above document are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Bethesda, Maryland, this 29th day of April 1985.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 85-10963 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-208]

Columbia University in the City of New York; Proposed Issuance of Order Terminating Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an Order to Columbia University in the City of New York terminating Facility Operating License No. R-128, in accordance with the licensee's request dated January 14, 1985, as supplemented March 27, 1985. The licensee has never operated the facility and no fuel was ever obtained or installed in the reactor. The licensee had modified certain systems so as to render the reactor inoperable.

Prior to issuance of the Order, the Commission will have made the findings by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By June 5, 1985, the licensee may file a request for a hearing with respect to issuance of the subject Order and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate Order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any Order which may be entered on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Cecil O. Thomas: (petitioner's name and telephone number); (date petition was mailed); (Columbia University in the City of New York); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Exeuctive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John Mason Harding, Resident University Counsel, Columbia University in the City of New York, New York, 10027.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, or the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated January 14, 1985, as supplemented March 27, 1985, which is available for

public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland this 29th day of April 1985.

For the Nuclear Regulatory Commission

Cecil O. Thomas,

Chief, Standardization and Special Projects Branch, Division of Licensing.

[FR Doc. 85-10964 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-323]

Diablo Canyon Nuclear Power Plant, Unit 2, Pacific Gas and Electric Co; Issuance of Facility Operating License DPR-81

Notice is hereby given that, pursuant to the approval given in a Memorandum and Order dated April 23, 1985, the U.S. Nuclear Regulatory Commission (the Commission) has issued Facility Operating License No. DPR-81 (the license) to Pacific Gas and Electric Company (PG&E or the licensee) which authorizes operation of the Diablo Canyon Nuclear Power Plant, Unit 2 (the facility or Diablo Canyon Unit 2). Diablo Canyon, Unit 2 is a pressurized water reactor located in San Luis Obispo County, California. This license authorizes operation at reactor core power levels not in excess of 3411 megawatts thermal (rated power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan. However, the license contains a condition currently limiting operation to five percent of full power (170 megawatts thermal). Authorization to operate at greater than five percent will require Commission approval.

The application for license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license authorizing full power operation was published in the Federal Register on October 19, 1973 (38 FR 29105).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (issued in May 1973, 38 FR 14183) and its Addendum (issued in May 1976, 41 FR 22895), the NRC Flood Plain Review (dated September 9, 1981) and the NRC Discussion of Environmental Effects of the Uranium Fuel Cycle (dated September 9, 1981) since the activity authorized by this License is encompassed by the overall action evaluated in those documents.

For further details with respect to this action, see (1) the Commission Memorandum and Order dated April 23, 1985; (2) Facility Operating License No. DPR-81 with Technical Specifications (NUREG-1132) and the Environmental Protection Plan; (3) the reports of the Advisory Committee on Reactor Safeguards dated June 12, 1975, August 19, 1977, July 14, 1978, November 12, 1980, February 14, 1984, April 9, 1984, June 20, 1984, and July 16, 1984; (4) the Commission's Safety Evaluation Report (NUREG-0675, Supplements 1 through No. 31); (5) the Final Environmental Statement dated May 1973 and its Addendum dated May 1976; (6) NRC Flood Plain Review of Diablo Canyon Nuclear Power Plant Site dated September 9, 1981; and (7) Discussion of the Environmental Effects of Uranium Fuel Cycle dated September 9, 1981. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and the California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407. A copy of the Facility Operating License No. DPR-81 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing. Copies of NUREG-0675 and the Final Environmental Statement and its Addendum may be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or may be ordered by calling (202) 275-2000 or (202) 275-2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, D.C. 20013-7082. All orders should clearly identify the NRC publication number and the requester's GPO deposit account, or Visa or Mastercard Number and expiration date.

Dated at Bethesda, Maryland, the 26th day of April 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 85-10966 Filed 5-3-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co. et al. (Beaver Valley Power Station Unit No. 1); Exemption

I

The Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), are the holders of Facility Operating License No. DPR-66 (the license) which authorizes operation of the Beaver Valley Power Station, Unit No. 1 at steady state reactor power level not in excess of 2652 MWth. The license provides, among other things, that it is subject to all rules, regulations and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

The facility comprises a pressurized water reactor at the licensee's site located at Beaver County, Pennsylvania.

II

Section 50.54(a) of 10 CFR Part 50 requires a license authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans which meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. Section IV. F of Appendix E requires each licensee to conduct an emergency preparedness exercise annually. The last annual exercise at Beaver Valley was held on June 27, 1984. The exercise date was changed in 1984 due to a request by FEMA Region III (Exemption dated October 12, 1983)

By letter dated September 11, 1984, the license requested an exemption to change the annual emergency exercise anniversary date from February 1985 to September 1985. The licensee stated that the change of exercise date for 1985 would enable use of a new simulator facility to develop operational data needed for the exercise. The use of this simulator will provide realistic detailed operational data for the exercise, and thereby will provide more meaningful training. This change will facilitate better coordination among the several NRC and FEMA Regions responsible for ensuring an adequate state of emergency-preparedness. Three FEMA Regions and two NRC Regions have jurisdiction within parts of the emergency planning area surrounding the facility. The licensee further stated that, based on the current Beaver Valley Unit 2 construction schedule, this change will also eliminate the need for two separate emergency exercises in 1986. Since the emergency organization and major facilities are the same for

both units, the schedule change would provide a better, more realistic training opportunity for this dual-unit site. The licensee also stated that the requested change would provide an opportunity to exercise the emergency plan in various weather conditions, as recommended in NUREG–0654/FEMA–REP–1.

The licensee has previously conducted full scale exercises on February 17, 1982, February 16, 1983, and June 27, 1984. During the June 27, 1984 exercise, minor deficiencies were identified involving the Commonwealth of Pennsylvania and Hancock County, West Virginia. Action to correct these deficiencies is being taken by appropriate offsite authorities. The exercise scheduled for 1985 is a partial one with limited offsite involvement and without FEMA observation.

There was no evidence that the delay in conducting the 1984 emergency exercise caused any adverse effects on the state of the licensee's emergency preparedness. There is no reason to expect that a change of the 1985 exercise date would adversely affect the state of emergency preparedness at the Beaver Valley site.

Based on the above discussion, we conclude that a schedular exemption can be granted for the 1985 exercise, and September of each year be designated for scheduling for exercises.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR Part 50.12, 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 with respect to the requirements of the 10 CFR 50, Appendix E, Section IV F., as follows:

The next emergency preparedness exercise at the Beaver Valley Power Station, Unit No. 1, shall be conducted during September 1985. The date of scheduling subsequent annual emergency exercises for the Beaver Valley Power Station site shall be September of each year.

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 15514, April 18, 1985).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 25th day of April, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–10965 Filed 5–3–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will met on May 15, 1985, in Room 5104, New Executive Office Building, Washington, D.C. The meeting will begin at 8:00 a.m. on May 15. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

A portion of the May 15 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures if the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1), (2), and 9 (B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C 552b(c)(6).

The portion of the meeting open to the public will begin approximately 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on May 13. Ms. Boyd is also available to provide further information regarding this meeting.

Jerry D. Jennings

Executive Director, Office of Science and Technology Policy.

May 1, 1985.

[FR Doc. 85–1009 Filed 5–3–85; 8:45 am]

BILLING CODE 3170–01–M

SMALL BUSINESS ADMINISTRATION

Business Loan Policy; Interest Rates

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: Effective on April 28, 1985, and pursuant to § 120.1–2 of our regulations (13 CFR 120.1–2), SBA will extend until September 30, 1985, the pilot program in which the maximum permissible interest rate on an SBA guaranteed loan will be equal to the state legal rate applicable to such loan. This extension applies to fixed rate loans and variable rate loans.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley Special Assistant, Room 800C, 1441 L St. NW, Washington, D.C. 20416, (202) 653–5954.

SUPPLEMENTARY INFORMATION: On April 27, 1984, SBA published a notice (49 FR 18204) for fixed rate loans and final regulations (49 FR 18083) for variable rate loans establishing a one year pilot program in which the maximum permissible interest rate on an SBA guaranteed loan was set at the state legal rate applicable to such loan. This pilot program has been operating in Region II (NJ, NY, PR), Region VII (IA, KS, MO, NE) and Region IX (AZ, CA, HI, NV) only.

The purpose of this pilot was to respond to suggestions by advisory groups that (1) some lenders use the SBA maximum rate as a suggested rate and (2) that the interest rate limits were inhibiting the ability of lenders to make small loans.

The data collected to date do not permit drawing a conclusion regarding lender's use of the SBA maximum as a suggested rate, but the data do suggest that allowing interest rates above the existing 2¾ percentage points above prime maximum encourage lenders to make smaller loans. During the pilot, 158 loans were made with interest rates above the existing maximum. The average size of these loans was $95,000 compared to an average loan size for all loans of $150,000.

Section 120.1–2 of SBA Regulations (13 CFR 120.1–2) authorizes the Administrator to publish a notice providing for a pilot program. This

notice is notification of this pilot to extend no later than September 30, 1985.

During the extension, SBA will continue to evaluate activity in the pilot regions and will make a decision regarding the possibility of proposing this interest rate policy for national implementation.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 29, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-10905 Filed 5-3-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0107]

Certified Grocers Investment Corp.; License Surrender

Notice is hereby given that Certified Grocers Investment Corporation, 4800 South Central Avenue, Chicago, Illinois 60638, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Certified Grocers Investment Corporation was licensed by the Small Business Administration on May 17, 1976.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender was accepted on April 25, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: April 30, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-10906 Filed 5-3-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Express Airlines I, Inc. d.b.a. Republic Express

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 85-5-8, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Express Airlines I, Inc., d.b.a. Republic Express is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Special Authorities Division, Room 6420, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than May 21, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Lundell, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-5-8 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, D.C. 20590. Persons outside the metropolitan area may send a postcard request for Order 85-5-8 to that address.

Dated: May 1, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-10968 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-62-M

Application of United States Overseas Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-5-9) Docket 42600.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that United States Overseas Airlines, Inc. continues to be fit, willing, and able to conduct operations as a certificated air carrier.

DATE: Persons wishing to file objections should do so no later than May 21, 1985.

ADDRESS: Responses should be filed in Docket 42600 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Office of Aviation Operations, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 (202) 755-3812.

Dated: May 1, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-10967 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See, 14 CFR 302.1701 et. seq.); Week Ended April 26, 1985

Subpart Q applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoptions of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
4-24-85	42883	Temsco Helicopters, Inc., c/o Hank Myers, Myers & Company, P.O. Box 7341, Bellevue, Washington 98006. Supplemental information of Temsco Helicopters, Inc. as requested by Order 85-3-43. Answers may be filed by May 22, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-10969 Filed 5-3-85; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

[Docket No. 24028-2 (LAC)]

Petition of Lineas Aereas del Caribe, S.A.; Grant of Exemption No. 4302

On March 29, 1985, the United States Court of Appeals for the District of Columbia entered its opinion in *Airmark, et al.* v. *FAA, et al.*, No. 84-1619, remanding to the FAA certain cases dealing with Petitions for exemption from the FAA's aircraft nosie compliance rules. As a consequence of that decision, on April 26, 1985, the FAA issued its decision *In the Matter of the Petition of Lineas Aereas del Caribe, S.A.*, Regulatory Docket No. 24028-2, Exemption No. 4301 (*LAC*). Since the *LAC* decision contains interpretive information useful to all potential petitioners for exemptions from the noise rule, it is published in its entirety for the information of interested persons.

Issued in Washington, DC, on April 30, 1985.

John H. Cassady,
Assistant Chief Counsel.

Grant of Exemption

In the matter of the petition of Petition of Lineas Aereas del Caribe, S.A. for an exemption from § 91.303 of the Federal Aviation Regulation.

[Regulatory Docket No. 24028-2; Exemption No. 4302]

By petition dated April 11, 985, field by Ms. J.W. Young, Barrett Smith Schapiro & Armstong, 1201 Pennsylvania Avenue, NW., Washington, D.C. 20004, on behalf of Petition of Lineas Aereas del Caribe, S.A. (hereinafter "LAC"), petitioner requested an exemption from the Janurary 1, 1985 noise level comliance date contained in 14 CFR Part 91, Subpart E, § 91.303.

The provisions of § 91.303 prohibit any persons, on or after January 1, 1985, from operating any subsonic turbojet airplane covered by Subpart E to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under 14 CFR Part 36. Petitioner conducts scheduled all-cargo air service, using aircraft that do not comply with the noise level requirements. Under section 91.303, absent an exemption, these aircraft cannot now legally be operated in the United States.

On March 29, 1985, the United States Court of Appeals for the District of Columbia Circuit entered its opinion in *Airmark, et al.* v. *FAA, et al.*, No. 84-1619, remanding to the FAA certain cases dealing with petitions for exemption from the FAA's aircraft noise compliance rule. In that decision, the Court indicatd that the FAA had broad discretion both as to the manner in which it could review newly filed exemption petitions and the criteria to be applied in reviewing such petitions. The Court, on April 5, 1985, issued an order concerning petitioner which required the FAS to show cause why the FAA's January 3, 1985, denial of LAC's previous petition for exemption should not be vacated.

In light to this background, this petition has not been published in the **Federal Register** because the FAA has determined that it would be contrary to the public interest to delay disposition of this petition pending publication for comment. This grant contains information for petitioners, including petitioners affected by orders entered by the Court of Appeals who are confronted with early deadlines for filing new petitions with the FAA. Due to the imminence of the Court's filing deadlines, the FAA finds that it is in the public interest to make this information available as quickly as possible to those petitioners affected by the orders of the Court, as well as all others. The FAA has determined, for good cause, that publication in advance in the **Federal Register** should be waived in this case, only, and to issue the exemption herewith since, as noted below, the FAA finds that this petitioner meets the criteria set forth herein.

General Discussion

In reviewing this petition and all other petitions, the FAA has determined that two class of petitions may warrant an exemption from § 91.303. First will be those petitioners who satisfy all five of the criteria set out by the congress in the Conference Report on the Aviation Safety and Noise Abatement Act (ASNA) (H.R. Rep. No. 715, 96th Cong., 1st Sess. 23, reprinted in 1980 U.S. Code Cong. & Ad. News 115, 124). Second, those petitioners who have been designated in U.S. Department of Transportation (DOT) orders to serve routes determined to be essential service may be eligible for an exemption from the noise rule for service on those routes without regard to whether they otherwise satisfy the five criteia set out by Congress.

I. Congressional Criteria

As stated previously, the ASNA Conferees indicated that the FAA in reviewing peitions for exemption from the noise rule should give consideration to hardship situations. The Conferees described a hardship situation as being comprised of the following five necessary components all of which must apply in each case:

—Smaller carrier
—Making a good faith compliance effort
—Needed technology delayed or unavailable
—Could suffer financial havoc
—Performs valuable airline service.

The following is a disucssion of the FAA's definition of interpretation of these criteria.

A. The term "smaller carrier" means a carrier which, on January 1, 1985, operated 9 or fewer transport category turbojet aircraft. A "smaller carrier" may also be one which on that date had less than 1500 employees.

These definitions of "smaller carrier" are based upon the FAA's a small entity for purpose of implementing the Regulatory Flexibility Act of 1980 (FAA Order 2100.14, dated, July 15, 1983) and the Small Business Administration definition of "small business concern" contained in 15 U.S.C 632 and in the Small Business Size Regulations promulgated by the Administration on February 9, 1984 (49 FR 5024). Although the FAA and SBA standards were established for purposes other then the aircraft noise rule, they can be used as reliable guidance utilizing available data on industry size.

B. The term "good faith compliance effort" requires that the petitioner have a firm contract entered into no later than March 29, 1985 (the date of the U.S. Court of Appeals decision in the Airmark case), for either hush kits or replacement complying aircraft supported by a non-refundable deposit of at least $75,000 for each affected aircraft, and that the delivery date is the earliest possible date. Exemptions will be limited to aircraft which are the subject of a hush kit or replacement contract. Further, a petitioner may not obtain an exemption for more aircraft than the number of non-compliant aircraft operated by it in the comparable period in 1984, since the purpose of ASNA is to mitigate the noise impact of such aircraft. In addition, if the pertinent contract is for a hush kit, the contract must be with a supplier which had applied for a supplemental type certificate (STC) for the hush kits before January 1, 1985, and is continuing active efforts to obtain the STC. This requirement is necessary to ensure there be a serious likelihood that the non-noise compliant aircraft can be brought into compliance in a reasonable time-frame. Given the general experience of the FAA with the supplemental type certification process and its specific experience with certification of hush kits, any applicants who did not even apply for an STC prior to January 1, 1985, are faced with development efforts requiring a substantial amount of time prior to certification. The clear Congressional intent of ASNA was to place a policy premium on the expeditious delivery of improved noise technology to the market. Allowing later filed STC's to qualify for this criterion would contradict that legislative policy. Thus, to faithfully carry out the Congressional intent, contracts with suppliers who do not fulfill this requirement will not be considered by the FAA as constituting "good faith" compliance efforts for purposes of satisfying this criterion.

C. The FAA has determined that the criterion "needed technology is delayed or unavailable" is essentially met by all petitioners. Those petitioners having aircraft for which the technology to manufacture hush kits was developed in 1973, meet this criterion because the commercial availability of the hush kits has been delayed until recently. Those petitioners that have aircraft for which there are no hush kits currently under development also meet this criterion.

D. In determining whether a petitioner, absent an exemption, could suffer "financial havoc," the FAA will:

1. Presume that, if 20% or more of the petitioner's total operations during the same period in 1984 for which it is seeking an exemption in 1985 would be prohibited, then financial havoc would occur.

2. If however, a petitioner cannot show that it would lose 20% or more of its total operations, but still believes it will suffer financial havoc if it does not receive an exemption, the FAA will apply the following test to the data submitted by the petitioner:

Using publicly available data for 1984, delete revenue produced by non-compliant U.S. operations which would have been barred by the noise rule and which would not be permitted by any other exemption held by the petitioner, from the operator's financial database, along with an equal percentage of variable costs. If the resulting figure results in a net loss of greater than 10% of the operator's assets, the FAA will presume that financial havoc exists in that case.

Given the fact that there are significant carrier-by-carrier variations in economic make-up, (i.e. amount of accured reserves, operating margins, etc.), a single, overall test for financial havoc is inadequate. Rather, the FAA will first apply a presumptive standard (20% of operations) which would reasonably be viewed as resulting in financial havoc if met by a petitioner. However, if an individual carrier fails to meet this presumptive standard, but still believes that its individual situation will result in financial havoc, the carrier may submit particularized information concerning its own profit and loss (10% of assets).

Both the financial havoc tests use historical, publicly available data because such data are sufficiently objective for the FAA to evaluate. Any projections of 1985 operations or financial results would be so subjective that the agency could not adequately determine their validity.

E. In the context of determining eligibility for an exemption from Section 91.303, the criterion "valuable airline service" is met by all petitioners who operated aircraft in charter or scheduled air transportation before January 1, 1985. This date has been used because Congress obviously intended that the service must have been provided prior to the effective date of the prohibition to be deemed "valuable" within the context of the criteria.

II. Essential Air Service (EAS)

Notwithstanding the five criteria explained above, the FAA has determined that carriers which have been designated in DOT orders to perform service on routes which have been designated as EAS routes pursuant to section 419 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1389) warrant special consideration in that maintenance of air service on such routes is, by statute, deemed to be in the public interest. The Congress, in its passage of the Airline Deregulation Act, considered essential air service to be a critical element of the maintenance of air service to small and isolated communities. Despite the primary thrust of the Act to restore competitive incentives to civil aviation, Congress recognized the importance of ensuring that small communities would be given access to the air transportation system, and directed the Board (and how DOT) through section 419 to further:

" * * the congressional policy to encourage and foster the continuation of safe and reliable scheduled air transportation for small communities and isolated areas." S. REP. No. 95-631, 95th Cong., 2nd Sess., 89 (1978).

The FAA also finds that the public interest requries that the objectives of the ASNA and the aircraft noise abatement program established by the FAA, including the aircraft noise operating rule contained in FAR § 91.303, must also be met insofar as possible consistent with continuation of essential air service. Therefore, the FAA will consider that an exemption from § 91.303 for a designated essential air service route is in the public interest if the petitioner shows that it:

—Is operating noncomplying aircraft on a route for which it has been found by a DOT order to be providing essential air service, and

—Has a firm contract with a hush kit manufacturer which, before January 1, 1985 applied for an STC; is continuing active efforts to obtain the STC; and such contract is supported by a non-refundable deposit of at least $75,000, for the installation of hush kits on each of its aircraft at the earliest available date, and

—Acquired the aircraft for which it seeks an exemption prior to January 1, 1985.

III. Failure of Hush Kit Manufacturers to Obtain STC

Some hush kit suppliers which applied for STC's prior to January 1, 1985 may be unable, for various reasons, to obtain the STC that is required before their hush kit can be used on aircraft engaged in air commerce. To this end, included among the conditions and limitations contained in each exemption will be a provision which permits exemption holders to obtain substitute contracts if their hush kit suppliers are unable to obtain an STC.

Therefore, the FAA will, without affecting the validity of the exemption, allow exemptions which are based on hush kit contracts that meet the good faith compliance criterion, to obtain substitute contracts if the initial hush kit supplier fails to obtain an STC by September 30, 1985. Those substitute contracts must be with suppliers which have obtained STCs by September 30, 1985, be supported by a non-refundable deposit of at least $75,000, and be for the earliest possible delivery date. If the hush kits from the substitute supplier cannot be installed until after December 31, 1985, these exemption holders will be able to continue operations under their exemptions until the earliest available installation date after December 31, 1985. September 30, 1985, has been selected as the date by which the supplier must have received its STC because that date represents the latest date by which a hush kit purchaser may reasonably expect to obtain delivery positions for its aircraft by December 31, 1985. In addition, based on the information the FAA now has concerning the status of hush kit suppliers which applied for STC's before January 1, 1895, September 30, 1985, is the latest date in calendar year 1985 that a hush kit supplier can expect to have obtained its STC and still have a reasonable expectation of being able to install production hush kits within that year.

IV. General Exemption Provisions

All exemptions granted by the FAA will include, but not be limited to, the following conditions and limitations:

—Operations allowed under the exemption will be the same number as in the comparable period in 1984,[1] or in the case of essential air service, the same number of operations for the essential route which was authorized in a previous grant of exemption or, in cases of further DOT orders designating EAS routes, the number of operations needed to meet the EAS requirements.

—All operations except those to Miami International Airport (MIA) and Bangor International Airport (BIA) will be limited to the hours between 0700 and 2200 local time at all airports. The exception for MIA and BIA is based on the Congressional intent evinced in Pub. L. 98-473.

—The FAA will not grant an exemption beyond December 31, 1985, except where the exemption holder has a firm hush kit delivery position after that date, and the hush kit supplier has obtained its STC by September 30, 1985.[2]

—Certain reporting requirements will be required by the FAA to monitor the compliance with the terms of the exemption.

Application of Criteria

Smaller carrier. The FAA finds that the petitioner meets this criterion because, on January 1, 1985 it operated nine or fewer transport category turbojet aircraft.

Good faith compliance. The FAA finds that petitioner meets this criterion because it has a firm contract, entered into on or before

[1] Carriers that engaged in exempted international flights may, in addition, conduct the same number of non-revenue operations for the purpose of refueling that they did last year, at the same locations. This is analogous to the operation of section 124 of Pub. L. 98-473 (the Hawkins-Chiles amendment), pursuant to which exempt carriers en route to Miami are allowed the same number of refueling stops at Bangor that they had in the previous year.

[2] Section 124 of Pub. L. 98-473 required the Secretary to grant exemptions from the noise rule to certain petitioners for operations to Miami or Bangor International Airports. As mandated by that law, the FAA issued 25 exemptions from § 91.303 of the Federal Aviation Regulations. Section 124(e) specifically provided that those exemptions shall expire no later than December 31, 1985, "except that, if the Secretary determines that equipment to insure compliance with the provisions of Pub. L. 96-193 which has been certified by the Department for that purpose will not be available to the holder of the exemption by that date, the Secretary may extend such exemption for such period as the Secretary determines is necessary to insure compliance with such provisions."

Accordingly, in evaluating whether a particular exemption granted under authority of Pub. L. 98-473 should be extended beyond December 31, 1985, the FAA will consider whether the exemption holder has a firm hush kit delivery position after that date and whether the hush kit supplier has obtained the necessary certification from the FAA. This provision assures that operators acquire hush kits for their noncomplying aircraft at the earliest possible time and that hush kit suppliers diligently work toward acquiring the STC.

March 29, 1985, for hush kits for the aircraft for which this exemption will be granted. The contract is supported by a non-refundable deposit of at least $75,000. The hush kit supplier applied to the FAA for a supplemental type certificate (STC) for that product before January 1, 1985.

Needed technology is delayed or unavailable. The FAA finds that petitioner meets this criterion because no hush kits for petitioner's aircraft are commercially available.

Financial havoc. The FAA finds that petitioner meets this criterion because more than twenty percent of petitioner's total operations during the same period in 1984 for which it seeks this exemption would be prohibited by the noise rule absent an exemption.

Valuable airline service. The FAA that petitioner meets this criterion in that it operated aircraft in charter or scheduled air transportation before January 1, 1985, and continues to do so.

In view of the foregoing matters, the FAA concludes that the petitioner has demonstrated that the public interest requires it be granted an exemption from section 91.303. Therefore, under the authority of sections 313(a), 601(c) and 611(b) of the Federal Aviation Act of 1958, as amended, which has been delegated to me by the Administrator (14 CFR 11.53), the petition of Lineas Aereas del Caribe, S.A., for exemption from § 91.303 of the Federal Aviation Regulations is hereby granted, subject to the following conditions and limitations:

Conditions and Limitations

1. This exemption shall apply only to the DC-8-54F aircraft having the following registration and serial number: HK-2632, 45768.

2. A copy of this Grant of Exemption shall be carried on board the above aircraft at all times.

3. This exemption is valid only for the operation of the above aircraft within the United States during the period between the date of this exemption and December 31, 1985, the date by which petitioner states that hush kits will have been installed on its aircraft.

4. This exemption is valid only for the number of operations within the U.S. that petitioner performed between April 1 and December 31, 1984.

5. With respect to the aircraft identified in paragraph 1, above, this exemption is valid only while the "SAI DC-8 Hush Kit Modification Contract" dated January 16, 1985, between Snow Aviation International, Inc. (SAI) and petitioner remains in effect, except that, should SAI fail to receive FAA certification for its hush kits by September 30, 1985, the exemption for the identified aircraft shall remain in effect for a period of sixty days after such failure occurs. If, during the sixty day period, petitioner obtains and submits to FAA a firm substitute contract, supported by a non-refundable deposit of at least $75,000, for installation of hush kits by a hush kit supplier which has obtained its STC by September 30, 1985, then the exemption granted herein shall remain in effect until installation of those hush kits on petitioner's aircraft. In all other cases, this exemption terminates on December 31, 1985.

6. This exemption is valid only while petitioner retains line position number 16 for the hush kits manufactured by SAI.

7. This exemption is valid only as long as petitioner remains the operator of the aircraft described in paragraph 1, above, and shall terminate immediately if petitioner sells, or otherwise disposes of said aircraft while this exemption is in effect.

8. During the period this exemption remains in effect, petitioner shall submit the following reports by an authorized official of the petitioner certifying that they are true and complete (under penalty of 18 U.S.C. 1001): (1) Not later than May 10, 1985, a report which contains at least the following information: the frequency of operations conducted by the petitioner using noncomplying aircraft at the airports used by petitioner for noncomplying aircraft during each of the twelve months preceding the date of issuance of this exemption; and (2) not later than the tenth day of each month commencing in May, 1985, reports containing at least the following information: (a) The frequency of operations conducted by the petitioner at each airport used by the petitioner for noncomplying aircraft during the preceding calendar month; (b) the registration and serial numbers and the number of operations of each noncomplying aircraft used at the airports reported under (a), above, during such month; (c) the status of petitioner's contract with its hush kit supplier, including particularly whether any change has occurred since the last monthly report in the expected date of installation of the hush kits and, if so, exact details of such change.

9. Except at Miami and Bangor International Airports, this exemption is valid only for landings or takeoffs of the above aircraft between the hours of 0700 and 2200 local time.

Except as provided above, this exemption expires on December 31, 1985, the scheduled date for delivery of the hush kits.

Issued at Washington, D.C., on April 26, 1985.

John E. Wesler,

Director of Environment and Energy.

[FR Doc. 85-10896 Filed 5-3-85; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-85-8]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final dispostition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 28, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on April 30, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemption

Docket No.	Petitioner	Regulations affected	Description of relief sought
23956-1	Worldwide Airlines, Inc.	14 CFR 91.303	To allow petitioner to operate at least two Stage 1 Boeing-707-331B aircraft until hush kits are installed.
23982-1	Tradewinds Airways Ltd.	14 CFR 91.303	To allow petitioner to operate Stage 1 Boeing 707 aircraft in scheduled and charter cargo service to the United States until hush kits are installed.

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
22978–1	Airmark Corp	14 CFR 91.303	To allow petitioner to operate one Stage 1 Boeing-136 until hush kits are installed

[FR Doc. 85–10899 Filed 5–3–85; 8:45 am]
BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of December 17, 1982 (47 FR 57600, December 27, 1982), I hereby determine that the objects to be included in the exhibit, "Gericault Drawings" (including in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the International Exhibitions Foundation and various foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Pierpont Morgan Library, New York, New York, beginning on or about June 7, 1985, to on or about July 31, 1985; the San Diego Museum of Art, San Diego, California, beginning on or about August 31, 1985, to on or about October 20, 1985; and the Museum of Fine Arts, Houston, Texas, beginning on or about November 9, 1985, to on or about January 5, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: April 30, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85–10873 Filed 5–3–85; 8:45 am]
BILLING CODE 8230–01–M

[1] An itemized list of objects include in the exhibit is filed as part of the original document.

OMB Circular A–76 Study of Acquisition of Books, Periodicals and Other Library Materials

The United States Information Agency announces its intention to perform a cost comparison study of its Program Support Division, Office of Cultural Centers and Resources. This office coordinates with suppliers for acquisition of books, periodicals, recordings and a variety of supplies, equipment and materials in response to requests from USIA officers overseas, and in Washington in support of U.S. cultural education programs overseas.

This activity has not been previously scheduled for an A–76 study.

Milestone charts for the in-house and cost comparison studies are being developed and will be published in the **Federal Register** within the next 90 days.

For further information contact Carolyn S. Hillier, Planning and Development Staff, Office of Administration and Technology, on (202) 485–2449.

Dated: May 1, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85–10932 Filed 5–3–85; 8:45 am]
BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 87
Monday, May 6, 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

1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—May 8, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Parts of the meeting open to the public. The rest of the meeting closed to the public.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

1. Special Docket No. 1206—Application of Sea-Land Service, Inc. for the benefit of Page & Jones, Inc. as Agent for Sony Magnetic Products, Inc., and Special Docket No. 1238—Application of Pacific Westbound Conference and Sea-Land Service, Inc. for the benefit of Tone Forwarding as Agent for the Mearl Corporation—Consideration of the Records.

Portions closed to the public

1. Agreement No. 207-0101737: Italia/Transatlantica Joint Service Agreement.
2. Petition of Concorde/Nopal Line for Issuance of Regulations to Adjust and Meet Conditions Unfavorable To Shipping in the Foreign Trade of the United States—Consideration of the Record.
3. Docket No. 84-33: Section 19 Inquiry—United States/Argentina and United States/Brazil Trades—Consideration of Motion For Suspension of Investigation, and Replies thereto.
4. Agreement No. 202-010689: Actions of the Transpacific Westbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-10957 Filed 5-1-85; 4:26 pm]

BILLING CODE 6730-01-M

2

TENNESSEE VALLEY AUTHORITY

Meeting No. 1349

TIME AND DATE: 10:15 a.m. (edt), Wednesday, May 8, 1985.

PLACE: Sullivan Central High School, Little Theater, Route 4, Blountville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on April 23, 1985.

Discussion Items

1. Update on lake levels in Upper Holston Watershed.

Action Items

C—Power Items

C1. Agreement between the Institute of International Education and TVA whereby TVA will conduct an 8-week energy conservation training program for a maximum of 30 program participants from underdeveloped countries.

*C2. Cooperative Agreement No. TV-66579A with the Atmospheric Fluidized Bed Development Corporation for the 160-MW atmospheric fluidized bed combustion demonstration plant project.

*C3. Amendment to Cooperative Agreement No. TV-65607A with Duke Power Company for procurement services for the atmospheric fluidized bed combustion demonstration plant project.

(*Items approved by individual Board members. This will give formal ratification to the Board's action.)

F—Unclassified

F1. Memorandum of Understanding No. TV-66689A between Corps of Engineers, Nashville District, U.S. Department of the Army and TVA covering arrangements for cooperative exchange of engineering and other expertise.

F2. Revised policy code relating to employee development.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: May 1, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-11006 Filed 5-2-85; 12:03 p.m.]

BILLING CODE 8120-01-M

federal register

Monday
May 6, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23 and 91

Shoulder Harness in Normal, Utility, and Acrobatic Category Airplanes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23 and 91

[Docket No. 23815; Notice No. 85-11]

Shoulder Harnesses in Normal, Utility, and Acrobatic Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Parts 23 and 91 of the Federal Aviation Regulations (FAR) to require the installation of shoulder harnesses at all seats of normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment and to require the pilot-in-command to brief passengers on how to fasten and unfasten their shoulder harness for takeoff and landings if shoulder harnesses are installed. This proposal responds to the conclusions of an FAA Crashworthiness Study Report, a Petition for Rulemaking from the General Aviation Manufacturers Association (GAMA), and Safety Recommendations from the National Transportation Safety Board (NTSB). This proposal will enhance the crashworthiness of small airplanes manufactured one year after the effective date of the proposed amendment.

DATE: Comments must be received on or before June 20, 1985.

ADDRESS: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-204), Docket No. 23815, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments delivered must be marked Docket No. 23815. Comments may be inspected in Room 916 between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: J. Robert Ball, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23815". The postcard will be date stamped and returned to the commenter. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn.: Public Information Center (APA-430), 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Amendment 23-7 to Part 23 of the FAR, adopted on August 1, 1969, upgraded many airworthiness standards for small airplanes. Section 23.785 was amended to require that, in addition to the safety belt, each occupant must be protected from head injury by one of the following: (1) A shoulder harness to prevent the head from contacting any injurious objects; (2) elimination of any injurious object within the striking radius of the head; or (3) an energy absorbing rest that would support the arms, shoulder, head, and spine.

On January 31, 1973, the FAA issued Notice No. 73-1 (38 FR 2985) proposing to amend Parts 23 and 91 of the FAR to require: (1) Shoulder harnesses for all occupants of newly certificated airplanes; (2) shoulder harnesses for all occupants of airplanes manufactured one year after the effective date of the amendment, regardless of the type certification basis of the airplane; and (3) shoulder harnesses for all airplanes in service with attachment structural provisions within one year after the effective date of the amendment.

In support of final action on Notice No. 73-1, the FAA obtained the following information: (1) Approximately 80,000 to 90,000 of the 130,000 U.S. registered small airplanes in service would be required to add shoulder harnesses on the basis of existence of structural provisions; (2) the cost per seat for the installation of a shoulder harness would vary from $20 to $200 for most airplanes and installations made at the factory were mainly in the $20 to $40 per seat range; and (3) two percent of the current airplanes were equipped with shoulder harnesses, 50 percent of these shoulder harnesses were used on a regular basis, and the increased availability of shoulder harnesses would contribute significantly to occupant protection in an airplane accident.

As the final action on Notice 73-1, the FAA issued Amendment 23-19 to Part 23 and Amendment 91-139 to Part 91 on June 9, 1977. Amendment 23-19 requires the installation of shoulder harnesses for the front seats of all small airplanes for which an application for a type certificate is received after July 18, 1978 and Amendment 91-139 requires the installation of shoulder harnesses for the front seats of small airplanes manufactured after July 18, 1978. The rationale for the final action is discussed in the preamble to these amendments.

Also, § 23.785(j) was amended to require, in part, the cabin area surrounding each seat within striking distance of the occupant's head or torso be free of potentially injurious objects and if energy absorbing designs are used to meet this requirement, they must protect the occupant from serious injury when the occupant experiences the ultimate inertia forces set forth in § 23.561(b)(2).

As a result of the final action on Notice No. 73-1, the NTSB, on December 8, 1977, issued Safety Recommendations A-77-70 and A-77-71. Safety Recommendations A-77-70 and A-77-71 reiterated the NTSB's concern on what was considered to be the inadequacies of the new rule since the new requirements applied only to the front seats of new airplanes. On December 17, 1980, the Safety Board Completed a review of the FAA's action for accomplishing the safety improvements

sought by Safety Recommendations A–77–70 and A–77–71. Safety Recommendation A–77–70 states:

Amend 14 CFR 23.785 to require the installation of approved shoulder harnesses at all seat locations as outlined in NPRM 73–1. (Recommendation Status: Open, Unacceptable Action.)

Safety Recommendation A–77–71 states:

Amend 14 CFR 91.33 and .39 to require the installation of approved shoulder harnesses on all general aviation aircraft manufactured before July 18, 1978, after a reasonable lead time, and at all seat locations as outlined in NPRM [Notice of Proposed Rulemaking] 73–1.

Since this recommendation had been classified as "open, unacceptable action" for three years, the Safety Board developed recommendations to specify a certain date by which the FAA should accomplish the safety objectives of Safety Recommendation A–77–71 and included them as new recommendations.

On December 31, 1980, the NTSB forwarded to the FAA Administrator their Safety Recommendations A–80–125 through –127 which address the subject of installation of shoulder harnesses and are as follows:

Safety Recommendation A–80–125:

Require that those general aviation aircraft manufactured to include attachment points for shoulder harnesses at occupant seats be fitted with shoulder harnesses no later than December 31, 1985, and, in the interim, require this modification as a requisite for change in FAA registration. (Class II, Priority Action) (A–80–125).

Safety Recommendation A–80–126:

Develop, in coordination with airframe manufacturers, detailed approved installation instructions for installing shoulder harnesses at each seat location in current models and types of general aviation aircraft in which shoulder harness attachment points were not provided as standard equipment. Publish and provide these instructions to owners of these aircraft by December 31, 1982. (Class II, Priority Action) (A–80–126).

Safety Recommendation A–80–127:

Require that those general aviation aircraft for which FAA-approved harness installation instructions have been developed be fitted with shoulder harnesses at each seat location no later than December 31, 1985, and, in the interim, require this modification as a requisite for change in the FAA registration. (Class II, Priority Action) (A–80–127).

In reply to these safety recommendations, the FAA informed the NTSB that the feasibility of requiring the installation of approved shoulder harnesses at all seat locations was being considered under an existing regulatory project and that the economic impact of the various options was being carefully assessed.

In support of the regulatory project, the FAA's Civil Aeromedical Institute (CAMI) completed a report entitled "Crashworthiness Studies: Cabin, Seat, Restraint, and Injury Findings in Selected General Aviation Accidents," Report No. FAA–AM–82–7. Numerous accidents were reviewed for features of crashworthiness and, in particular, for the injuries to the occupants in relation to the apparent severity of the impact and the adequacy of the function of the cabin and occupant restraint systems. Forty-seven (47) of a greater number of accidents were deemed worthy of more extensive review, in that there appeared to be meaningful information in the accident reports or the CAMI investigators were sufficiently familiar with the particulars of the accidents to provide details. In 23 of the 47 accidents investigated, there were occupants in passenger seats in addition to the pilot and copilot positions. There were 16 accidents in which the most severe injury in the pilot and copilot positions was "serious," yet, in 3 of these accidents, there was at least 1 fatality in the first row of passenger seats. In this context, first row of passenger seats are those immediately behind the pilot and copilot positions. In addition, there were four accidents in which injury to the occupants of the pilot and copilot positions were minor or none and the occupants of the first row of passenger seats received "serious" injuries. In two accidents, the most severe injuries were received by occupants of the second row of passenger seats. In concluding the review, an estimate of the value of upper torso restraint was made by the investigators. In the 47 accidents selected for further review, there were 136 persons involved. Eighty-seven (87) of these 136 were occupying a pilot or copilot seat, and it was estimated that 42 of the 49 passengers involved would have been helped had an upper torso restraint been available and used. From this study, it is clear that upper torso restraint does enhance the crashworthiness of an airplane and, thus, reduces the possibility of serious or fatal injuries to occupants of seats other than that of the pilot and copilot. A copy of this report is in the docket and is also available to the public through the National Technical Information Service, Springfield, Virginia 22161.

The FAA is greatly concerned about the number of injuries and fatalities in small airplane accidents and the General Aviation Manufacturers Association (GAMA) has also expressed concern about the injury rates in general aviation airplane accidents and is actively pursuing programs to both prevent accidents and reduce the risk of injury in those accidents that do occur. Many of these programs require the continuing cooperative efforts by industry, the National Aeronautics and Space Administration (NASA), the FAA's Civil Aeromedical Institute (CAMI), and others, in order to establish new standards for seat and restraint systems. On October 14, 1983, GAMA petitioned the FAA to amend §§ 23.785, 91.14, and 91.33 of the FAR to require the installation and use of shoulder harnesses at all crew and passenger seats in all newly manufactured small airplanes. Manufacturers represented by that organization now provide shoulder harnesses for all crew seats and shoulder harnesses are available as on option for passenger seats. In addition, GAMA members will incorporate structural provisions for the installation of shoulder harnesses in their newly manufactured small normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, or nine or less, that are manufactured after December 31, 1984.

Economic Impact

Following a February 1, 1979 meeting between the FAA Administrator and the Chairman of the NTSB on the issues of crashworthiness, the FAA Administrator directed that the shoulder harness requirements be reevaluated to determine if the requirements should be broadened to include all seats, extented to cover older airplanes, or both. Accordingly, in December 1981, the FAA completed a Benefit-Cost Analysis for the installation of shoulder harnesses in all general aviation airplanes. The analysis included nine alternatives for rulemaking action related to the installation and use of shoulder harnesses. The alternatives considered are cited and discussed as follows:

1. Amend Part 23 to require shoulder harnesses at all seats on newly certificated airplanes (extension of the current rule which requires shoulder harnesses at the front seats only).

Although this alternative would not affect existing airplane designs, it would impose a future requirement for new airplanes whether the shoulder harness is used or not used.

2. Amend Part 23 to require structural design provisions to accommodate the installation of shoulder harnesses at all rear seat locations on newly certificated airplanes.

This alternative would provide the opportunity to install shoulder harnesses, at the owner's option, without the need for structural

modification. This alternative would not be applicable to airplanes being manufactured under the provisions of a current type certificate.

3. Amend Part 91 to require a shoulder harness at all seat locations on new airplane models, that is, those new airplane models manufactured under an amended type certificate, within a certain time period after the effective date of the amendment. Time periods of 1, 3, and 5 years were considered for this alternative.

This alternative is similar to alternative 1, except that the scope is broadened to include airplanes manufactured under an amended type certificate and a transition period is provided.

4. Amend Part 91 to require structural provisions to accommodate shoulder harnesses at all seat locations on new airplane designs.

5. Amend Part 91 to require shoulder harnesess at all seat locations on newly manufactured airplanes after a specified date.

6. Amend Part 91 to require structural provisions to accommodate the installation of shoulder harnesses at all seat locations on all small airplanes within a specified time period.

7. Amend Part 91 to require the installation of shoulder harnesses at all seats on all small airplanes after a specified time.

All airplanes which do not have provisions for shoulder harnesses would be required to be modified to meet the crashworthiness standards of Part 23.

8. Amend Part 91 to require structural provisions to accommodate the installation of shoulder harnesses at all seat locations on small airplanes prior to the time of reregistration.

This would require sellers or buyers to modify the airplane before registration to the new owner.

9. Make no regulatory changes.

The study indicated a positive benefit to cost ratio for alternatives one, two, and seven. Alternatives one and two have been rejected because the present proposal provides much greater benefits in addition to those proposed in alternatives one and two.

Because alternative seven is of such complexity and cost and because some of the data upon which the study was based has changed, the FAA believes that further study is required before that alternative can be considered for regulatory action. Some of the factors which led to this conclusion are as follows:

1. The overall cost was estimated to be from $287 million to $328 million in the 1981 study and more recent information indicates even higher costs.

2. The cost of shoulder harness installation can vary appreciably from one airplane to another. For example, owners of airplanes manufactured without the attachment points for shoulder harnesses or whose airplane requires structural strengthening would have to bear significantly greater expense than those that only require the installation of the shoulder harness itself.

3. Rather than retrofit all seats, it may be more appropriate to retrofit only those seats where it can be done at reasonable cost or to only retrofit the front seats since these have much higher occupancy than the rear seats and, therefore, the benefit to cost ratio will be significantly higher.

The FAA will study the practicality of retrofitting the general aviation fleet and requests information from the public relating to this matter. However, the FAA is concerned about the lack of shoulder harnesses in older airplanes and has taken a number of non-regulatory measures to improve occupant safety.

The FAA and a number of general aviation organizations have active educational programs under way emphasizing the advantages of having, and using, shoulder harnesses at all seat positions. The FAA's Accident Prevention Program emphasizes these advantages at the seminars conducted for the general aviation community. In addition, FAA Advisory Circular (AC) No. 43.13-2A, entitled, "Acceptable Methods, Techniques, and Practices—Aircraft Alterations," contains specific guidance for the installation of shoulder harnesses. This AC describes types of occupant restraint systems, effective restraint angles for the shoulder harnesses, and attachment methods, including precautions for an engineering evaluation of installations which involve cutting or drilling of critical fuselage members or skin of pressurized airplanes.

However, the FAA has concluded that the information within this AC is not receiving the widespread distribution necessary to encourage voluntary installation of shoulder harnesses. The FAA is updating the shoulder harness installation information in AC Number 43.13-2A and plans to issue a new Advisory Circular (AC) for the general aviation community. The new AC will encourage the installation of shoulder harnesses at all seat positions and will be available to all small airplane owners in addition to those individuals concerned with airplane maintenance and alterations for which AC 43.13-2A was prepared. As a further effort to encourage the installation and use of shoulder harnesses, the FAA has prepared a pamphlet entitled: "Your Shoulder Harness—If You Got It—Use It", for pilots attending Accident Prevention Seminars. This pamphlet, FAA-P-8740-45, will be available at the FAA's General Aviation District Offices (GADOs) and Flight Standards District Offices (FSDOs) in late 1984.

In the spring of 1983, the FAA called for the formation of a government/industry committee tasked with addressing several critical general aviation safety problems, including occupant protection. Other problems to be addressed included criteria for the dynamic testing of airplane seats/occupant restraint systems and the crashworthiness of airplane fuel systems. This committee, known as the General Aviation Safety Panel (GASP) has had several meetings and technical working sessions directly aimed at resolving issues for improved crashworthiness in general aviation airplanes. In this regard, the Part 23 Airworthiness Review Conference held October 22-26, 1984, discussed these issues and the FAA plans to address them in a forthcoming Notice of Proposed Rulemaking to improve the crashworthiness in general aviation airplanes.

In preparing the benefit-to-cost analysis for alternative number 5, "Amend Part 91 to require the installation of shoulder harnesses at all seat locations on newly manufactured airplanes after a specified date," it was assumed that the cost would include the design, installation of provisions for shoulder harnesses, and the shoulder harness. Further, the actual installation cost of shoulder harnesses at each seat is estimated at $150 to $250 per seat because the attaching means for these shoulder harnesses will be provided in the affected airplanes. The FAA has been informed by the airplane manufacturers, which are members of the General Aviation Manufacturers Association, that after December 31, 1984, their newly manufactured small normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less, will have structural provisions incorporated for the voluntary installation of shoulder harnesses by airplane owners and operators.

These manufacturers, which produce the majority of small airplanes, will be providing structural provisions for the installation of shoulder harnesses at all seat locations in these small airplanes; therefore, a review of the benefit-to-cost to benefit analysis has shown that

alternative number 5 will now have positive benefits relative to the estimated costs; and, therefore, the FAA concludes that the objectives of alternative 5 should be proposed at this time. For those small airplane manufacturers which are not members of GAMA, the proposed date requiring the installation of shoulder harnesses at all seat positions is considered a reasonable length of time in which to comply with the new requirements.

Discussion of Proposal

Because of the time frame between the completion of the December 1981, Benefit-Cost Analysis and the action proposed by this Notice, the FAA conducted another regulatory evaluation, including regulatory flexibility analysis, to verify the estimated benefits to be derived by this proposal. This latter regulatory evaluation verified that the benefits-cost of this proposal would be positive and are not considered to be major under the procedures and criteria prescribed by Executive Order 12291; however, the FAA does consider this proposal significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Copies of the December 1981, Benefit-Cost Analysis, and the regulatory evaluation for this action are filed in the regulatory docket.

The Federal Aviation Administration proposes a new § 23.2 of the FAR to require, at the time of manufacture, the installation of shoulder harnesses at all seat positions in small normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment. This proposal would assure that shoulder harnesses are available in small normal, utility, and acrobatic category airplanes manufactured one year after the effective date of the proposed amendment, prior to their use in air commerce and, thereby, have an enhanced level of crashworthiness.

Section 23.785 of the FAR is proposed to be amended to require shoulder harnesses designed to protect each occupant from serious head injury from contact with any injurious object when the seat occupant experiences the inertia forces prescribed in § 23.561(b)(2).

Part 91 of the FAR is proposed to be amended to require the pilot-in-command to brief passengers on how to fasten and unfasten the shoulder harness and to notify passengers to fasten their shoulder harness for takeoffs and landings if a shoulder harness is installed, and to require the shoulder harness for each seat be designed to protect the occupant from serious injury when the occupant experiences the ultimate inertia forces specified in § 23.561(b)(2) on small normal, utility, and acrobatic category airplanes manufactured one year after the effective date of the proposed amendment. In addition, the proposed change to § 91.33(B)(13) makes the requirement clear that shoulder harnesses at the flight crew seats must be designed to permit the flight crewmember, when seated and with safety belt and shoulder harness fastened, to perform all functions necessary for flight operations, thereby providing the flight crew the benefit of shoulder harnesses in the event of an accident.

Note.—This proposal will enhance the crashworthiness of normal, utility, and acrobatic category airplanes with a passenger seating configuration of nine or less, excluding pilot seats, at a minimum cost. The cost of shoulder harness installation has been estimated and a positive benefit-to-cost determined. This proposal, therefore, provides passengers of small airplanes manufactured one year after the effective date of the proposed amendment, an enhanced level of safety and reduction of potential injury in the event of an accident. Accordingly, the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States. A regulatory evaluation has been prepared and has been placed in the public docket.

List of Subjects

14 CFR Part 23

Aircraft, Aviation safety, Safety, Air transportation, Tires.

14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Liquor, Narcotics, Pilots, Airspace, Air transportation, Cargo, Smoking, Airports, Airworthiness directives and standards.

The Proposed Amendments

Accordingly, the FAA proposes to amend Parts 23 and 91 of the Federal Aviation Regulations (14 CFR Parts 23 and 91) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

1. By adding a new § 23.2 to read as follows:

§ 23.2 Special retroactive requirements.

Notwithstanding §§ 21.17 and 21.101 of this chapter and irrespective of the type certification basis, each normal, utility, and acrobatic category airplane having a passenger seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment, or such foreign manufactured airplane for entry into the U.S., must meet the requirements of § 23.785(g) in effect after the effective date of the proposed amendment. For the purpose of this paragraph, the date of manufacture is:

(a) The date the inspection acceptance records, or equivalent, reflect that the airplane is complete and meets the FAA Approved Type Design Data; or

(b) In the case of a foreign manufactured airplane, the date the foreign civil airworthiness authority certifies the airplane is complete and issues an original standard certificate of airworthiness, or the equivalent in that country.

2. By amending § 23.785 by adding the words "and shoulder harness" between the words "belt" and "fastened" within the parenthetical phrase of the first sentence of paragraph (j) and by revising paragraph (g) to read as follows:

§ 23.785 Seats, berths, safety belts, and harnesses.

* * * * *

(g) Each occupant must be protected from serious head injury, when subjected to the inertia forces prescribed in § 23.561(b)(2), by a safety belt and shoulder harness, that are designed to prevent the head from contacting any injurious object, for each seat in normal, utility, and acrobatic category airplanes with a passenger seating configuration, excluding pilot seats, of nine or less.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

§ 91.14 [Amended]

3. By amending the title of § 91.14 to read "Use of safety belts and shoulder harnesses"; by adding the words "and shoulder harness, if installed" following the word "belt" in the last sentence of paragraph (a)(1); and by adding the words "and shoulder harness, if

installed" following the word "belt" in the last sentence of paragraph (a)(2).

4. By amending § 91.33 to add a new paragraph (b)(14) to read a follows:

§ 91.33 Powered civil aircraft with standard category U.S. airworthiness certificates; instruments and equipment requirements.

* * * * *

(b) * * *

(14) For normal, utility, and acrobatic category airplanes with a seating configuration, excluding pilot seats, of nine or less, manufactured one year after the effective date of the proposed amendment, an approved shoulder harness for—

(1) Each front seat that meets the requirements of § 23.785 (g) and (h) of the chapter in effect after the effective date of the proposed amendment;

(2) Each additional seat that meets the requirements of § 23.785(g) of this chapter in effect after the effective date of the proposed amendment.

* * * * *

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

Issued in Kansas City, Missouri on April 29, 1985.

Murray E. Smith,

Director.

[FR Doc. 85-10844 Filed 5-3-85; 8:45 am]

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Federal Register

Monday
May 6, 1985

Part III

Office of Management and Budget

Issuance of Circular A-128; Audits of State and Local Governments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Circular A-128 "Audits of State and Local Governments"

AGENCY: Office of Management and Budget.

ACTION: Final Issuance of OMB Circular A-128, "Audits of State and Local Governments."

SUMMARY: This OMB Circular provides policy guidance to Federal agencies in the implementation of the Single Audit Act of 1984 (Pub. L. 98-502). It establishes uniform requirements for audits of Federal financial assistance provided to State and local governments and promotes the efficient and effective use of audit services.

EFFECTIVE DATE: This Circular was effective April 12, 1985, and shall apply to fiscal years of State and local governments that began after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

FOR FURTHER INFORMATION CONTACT: Palmer A. Marcantonio, Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, (202) 395-3993.

SUPPLEMENTARY INFORMATION: On December 26, 1984, a notice was published in the Federal Register (49 FR 50134), asking for comments on a proposed Circular, "Audit requirements for State and local governments." Interested parties were invited to submit comments by February 25, 1985. Almost 150 comments were received from Federal agencies, State and local governments, universities, professional organizations, and others. All comments were considered in developing these final requirements.

There follows a summary of the major comments, grouped by subject and a response to each, including a description of changes made as a result of the comments. Other changes have been made to increase clarity, and readability.

Supersession

Comment: One commenter said this section should be expanded to provide clarification that this Circular supersedes not only audit requirements of OMB Circular A-102, but also those related to all forms of Federal financial assistance such as Block Grant programs and contracts awarded under Federal acquisition regulations.

Reply: Block grant audit regulations will be superseded by individual department and agency regulations that will be issued shortly. With respect to contracts, the law makes it clear that assistance-type contracts are covered, and we would expect single audits to cover other cost-type contracts awarded to State and local governments as well.

Comment: Several commenters said this section should state that the Single Audit Act and this Circular do not relieve recipients of their responsibilities under Attachment P to OMB Circular A-102, "Uniform requirements for grants to State and local governments" for the fiscal years beginning before July 1, 1985.

Reply: Section 22 has been revised to say that until this Circular is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

Comment: One commenter suggested that OMB clearly indicate that GAO will take action to supersede the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs."

Reply: The requirement to use the guidelines has been deleted from this Circular. As Circular A-128 is implemented the guidelines will be phased out and auditors will use guidelines developed by appropriate professional bodies.

Background

Comment: One commenter said the law requires recipients that receive $100,000 or more each year to have an audit made for that year. However, the commenter said it was not clear if an audit was required in subsequent years if the funds were expended over a number of years.

Reply: The audit recipient should have audits made in all subsequent years where significant funds are expended.

Definitions

Comment: Several commenters said the definition of internal controls continued in the draft Circular could be construed to include only accounting controls. They recommended that the definition include administrative controls too.

Reply: We were advised by several groups including the General Accounting Office that the term "administrative controls" may cause some confusion in the accounting profession because the term as used in the auditing literature calls for tests of certain controls not contemplated by the Congress. Instead of using the term administrative controls, Section 8 of the Circular says that controls covering expenditures of Federal funds must be tested. We believe this was the intent of the Act.

Comment: A number of commenters asked whether the definition of subrecipient includes commercial or private businesses and organizations.

Reply: The Circular covers all Federal assistance funds whether the subrecipient is a private or public organization. All State or local governments that receive Federal financial assistance and provide $25,000 or more of it to a subrecipient must determine whether subrecipients spent Federal assistance funds in accordance with applicable laws and regulations. For State and local subrecipients and other nonprofit organizations OMB Circulars call for periodic audits. These audits may be used to determine whether the subrecipient spent the funds properly. For commercial or private businesses and organizations receiving Federal assistance funds the State and local governments may use other means such as program reviews to determine if the funds are being spent properly.

Frequency of Audit

Comment: Several commenters recommended that the one-year requirement for the audit report to be forwarded to the Federal Government be changed to "within six months." Other commenters said the requirement should be deleted altogether because it is not a requirement of the law.

Reply: In order for audit reports to be useful they must be timely. The Circular calls for the audit report to be sent no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

Compliance Testing

Comment: One commenter suggested that the title of this section be changed to "Internal Control and Compliance Reviews," and a separate paragraph be devoted to testing and evaluation of internal control systems.

Reply: The title was changed and a separate section is devoted to reviews of internal control systems.

Comment: Several commenters said it was not clear whether the auditor was required to perform a study and evaluation of internal control systems if the auditor did not plan to place reliance on such systems.

Reply: The Circular was changed to make it clear that the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs whether or not the auditor intends to place reliance on these systems.

Comment: One commenter said the testing of non-Federal programs seemed to be limited to testing transactions

selected in the review of financial statements. The commenter suggested that either the auditor be required to make separate tests of programs other than the major ones or that the auditor be required to review the management controls over Federal programs that are not defined as major ones.

Reply: The law is specific as to how much testing will be made of programs other than major ones. It requires the auditor to determine and report on whether the organization has internal control systems that provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations. Further it provides that transactions for other than major programs that are selected in connection with examinations of financial statements and evaluation of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions. The provisions of the Act are reflected in Section 8 of the Circular.

Comment: One commenter said the draft Circular required the auditor to determine whether amounts claimed or used for matching were determined in accordance with Circular A–102, "Uniform requirements for grants to State and local governments," and Circular A–87, "Cost principles for State and local governments." The commenter objected because Job Training Partnership Act (JTPA) grantees and subgrantees are not required to comply with these Circulars. The recipients of JTPA funds may have developed their own cost principles and grant requirements which may differ from Circulars A–87 and A–102. Therefore, it would be impractical to test compliance with these Circulars.

Reply: Although JTPA grantees may not be subject to OMB Circulars A–102 or A–87 the cost principles and regulations adopted by the grantee should be equivalent to those in the Circulars. If there are significant differences between the grantee's regulations and the Circulars they should be included in the audit report.

Comment: Several commenters raised questions about the requirement for governmental units to maintain accounts that identify all Federal funds received and expended and to identify the programs under which they were received. The commenters were concerned that the recipient's official accounting records might have to be modified to meet the requirement.

Reply: The requirement for grantees to keep records on each grant is not a new one. Since Circular A–102 was first issued in 1971 Attachment G, "Standards for Grantee Financial Management Systems," required grantee financial management systems to provide for accurate, current, and complete disclosure of the financial results of each grant program. Therefore, we do not anticipate modification of grantee accounting records will be required as a result of Circular A–128.

Subrecipients

Comment: One commenter said this section may be interpreted as requiring the recipient to determine whether the subrecipient spent all its Federal funds properly, regardless of the source of the funds.

Reply: The section was amended to make it clear recipients were responsible only for the assistance funds provided by them to subrecipients.

Comment: One commenter said the roles of the recipient State agency, the Federal agency, and cognizant agency are unclear.

Reply: We are working with Federal agencies on procedures for distributing audit reports, resolving audit fundings, and carrying out other cognizance responsibilities. We will ask each agency to publish these procedures as soon as possible.

Relation to Other Audit Requirements

Comment: One commenter made a number of suggestions to make the language more precise. One suggestion was to make it clear that the single audit shall be in lieu of any *financial and compliance audit* required under Federal assistance programs.

Reply: We adopted this suggestion as well as a number of other proposed changes to this section.

Cognizant Agencies

Comment: Several commenters said the draft Circular appears to require that all recipients, regardless of funding level, have established formal cognizant agency assignments.

Reply: The Circular was clarified to say, "Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds." No formal arrangement is anticipated for these smaller government recipients.

Audit Reports

Comment: There were a number of comments that said there was confusion between the responsibilities of the cognizant agency and the clearinghouse.

Reply: This section was rewritten to accommodate these concerns.

Comment: One commenter said that all fraud, abuse, or illegal acts should normally be covered in a separate written report.

Reply: The Circular was amended to say a separate report is normally required for fraud, abuse, and illegal acts.

Comment: There were a number of comments on how the report distribution process can be improved.

Reply: The report distribution process has been streamlined. Now recipients are required to send copies of the audit report to Federal agencies providing funds and one copy of the audit report to a central clearinghouse.

Audit Resolution

Comment: A number of commenters asked that the six month audit resolution period begin when program officials receive the report, not when the agency receives it.

Reply: This section was not changed. Six months from the time an agency receives an audit report seems to be ample time for a Federal agency to receive, process and resolve audit findings.

Sanctions

Comment: One commenter said the Circular should have a more comprehensive government-wide policy concerning actions that should be taken if a State or locality does not comply with the Act or the Circular.

Reply: The Circular now lists a number of actions Federal agencies may consider when a recipient is unable or unwilling to have a proper audit made.

Auditor Selection

Comment: One commenter said there should be some analysis made by State and local governments to determine the most economical way to obtain audit services.

Reply: A new section was added to the Circular reiterating the requirement for State and local governments to follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments," when arranging for audit services.

Darrell A. Johnson,

Acting Deputy Associate Director for Administration.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) a public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resource use is consistent with laws, regulations, and policies;

(2) resources are safeguarded against waste, loss, and misuse; and

(3) reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) the financial statements of the government, department, agency or establishment present fairly its financial

position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) the organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) the organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local

government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single

Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

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May 6, 1985

Part IV

Department of Justice

Office of the Attorney General

28 CFR Part 51

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Proposed Rules

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 51

[Order No. 1091-85]

Procedures for the Administration of Section 5 of the Voting Rights Act of 1965; Proposed Revision of Procedures

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: The Attorney General finds it necessary to propose revisions to the Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 CFR Part 51, 46 FR 872, Jan. 5, 1981. The revisions are needed to conform the existing Procedures to developments that have occurred since 1981, interpretations of Section 5 contained in judicial decisions, and changes mandated by the 1982 Amendments to the Voting Rights Act. Interested persons are invited to participate in the formulation of the proposed revised Procedures by submitting written comments.

DATE: All comments received on or before July 5, 1985, will be considered. It is proposed that the revised Procedures will be effective 30 days after publication in final form.

ADDRESS: Comments should be sent to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530.

Comments regarding collection of information requirements contained in these procedures and submitted to the Director of the Office of Management and Budget, should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of Justice, Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724-5898.

SUPPLEMENTARY INFORMATION: Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, requires certain jurisdictions (listed in the Appendix) to obtain "preclearance" from either the United States District Court for the District of Columbia or from the United States Attorney General before implementing any new standard, practice, or procedure that affects voting.

Procedures for the Attorney General's administration of Section 5 were first published in 1971. Proposed Procedures were published for comments on May 28, 1971 (36 FR 9781), and the final Procedures were published on September 10, 1971 (36 FR 18186). As a result of experience under the 1971 Procedures, changes mandated by the 1975 Amendments to the Voting Rights Act, and interpretations of Section 5 contained in judicial decisions, revised Procedures were published for comment on March 21, 1980 (45 FR 18890), and final revised Procedures were published on January 5, 1981 (46 FR 870) (corrected at 46 FR 9571, Jan. 29, 1981).

In the four years since the revision became final, the Attorney General has had further experience in the consideration of voting changes, most significantly with respect to submitted redistricting plans adopted following the 1980 census; the courts have made a number of important decisions in cases involving Section 5, and Congress has again amended the Voting Rights Act. This new proposed revision reflects these developments.

The principal change proposed is the addition of the new Subpart F, Determinations by the Attorney General. This new subpart discusses the substantive standards followed by the Attorney General in deciding whether or not to object to submitted changes affecting voting. It includes a general discussion of the principles applicable to all determinations and more specific discussions of the standards for the three most complex types of changes—redistrictings, changes in electoral systems, and annexations. The proposed subpart makes it clear that in making substantive Section 5 determinations the Attorney General follows the law as interpreted by the Supreme Court of the United States and other courts. It is hoped that the new subpart will provide additional guidance to jurisdictions subject to the preclearance requirement of Section 5 and to other interested persons.

Although the 1982 Amendments to the Voting Rights Act, Pub. L. 97-205, 96 Stat. 131, do not amend Section 5 or add any jurisdictions to the coverage of Section 5, they make two significant changes concerning the termination of coverage under Section 5 (bailout).

First, effective in August 1984, the Amendments authorize bailout actions by individual political subdivisions (which are usually counties) of covered States. In the past, if statewide coverage existed, only the State could bail out. Section 51.5 has been revised to reflect this change.

Second, also effective in August 1984, the standard that a jurisdiction must meet to obtain permission from a court to bail out has been changed. In order to secure a bailout order after August 4, 1984, the jurisdiction will have to establish, for the ten year period preceding the filing of the action and while the action is pending, that it—

and all governmental units within its territory have complied with Section 5 of this Act, including compliance with the requirement that no change covered by Section 5 has been enforced without preclearance under Section 5, and have repealed all changes covered by Section 5 to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment.

In addition, the jurisdiction will have to establish, for the same period, that—

the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court [or withdrawn by the Attorney General]) and no declaratory judgment has been denied under Section 5, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under Section 5, and no such submissions or declaratory judgment actions are pending.

Notice of the new requirements is given in new § 51.62 of Subpart G (old Subpart F), Sanctions.

The following additional changes in the Procedures are proposed:

A new § 51.8, Section 3 coverage, has been added to make clear that the Attorney General also follows the Procedures set forth herein with respect to submissions received from jurisdictions required under Section 3(c) of the Act to preclear voting changes.

A new § 51.17, Special elections, has been added to clarify the application of Section 5 to the conduct of special elections.

Section 51.18 (old § 51.16), Court-ordered changes, has been expanded to reflect the decision of the Supreme Court in *McDaniel* v. *Sanchez*, 452 U.S. 130 (1981).

In §§ 51.24 (old § 51.22), 51.29 (old § 51.27), and 51.31 (old § 51.29) the address to be used for Section 5 communications has been changed to enable the Department of Justice mail room to improve its handling correspondence relating to Section 5.

Section 51.22 (old § 51.20), Premature submissions, has been revised to make clear that the Attorney General will review a redistricting plan resulting from Federal court litigation prior to the court's final order, if the plan is otherwise final.

Section 51.25 (old § 51.23), Withdrawal of submissions, has been revised to eliminate the good cause requirement for withdrawals and to make clear that a request to withdraw a submission must be in writing.

A new subsection (f) has been added to § 51.28 (old § 51.26), Supplemental contents, to indicate that the Attorney General considers it useful to know whether the jurisdiction has made a complete copy of its submission available for public inspection and has given adequate public notice of this availability.

Section 51.33 (old § 51.31), Notice to registrants concerning submissions, has been revised to indicate that the weekly notice of submissions includes notice of Section 5 declaratory judgment actions, and new § 51.62(c) indicates that the weekly notice includes notice of bailout actions.

Section 51.50(d) (old § 51.49(d)), Records concerning submissions, has been revised to reflect the fact that Section 5 files are now kept on microfiche.

The Appendix added to the Procedures in 1981 listed all jurisdictions subject to the Section 5 preclearance requirement because of coverage under Section 4(b) of the Act, 42 U.S.C. 1973b(b), and for each jurisdiction the date after which voting changes made by it or its political subunits are subject to the preclearance requirement. The revised Appendix adds the Federal Register citation for the coverage determination. Since the January 5, 1981 publication, sixteen jurisdictions have bailed out—El Paso County, Colorado; Honolulu County, Hawaii; Elmore County, Idaho; Campbell County, Wyoming; three towns in Connecticut, and nine towns in Massachusetts. In addition, a bailout application by the State of Alaska is pending. *State of Alaska* v. *United States*, C.A. No. 84-1362 (D.D.C., filed May 1, 1984).

REDESIGNATION TABLE

Old section	New section
51.1	51.1
51.2	51.2
51.3	51.3
51.4	51.4
51.5	51.5
51.6	51.6
51.7	51.7
	51.8
51.8	51.9
51.9	51.10
51.10	51.11
51.11	51.12
51.12	51.13
51.13	51.14
51.14	51.15
51.15	51.16
	51.17
51.16	51.18
51.17	51.19
51.18	51.20
51.19	51.21
51.20	51.22
51.21	51.23
51.22	51.24
51.23	51.25
51.24	51.26
51.25	51.27

REDESIGNATION TABLE—Continued

Old section	New section
51.26	51.28
51.27	51.29
51.28	51.30
51.29	51.31
51.30	51.32
51.31	51.33
51.32	51.34
51.33	51.35
51.34	51.36
51.35	51.37
51.36	51.38
51.37	51.39
51.38	51.40
51.39	51.51
51.40	51.41
51.41	51.42
51.42	51.43
51.43	51.44
51.44	51.45
51.45	51.46
51.46	51.47
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51.51	51.61
	51.62
51.52	51.63
51.53	51.64
51.54	51.65

List of Subjects in 28 CFR Part 511

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Under the definition of section 1(b) of E.O. 12291, 3 CFR 127 (1981 Compilation), these Procedures do not constitute a major rule. Accordingly, a regulatory impact analysis, pursuant to section 3 of E.O. 12291 has not been prepared. Pursuant to section 3(c)(3) of E.O. 12291, these revised Procedures were submitted to the Director of the Office of Management and Budget more than 10 days prior to this publication. Issuance of these Procedures does not constitute a major Federal action and will not significantly affect the human environment. Accordingly, neither an environmental impact assessment nor an environmental impact statement has been prepared. See 28 CFR Part 61. Because these Procedures are excepted under 5 U.S.C. 553(b)(A), an initial regulatory flexibility analysis is not required under 5 U.S.C. 603(a). Accordingly, such an analysis has not been prepared. The collection of information requirments contained in these Procedures have been submitted to the Director of the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3504(h)(1) and 5 CFR 1320.13. Comments in this regard should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of Justice, Washington, D.C. 20530.

This statement of revised Procedures is proposed under 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

Dated: April 26, 1985.

Edwin Meese III,

Attorney General.

Part 51 is proposed to be revised to read as follows:

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965, AS AMENDED

Subpart A—General Provisions

Sec.

Subpart B—Procedures for Submission to the Attorney General

Subpart C—Contents of Submissions

Subpart D—Communications From Individuals and Groups

Sec.

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

Subpart A—General Provisions

§ 51.1 Purpose.

Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by Section 4(b) of the Act, 42 U.S.C. 1973(b), of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage, unitl either: (1) A declaratory judgment is obtained from the U.S. District Court for the District of Columbia that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, or (2) it has been submitted to the Attorney General and the Attorney General has interposed no objection within a 60-day period following submission. In order to make clear the responsibilities of the Attorney General under Section 5 and the interpretation of the Attorney General of the responsibility imposed on others under this section, the procedures in this part have been established to govern the administration of Section 5.

§ 51.2 Definitions.

As used in this part—

(a) "Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Civil Rights Act of 1968, 82 Stat. 73, the Voting Rights Act Amendments of 1970, 84 Stat. 314, the District of Columbia Delegate Act, 84 Stat. 853, the Voting Rights Act Amendments of 1975, 89 Stat. 400, and the Voting Rights Act Amendments of 1982, 96 Stat.131, 42 U.S.C. 1973 *et seq.* Section numbers, such as "Section 14(c)(3)," refer to sections of the Act.

(b) "Attorney General" means the Attorney General of the United States or the delegate of the Attorney General.

(c) "Vote" and "voting" are used, as defined in the Act, to include "all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing pursuant to this Act, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election." Section 14(c)(1).

(d) "Change affecting voting" means any voting qualification, prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on the date used to determine coverage under Section 4(b) and includes, *inter alia*, the examples given in § 51.13.

(e) "Political subdivision" is used, as defined in the Act, to refer to "* * * any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c)(2).

(f) "Covered jurisdiction" is used to refer to a State, where the determination referred to in § 51.4 has been made on a statewide basis, and to a political subdivision, where the determination has not been made on a statewide basis.

(g) "Preclearance" is used to refer to the obtaining of the declaratory judgment described in Section 5 or to the failure of the Attorney General to interpose an objection pursuant to Section 5.

(h) "Submission" is used to refer to the written presentation to the Attorney General by an appropriate official of any change affecting voting.

(i) "Submitting authority" means the jurisdiction on whose behalf a submission is made.

(j) "Language minority" or "language minority group" is used, as defined in the Act, to refer to persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Sections 14(c)(3) and 203(e). See 28 CFR Part 55, Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

§ 51.3 Delegation of authority.

The responsibility and authority for determinations under Section 5 have been delegated by the Attorney General to the Assistant Attorney General, Civil Rights Division. With the exception of objections and decisions following the reconsideration of objections, the Chief of the Voting Section is authorized to act on behalf of the Assistant Attorney General.

§ 51.4 Date used to determine coverage; list of covered jurisdictions.

(a) The requirement of Section 5 takes effect upon publication in the **Federal Register** of the requisite determinations of the Director of the Census and the Attorney General under Section 4(b). These determinations are not reviewable in any court. Section 4(b).

(b) Section 5 requires the preclearance of changes affecting voting made since the date used for the determination of coverage. For each covered jurisdiction that date is one of the following: November 1, 1964; November 1, 1968; or November 1, 1972.

(c) The Appendix to this part contains a list of covered jurisdictions, together with the applicable date used to determine coverage and the **Federal Register** citation for the determination of coverage.

§ 51.5 Termination of coverage (bailout).

A covered jurisdiction may terminate the application of Section 5 (or bail out)

by obtaining the declaratory judgment described in Section 4(a) of the Act. Effective on and after August 5, 1984, Section 4(a) authorizes a political subdivision of a covered State to bring a declaratory judgment action for the termination of coverage.

§ 51.6 Political subunits.

All political subunits within a covered jurisdiction (e.g., counties, cities, school districts) are subject to the requirement of Section 5.

§ 51.7 Political parties.

Certain activities of political parties are subject to the preclearance requirement of Section 5. A change affecting voting effected by a political party is subject to the preclearance requirement: (1) If the change relates to a public electoral function of the party and (2) if the party is acting under authority explicitly or implicitly granted by a covered jurisdiction or political subunit subject to the preclearance requirement of Section 5. For example, changes with respect to the recruitment of party members, the conduct of political campaigns, and the drafting of party platforms are not subject to the preclearance requirement. Changes with respect to the conduct of primary elections at which party nominees, delegates to party conventions, or party officials are chosen are subject to the preclearance requirement of Section 5. Where appropriate the term "jurisdiction" (but not "covered jurisdiction") includes political parties.

§ 51.8 Section 3 coverage.

Under Section 3(c) of the Act, a court in voting rights litigation can order as relief that a jurisdiction not subject to the preclearance requirement of Section 5 preclear its voting changes by submitting them either to the court or to the Attorney General. Where a jurisdiction is required under Section 3(c) to preclear its voting changes, and it elects to submit the proposed changes to the Attorney General for preclearance, the procedures in this part will apply.

§ 51.9 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) Except as specified in §§ 51.37, 51.39, and 51.42 the 60-day period shall commence upon receipt by the Department of Justice of a submission.

(c) The 60-day period shall mean 60 calendar days, with the day of receipt of the submission not counted. If the final day of the period should fall on a Saturday, Sunday, any day designated as a holiday by the President or Congress of the United States, or any other day that is not a day of regular business for the Department of Justice, the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

§ 51.10 Requirement of action for declaratory judgment or submission to the Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the jurisdiction that has enacted or seeks to administer the change must either: (1) Obtain a judicial determination from the U.S. District Court for the District of Columbia that denial or abridgment of the right to vote on account of race, color, or membership in a language minority group is not the purpose and will not be the effect of the change or (2) make to the Attorney General a proper submission of the change to which no objection is interposed. It is unlawful to enforce a change affecting voting without obtaining preclearance under Section 5. The obligation to obtain such preclearance is not relieved by unlawful enforcement.

§ 51.11 Right to bring suit.

Submission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change affecting voting does not have the prohibited discriminatory purpose or effect.

§ 51.12 Scope of requirement.

Any change affecting voting, even though it appears to be minor or indirect, even though it ostensibly expands voting rights, or even though it is designed to remove the elements that caused objection by the Attorney General to a prior submitted change, must meet the Section 5 preclearance requirement.

§ 51.13 Examples of changes.

Changes affecting voting include, but are not limited to, the following examples:

(a) Any change in qualifications or eligibility for voting.

(b) Any change concerning registration, balloting, and the counting of votes and any change concerning publicity for or assistance in registration or voting.

(c) Any change with respect to the use of a language other than English in any aspect of the electoral process.

(d) Any change in the boundaries of voting precincts or in the location of polling places.

(e) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, deannexation, incorporation, reapportionment, changing to at-large elections from district elections, or changing to district elections from at-large elections).

(f) Any change in the method of determining the outcome of an election (e.g., by requiring a majority vote for election or the use of a designated post or place system).

(g) Any change affecting the eligibility of persons to become or remain candidates, to obtain a position on the ballot in primary or general elections, or to become or remain holders of elective offices.

(h) Any change in the eligibility and qualification procedures for independent candidates.

(i) Any change in the term of an elective office or an elected official or in the offices that are elective (e.g., by shortening the term of an office, changing from election to appointment or staggering the terms of offices).

(j) Any change affecting the necessity of or methods for offering issues and propositions for approval by referendum.

(k) Any change affecting the right or ability of persons to participate in political campaigns which is effected by a jurisdiction subject to the requirement of Section 5.

§ 51.14 Recurrent practices.

Where a jurisdiction implements a practice or procedure periodically or upon certain established contingencies, a change occurs: (1) The first time such a practice or procedure is implemented by the jurisdiction, (2) when the manner in which such a practice or procedure is implemented by the jurisdiction is changed, or (3) when the rules for determining when such a practice or procedure will be implemented are changed. The failure of the Attorney General to object to a recurrent practice or procedure constitutes preclearance of the future use of the practice or procedure if its recurrent nature is clearly stated or described in the submission or is expressly recognized in the final response of the Attorney General on the merits of the submission.

§ 51.15 Enabling legislation and contingent or nonuniform requirements.

(a) The failure of the Attorney General to interpose an objection to legislation: (1) That enables or permits

political subunits to institute a voting change or (2) that requires or enables political subunits to institute a voting change upon some future event or if they satisfy certain criteria does not exempt the political subunit itself from the requirement to obtain preclearance when its seeks or is required to institute the change in question, unless implementation by the subunit is explicitly included and described in the submission of such parent legislation.

(b) Such legislation includes for example: (1) Legislation authorizing counties, cities, or school districts to institute any of the changes described in § 51.13, (2) legislation requiring a political subunit that chooses a certain form of government to follow specified election procedures, (3) legislation requiring or authorizing political subunits of a certain size or a certain location to institute specified changes, (4) legislation requiring a political subunit to follow certain practices or procedures unless the subunits charter or ordinances specify to the contrary.

§ 51.16 Distinction between changes in procedure and changes in substance.

The failure of the Attorney General to interpose an objection to a procedure for instituting a change affecting voting does not exempt the substantive change from the preclearance requirement. For example, if the procedure for the approval of an annexation is changed from city council approval to approval in a referendum, the preclearance of the new procedure does not exempt an annexation accomplished under the new procedure from the preclearance requirement.

§ 51.17 Special elections.

(a) The conduct of a special election (e.g., an election to fill a vacancy; an initiative, referendum, or recall election; or a bond issue election) is subject to the preclearance requirement to the extent that the jurisdiction makes changes in the practices or procedures to be followed.

(b) A jurisdiction conducting a referendum election to ratify a change in a practice or procedure that affects voting may submit the change to be voted on at the same time that it submits any changes involved in the conduct of the referendum election. A jurisdiction wishing to receive preclearance for the change to be ratified should state clearly that such preclearance is being requested. See § 51.22 below.

§ 51.18 Court-ordered changes.

(a) Changes affecting voting that are specifically ordered by a Federal court as a result of the court's equitable jurisdiction over an adversary proceeding are not subject to the preclearance requirement of Section 5. Changes designed or formulated by a Federal court are not subject to preclearance merely because the court in fashioning a remedy seeks to effectuate legitimate policies of the jurisdiction. When, however, a jurisdiction submits and a Federal court then adopts a proposed change reflecting the policy choices of jurisdiction officials, the change is subject to the preclearance requirement of Section 5. For example, if a Federal court finds a jurisdiction's districting plan unconstitutionally malapportioned or discriminatory, a remedial plan prepared on behalf of the jurisdiction cannot be ordered into effect and implemented without preclearance, except when the court concludes that exigent circumstances (e.g., impending elections) warrant use of such a plan on an interim basis. That the jurisdiction lacks authority under State law to redistrict on its own does not alter the application of this rule.

(b) Where a court-ordered change is not itself subject to the preclearance requirement, subsequent changes necessitated by the court order but decided upon by the jurisdiction are subject to the preclearance requirement. For example, although a court-ordered districting plan may not be subject to the preclearance requirement, changes in voting precincts and polling places made necessary by the new plan remain subject to Section 5.

§ 51.19 Request for notification concerning voting litigation.

A jurisdiction subject to the preclearance requirement of Section 5 that becomes involved in any litigation concerning voting is requested promptly to notify the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered a submission under Section 5.

Subpart B—Procedures for Submission to the Attorney General

§ 51.20 Form of submissions.

Submissions may be made in letter or any other written form.

§ 51.21 Time of submissions.

Changes affecting voting should be submitted as soon as possible after they become final.

§ 51.22 Premature submissions.

The Attorney General will not consider on the merits: (a) Any proposal for a change affecting voting submitted prior to final enactment or administrative decision or (b) any proposed change which has a direct bearing on another change affecting voting which has not received Sectin 5 preclearance. However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

§ 51.23 Party and jurisdiction responsible for making submissions.

(a) Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the submitting authority or by any other authorized person on behalf of the submitting authority. When one or more counties or other political subunits within a State will be affected, the State may make a submission on their behalf. Where a State is covered as a whole, State legislation (except legislation of local applicability) or other changes undertaken or required by the State shall be submitted by the State.

(b) A change affected by a political party (see § 51.7) may be submitted by an appropriate official of the political party.

§ 51.24 Address for submissions.

Changes affecting voting shall be mailed or delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.25 Withdrawal of submissions.

If while a submission is pending the submitted change is repealed, altered, or declared invalid or otherwise becomes unenforceable, the jurisdiction may withdraw the submission. In other circumstances, a jurisdiction may withdraw a submission at any time prior to a final decision by the Attorney General. Notice of the withdrawal of a submission must be made in writing, addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The submission shall be deemed withdrawn upon receipt of said notice, provided that the Attorney General has not theretofore made a decision either to preclear or object to the submission.

Subpart C—Contents of Submissions

§ 51.26 General.

(a) The source of any information contained in a submission should be identified.

(b) Where an estimate is provided in lieu of more reliable statistics, the submission should identify the name, position, and qualifications of the person responsible for the estimate and should briefly describe the basis for the estimate.

(c) Submissions should be no longer than is necessary for the presentation of the appropriate information and materials.

(d) A submitting authority that desires the Attorney General to consider any information supplied as part of an earlier submission may incorporate such information by reference by stating the date and subject matter of the earlier submission and identifying the relevant information.

(e) Where information requested by this subpart is relevant but not known or available, or is not applicable, the submission should so state.

§ 51.27 Required contents.

Each submission should contain the following information or documents to enable the Attorney General to make the required determination pursuant to Section 5 with respect to the submitted change affecting voting:

(a) A copy of any ordinance, enactment, order or regulation embodying a change affecting voting.

(b) If the change affecting voting either is not readily apparent on the face of the document provided under paragraph (a) or is not embodied in a document, a clear statement of the change explaining the difference between the submitted change and the prior law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the prior and proposed situation with respect to voting.

(c) The name, title, address, and telephone number of the person making the submission.

(d) The name of the submitting authority and the name of the jurisdiction responsible for the change, if different.

(e) If the submission is not from a State or county, the name of the county and State in which the submitting authority is located.

(f) Identification of the person or body responsible for making the change and the mode of decision (e.g., act of State legislature, ordinance of city council, administrative decision by registrar).

(g) A statement identifying the statutory or other authority under which the jurisdiction undertakes the change and a description of the procedures the jurisdiction was required to follow in deciding to undertake the change.

(h) The date of adoption of the change affecting voting.

(i) The date on which the change is to take effect.

(j) A statement that the change has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(k) Where the change will affect less than the entire jurisdiction, an explanation of the scope of the change.

(l) A statement of the reasons for the change.

(m) A statement of the anticipated effect of the change on members of racial or language minority groups.

(n) A statement identifying any past or pending litigation concerning the change or related voting practices.

(o) A Statement that the prior practice has been precleared (with the date) or is not subject to the preclearance requirement and a statement that the procedure for the adoption of the change has been precleared (with the date) or is not subject to the preclearance requirement, or an explanation of why such statements cannot be made.

(p) Other information that the Attorney General determines is required for an evaluation of the purpose or effect of the change. Such information may include items listed in § 51.28 and is most likely to be needed with respect to redistricting, annexations, and other complex changes. In the interest of time such information should be furnished with the initial submission relating to voting changes of this type. When such information is required, but not provided, the Attorney General shall notify the submitting authority in the manner provided in § 51.37.

§ 51.28 Supplemental contents.

Review by the Attorney General will be facilitated if the following information, where pertinent, is provided in addition to that required by § 51.27.

(a) *Demographic information.* (1) Total and voting age population of the affected area before and after the change, by race and language group. If such information is contained in publications of the U.S. Bureau of the Census, reference to the appropriate volume and table is sufficient.

(2) The number of register voters for the affected area by voting precinct before and after the change, by race and language group.

(3) Any estimates of population, by race and language group, made in connection with the adoption of the change.

(b) *Maps.* Where any change is made that revises the constitutency that elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or that changes voting precinct boundaries, polling place locations, or voter registration sites, maps in duplicate of the area to be affected, containing the following information:

(1) The prior and new boundaries of the voting unit or units.

(2) The prior and new boundaries of voting precincts.

(3) The location of racial and language minority groups.

(4) Any natural boundaries or geographical features that influenced the selection of boundaries of the prior or new units.

(5) The location of prior and new polling places.

(6) The location of prior and new voter registration sites.

(c) *Election returns.* Where a change may affect the electoral influence of a racial or language minority group, returns of primary and general elections conducted by or in the jurisdiction, containing the following information:

(1) The name of each candidate.

(2) The race or language group of each candidate, if known.

(3) The position sought by each candidate.

(4) The number of votes received by each candidate, by voting precinct.

(5) The outcome of each contest.

(6) The number of registered voters, by race and language group, for each voting precinct for which election returns are furnished. Information with respect to elections held during the last ten years will normally be sufficient.

(d) *Language usage.* Where a change is made affecting the use of the language of a language minority group in the electoral process, information that will enable the Attorney General to determine whether the change is consistent with the minority language requirements of the Act. The Attorney General's interpretation of the minority language requirements of the Act is contained in Interpretative Guidelines: Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 CFR Part 55.

(e) *Publicity and participation.* For submissions involving controversial or potentially controversial changes, evidence of public notice, of the

opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place. Examples of materials demonstrating public notice or participation include:

(1) Copies of newspaper articles discussing the proposed change.

(2) Copies of public notices that describe the proposed change and invite public comment or participation in hearings and statements regarding where such public notices appeared (e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups).

(3) Minutes or accounts of public hearings concerning the proposed change.

(4) Statements, speeches, and other public communications concerning the proposed change.

(5) Copies of comments from the general public.

(6) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(f) *Availability of the submission.* Copies of public notices that announce the submission to the Attorney General, inform the public that a complete duplicate copy of the submission is available for public inspection (e.g., at the county courthouse) and invite comments for the consideration of the Attorney General and statements regarding where such public notice appeared.

(g) *Minority group contacts.* For submissions from jurisdictions having a significant minority population, the names, addresses, telephone numbers, and organizational affiliation (if any) or racial or language minority group members residing in the jurisdiction who can be expected to be familiar with the proposed change or who have been active in the political process.

Subpart D—Communications From Individuals and Groups

§ 51.29 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in a jurisdiction to which Section 5 applies.

(a) Communications may be in the form of a letter stating the name, address, and telephone number of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose of effect, or simply bringing to the attention of the Attorney General the fact that a voting change has occurred.

(b) The communications should be mailed to the Chief, Voting Section Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page should be marked: Comment under Section 5 of the Voting Rights Act.

(c) Comments by individuals or groups concerning any change affecting voting may be sent at any time; however, individuals and groups are encouraged to comment as soon as they learn of the change.

(d) Department of Justice officials and employees shall comply with the request of any individual that his or her identity not be disclosed to any person outside the Department, to the extent permitted by the Freedom of Information Act, 5 U.S.C. 552. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting "would constitute a clearly unwarranted invasion of personal privacy" under 5 U.S.C. 552(b)(6), the identity of the individual shall not be disclosed to any person outside the Department.

(e) When an individual or group desires the Attorney General to consider information that was supplied in connection with an earlier submission, it is not necessary to resubmit the information but merely to identify the earlier submission and the relevant information.

§ 51.30 Action on communications from individuals or groups.

(a) If there has already been a submission received of the change affecting voting brought to the attention of the Attorney General by an individual or group, any evidence from the individual or group shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If such a submission has not been received, the Attorney General shall advise the appropriate jurisdiction of the requirement of Section 5 with respect to the change in question.

§ 51.31 Communications concerning voting suits.

Individuals and groups are urged to notify the Chief, Voting Section, Civil Rights Division, of litigation concerning voting in jurisdictions subject to the requirement of Section 5.

§ 51.32 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups, which shall contain the name and address of any individual or group that wishes to receive notice of Section 5 submissions. Information relating to this registry and to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a *et seq.*, is contained in JUSTICE/CRT–004, 48 FR 5334 (Feb. 4, 1983).

Subpart E—Processing of Submissions

§ 51.33 Notice to registrants concerning submissions.

Weekly notice of submissions that have been received will be given to the individuals and groups who have registered for this purpose under § 51.32. Such notice will also be given with respect to declaratory judgment actions filed pursuant to Section 5.

§ 51.34 Expedited consideration.

(a) When a submitting authority is required under State Law or local ordinance or otherwise finds it necessary to implement a change within the 60-day period following submission, it may request that the submission be given expedited consideration. The submission should explain why such consideration is needed and provide the date by which a determination is required.

(b) Jurisdictions should endeavor to plan for changes in advance so that expedited consideration will not be required and should not routinely request such consideration. When a submitting authority demonstrates good cause for expedited consideration the Attorney General will attempt to make a decision by the date requested. However, the Attorney General cannot guarantee that such consideration can be given.

(c) Notice of the request for expedited consideration will be given to interested parties registered under § 51.32.

§ 51.35 Disposition of inappropriate submissions.

The Attorney General will make no response on the merits with respect to an inappropriate submission but will notify the submitting authority of the inappropriateness of the submission. Such notification will be made as promptly as possible and no later than the 60th day following receipt and will include an explanation of the inappropriateness of the submission. Inappropriate submissions include the

submission of changes that do not affect voting (see, e.g., § 51.13), the submission of standards, practices, or procedures that have not been changed (see e.g., §§ 51.4, 51.14), the submission of changes that affect voting but are not subject to the requirement of Section 5 (see, e.g., § 51.18), premature submissions (see § 51.22), and submissions by jurisdictions not subject to the requirement of Section 5 (see §§ 51.4, 51.5).

§ 51.36 Release of information concerning submissions.

The Attorney General shall have the discretion to call to the attention of the submitting authority or any interested individual or group information or comments related to a submission.

§ 51.37 Obtaining information from the submitting authority

(a) If a submission does not satisfy the requirements of § 51.27, the Attorney General may request any omitted information from the submitting authority and, upon requesting such information, shall advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. Only that information considered necessary for evaluation of the submission shall be requested from the submitting authority. The request shall be made as promptly as possible after receipt of the original inadequate submission, and only the first such request shall operate to begin anew the 60-day period in which the Attorney General may interpose an objection.

(b) A copy of the request shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(c) If, after a request for further information is made pursuant to this section, the information requested becomes available to the Attorney General from a source other than the submitting authority, the Attorney General shall promptly notify the submitting authority, and the 60-day period will commence upon the date of such notification.

(d) Notice of the request for and receipt of further information will be given to interested parties registered under § 51.32.

§ 51.38 Obtaining information from others.

(a) The Attorney General may at any time request relevant information from governmental jurisdictions and from interested groups and individuals and may conduct any investigation or other inquiry that is deemed appropriate in making a determination.

(b) If a submission does not contain evidence of adequate notice to the public, and the Attorney General believes that such notice is essential to a determination, steps will be taken by the Attorney General to provide public notice sufficient to invite interested or affected persons to provide evidence as to the presence or absence of a discriminatory purpose or effect. The submitting authority shall be advised when any such steps are taken.

§ 51.39 Supplementary submissions.

When a submitting authority provides documents and written information materially supplementing a submission (or a request for reconsideration of an objection) for evaluation as if part of its original submission, or, before the expiration of the 60-day period, makes a second submission such that the two submissions cannot be independently considered, the 60-day period for the original submission will be calculated from the receipt of the supplementary information or from the second submission.

§ 51.40 Failure to complete submissions.

If after 60 days the submitting authority has not provided further information in response to a request made pursuant to § 51.37(a), the Attorney General, absent extenuating circumstances and consistent with the burden of proof under Section 5 described in § 51.51 (b) and (d), may object to the change, giving notice as specified in § 51.44.

§ 51.41 Notification of decision not to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose no objection to a submitted change affecting voting.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.42 Failure of the Attorney General to respond.

It is the practice and intention of the Attorney General to respond to each submission within the 60-day period. However, the failure of the Attorney General to make a written response within the 60-day period constitutes preclearance of the submitted change, provided the submission is addressed as specified in § 51.24 and is appropriate for a response on the merits as described in § 51.35.

§ 51.43 Reexamination of decision not to object.

After notification to the submitting authority of a decision to interpose no objection to a submitted change affecting voting has been given, the Attorney General may reexamine the submission if, prior to the expiration of the 60-day period, information indicating the possibility of the prohibited discriminatory purpose or effect is received. In this event, the Attorney General may interpose an objection provisionally and advise the submitting authority that examination of the change in light of the newly raised issues will continue and that a final decision will be rendered as soon as possible.

§ 51.44 Notification of decision to object.

(a) The Attorney General shall within the 60-day period allowed notify the submitting authority of a decision to interpose an objection. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will reconsider an objection upon a request by the submitting authority.

(c) The submitting authority shall be advised further that notwithstanding the objection it may institute and action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited discriminatory purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

(e) Notice of the decision to interpose an objection will be given to interested parties registered under § 51.32.

§ 51.45 Request for reconsideration.

(a) The submitting authority may at any time request the Attorney General to reconsider an objection.

(b) Requests may be in letter or any other written form and should contain relevant information or legal argument.

(c) Notice of the request will be given to any party who commented on the submission or requested notice of the Attorney General's action thereon and to interested parties registered under § 51.32. In appropriate cases the Attorney General may request the submitting authority to give local public notice of the request.

§ 51.46 Reconsideration of objection at the instance of the Attorney General.

(a) Where there appears to have been a substantial change in operative fact or relevant law, an objection may be reconsidered, if it is deemed appropriate, at the instance of the Attorney General.

(b) Notice of such a decision to reconsider shall be given to the submitting authority, to any party who commented on the submission or requested notice of the Attorney General's action thereon, and to interested parties registered under § 51.32, and the Attorney General shall decide whether to withdraw or to continue the objection only after such persons have had a reasonable opportunity to comment.

§ 51.47 Conference.

(a) A submitting authority that has requested reconsideration of an objection pursuant to § 51.45 may request a conference to produce information or legal argument in support of reconsideration.

(b) Such a conference shall be held at a location determined by the Attorney General and shall be conducted in an informal manner.

(c) When a submitting authority requests such a conference, individuals or groups that commented on the change prior to the Attorney General's objection or that seek to participate in response to any notice of a request for reconsideration shall be notified and given the opportunity to confer.

(d) The Attorney General shall have the discretion to hold separate meetings to confer with the submitting authority and other interested groups or individuals.

(e) Such conferences will be open to the public or to the press only at the discretion of the Attorney General and with the agreement of the participating parties.

§ 51.48 Decision after reconsideration.

(a) The Attorney General shall within the 60-day period following the receipt of a reconsideration request or following notice given under § 51.46(b) notify the submitting authority of the decision to continue or withdraw the objection, provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide. The reasons for the decision shall be stated.

(b) The objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose and will not have the effect of discriminating on account of race, color, or membership in a language minority group.

(c) If the objection is not withdrawn, the submitting authority shall be advised that notwithstanding the objection it may institute an action in the U.S. District Court for the District of Columbia for a declaratory judgment that the change objected to by the Attorney General does not have the prohibited purpose or effect.

(d) A copy of the notification shall be sent to any party who has commented on the submission or reconsideration or has request notice of the Attorney General's action thereon.

(e) Notice of the decision after reconsideration will be given to interested parties registered under § 51.32.

§ 51.49 Absence of judicial review.

The decision of the Attorney General not to object to a submitted change or to withdraw an objection is not reviewable. However, Section 5 states: "Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure."

§ 51.50 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a Section 5 file for each submission, containing the submission, related written materials, correspondence, memoranda, investigative reports, notations concerning conferences with the submitting authority or any interested individual or group, and copies of any letters from the Attorney General concerning the submission.

(b) Objection files: Brief summaries regarding each submission and the general findings of the Department of Justice investigation and decision concerning it will be prepared when a decision to interpose, continue, or withdraw an objection is made. Files of these summaries, arranged by jurisdiction and by the date upon which such decision is made, will be maintained.

(c) Computer file: Records of all submissions and of their dispositions by the Attorney General shall be electronically stored and periodically retrieved in the form of computer printouts.

(d) The contents of the above-described files, either in paper or in microfiche form, shall be available for inspection and copying by the public during normal business hours at the Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. Materials that are exempt from inspection under the Freedom of Information Act, 5 U.S.C. 552(b), may be withheld at the discretion of the Attorney General. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.29(d) shall be available only as provided by § 51.29(d). Applicable fees, if any, for the copying of the contents of these files are contained in the Department of Justice regulations implementing the Freedom of Information Act, 28 CFR 16.10.

Subpart F—Determinations by the Attorney General

§ 51.51 In general.

(a) *Basic standard.* Section 5 provides for submission to the Attorney General as an alternative to the seeking of a declaratory judgment from the U.S. District Court for the District of Columbia. Therefore, the Attorney General shall make the same determination that would be made by the court in an action for a declaratory judgment under Section 5: Whether the submitted change has the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

(b) *Burden of proof.* The burden of proof on a submitting authority when it submits a change to the Attorney General is the same as it would be if the change were the subject of a declaratory judgment action in the U.S. District Court for the District of Columbia. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 335 (1966).

(c) *Information considered.* The Attorney General shall base a determination on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice.

(d) *Nature of the determinations.* (1) If the Attorney General determines that a submitted change does not have the prohibited purpose or effect, no objection shall be interposed to the change.

(2) If the Attorney General determines that a submitted change has the prohibited purpose or effect, an objection shall be interposed to the change.

(3) If the evidence as to the purpose or effect of a change is conflicting and the Attorney General is unable to determine that the submitted change does not have the prohibited purpose or effect an objection shall be interposed to the change.

§ 51.52 Changes with a discriminatory purpose.

The Attorney General will object to a change affecting voting that is undertaken for a racially discriminatory purpose or a purpose to discriminate on the basis of membership in a language minority group. See *City of Richmond* v. *United States*, 422 U.S. 358, 378 (1975).

§ 51.53 Changes with a discriminatory effect.

The Attorney General will object to a change affecting voting that will lead to a retrogression in the position of members of a racial or language minority group (i.e., will make members of such a group worse off than they had been before the change) with respect to their effective exercise of the electoral franchise. See *Beer* v. *United States*, 425 U.S. 130, 140–142 (1976). Where retrogression is unavoidable, however, the Attorney General will not object to a retrogressive change that nonetheless fairly reflects minority voting strength as it exists. See *City of Richmond* v. *United States*, 422 U.S. 358, 370–371 (1975).

§ 51.54 Changes that violate the Constitution or other Federal statutes.

Because Section 5 is designed to safeguard the right to vote from discrimination on account of race, color, or membership in a language minority group, the Attorney General will object to a change affecting voting that has been shown to deny or abridge the right to vote in violation of the Fifteenth Amendment to the Constitution or any other constitutional or statutory provision providing this safeguard against discrimination. Such statutory provisions include 42 U.S.C. 1971 (a) and (b) and Sections 2, 4(a), 4(f)(2), 4(f)(4), 203(c), and 208 of the Voting Rights Act.

§ 51.55 Relevant factors.

The existence of a reasonable and legitimate justification for a submitted change is generally highly relevant in evaluating that change under Section 5. Also generally relevant is the extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change and took their concerns into account in making the change. Departures from objective guidelines and fair and conventional procedures in adopting the change are likely to be particularly relevant.

§ 51.56 Particularized standards for certain types of changes.

(a) *Introduction.* Many of the types of changes affecting voting are listed in § 51.13. This section and the sections that follow set forth standards—in addition to those set forth above—that are used by the Attorney General in reviewing redistrictings (see § 51.57), changes in electoral systems (see § 51.58), and annexations (see § 51.59).

(b) *Basic principles.* The basic principles relied upon by the Attorney General in deciding whether or not to object to changes involving representation are defined in the following cases: *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971); *White* v. *Regester*, 412 U.S. 755 (1973); *City of Richmond* v. *United States*, 422 U.S. 358 (1975); *Beer* v. *United States*, 425 U.S. 130 (1976); *United Jewish Organizations of Williamsburg, Inc.* v. *Carey*, 430 U.S. 144 (1977); *Connor* v. *Finch*, 431 U.S. 407 (1977); *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980); *City of Rome* v. *United States*, 446 U.S. 156 (1980); *Rogers* v. *Lodge*, 458 U.S. 613 (1982); *City of Port Arthur* v. *United States*, 459 U.S. 159 (1982).

(c) *Section 2 as a basis for objection.* (1) The Attorney General will interpose an objection based upon violation of Section 2 if there is clear and convincing evidence of such a violation that remains unrebutted by the submitting authority after it has been afforded an opportunity to do so. The burden of proof remains, as in suits brought under Section 2, on the party or parties alleging violation of the section, and not on the submitting authority.

(2) A violation of Section 2 may exist—

(i) Where district lines are drawn in a manner that unreasonably fragments minority voter concentrations, *or*

(ii) Where multi-member districts or an at-large election system submerge minority voter concentrations,

and where such fragmentation or submergence results in a denial of access to the political process for minority voters. (A denial of access is determined by reference to all of the factors that the Congress deems relevant to the Section 2 inquiry, as borrowed, *e.g.*, from *White* v. *Regester*, 412 U.S. 755 (1973), and cases referenced at S. Rep. 97–417, 97th Cong., 2d Sess. 23 nn. 78 & 82.

(3) A violation of Section 2 is not established merely upon a showing that a particular election system or aspect thereof or particular district lines are not designed in a manner likely to result in the election of one or more (or a proportional number of) representatives preferred by members of a minority group.

§ 51.57 Redistrictings.

(a) The Attorney General will object to a redistricting plan:

(1) If the submitted plan reflects a discriminatory purpose.

(2) If any significant reduction of minority voting strength under the submitted plan compared to minority voting strength under the existing plan is not required to achieve equal district population or other legitimate governmental goals.

(3) If the submitted plan demonstrably would result in a denial or abridgment of the right to vote in violation of Section 2. See § 51.56(c).

(b) The circumstances that lead to an objection with respect to redistricting plans most often occur when some or all of the following facts are found to exist:

(1) There is a pattern of racial bloc voting against candidates who are the choice of members of minority groups.

(2) The submitted plan unnecessarily fragments minority concentrations.

(3) The submitted plan unnecessarily over concentrates minorities in one or more districts.

(4) The jurisdiction rejected or refused to consider alternative plans that would effectuate its legitimate governmental interests and would reduce minority voting strength less than the submitted plan did.

(c) Other relevant factors for determining whether a basis for objection by the Attorney General exists are:

(1) The extent to which minorities have been denied an equal opportunity to participate in the various political activities that take place in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections that take place in the jurisdiction and to influence the decision-making of elected officials in the jurisdiction.

(3) The extent to which continuing effects of past discrimination have resulted in lower voter registration and election participation rates for minority group members than for other persons.

(4) The extent to which the districts created by the submitted plan needlessly depart from objective redistricting criteria such as compactness and contiguity or follow a unique configuration that inexplicably disregards prior district boundaries, boundaries of districts of other contemporaneous plans, political boundaries, prior precinct boundaries,

natural boundaries, or manmade physical boundaries.

(5) The extent to which the submitted plan is inconsistent with the jurisdiction's stated redistricting standards.

§ 51.58. Changes in electoral systems.

(a) The adoption of an at-large (jurisdiction-wide) system raises significant Section 5 issues, which courts have addressed on numerous occasions. See § 51.56(b). The Attorney General applies the principles extracted from that case law in assessing the permissibility of such changes. The same principles generally govern changes in other aspects of electoral systems, although the impact of these other changes on minority voting strength often is not as significant. Such changes include: use of numbered posts, anti-single shot provisions, candidate residency districts, or staggered terms; plurality versus majority vote requirements; increases or decreases in the size of elective bodies; and partisan versus nonpartisan elections.

(b) The Attorney General will object to a change in a jurisdiction's electoral system:

(1) If the change in the electoral system reflects a discriminatory purpose.

(2) If the new system unfairly or unnecessarily reduces minority voting strength from its level under the old system.

(3) If the new system demonstrably would result in a denial or abridgment of the right to vote in violation of Section 2. See § 51.56(c).

(c) The circumstances that lead to an objection with respect to changes in electoral systems most often occur when some or all of the following facts are found to exist:

(1) There is a pattern of racial bloc voting against candidates who are the choice of members of minority groups.

(2) The jurisdiction rejected or refused to consider alternative systems that would effectuate its legitimate governmental interests and would reduce minority voting strength less than the adopting change did.

(3) The change needlessly submerges minority concentrations into electoral units in such a manner as effectively to deprive minority voters of equal access to the political process.

(d) Other relevant factors for determining whether a basis for objection by the Attorney General with respect to the use of an electoral system exists are:

(1) The extent to which minorities have been denied an equal opportunity to participate in the various political activities that take place in the jurisdiction.

(2) The extent to which minorities have been denied an equal opportunity to influence elections that take place in the jurisdiction and to influence the decision-making of elected officials in the jurisdiction.

(3) The extent to which the continuing effects of past discrimination have resulted in lower voter registration and election participation rates for minority group members than for other persons.

§ 51.59. Annexations.

(a) Annexations are subject to Section 5 preclearance because they alter the composition of a jurisdiction's electorate. Thus, in analyzing annexations under Section 5, the Attorney General only considers the purpose and effect of the annexation as it pertains to voting.

(b) *Selective.* The Attorney General will object if a jurisdiction's annexations reflect the purpose or have the effect of excluding minorities while including other similarly situated persons.

(c) *Dilutive.* The Attorney General will object to annexations if they reflect a discriminatory purpose or if *all three* of the following criteria are satisfied:

(1) The annexation will result in a significant reduction in a jurisdiction's minority population percentage. (This reduction is measured at the time of the submission or is based on projections into the reasonably foreseeable future.)

(2) There is a pattern of racial bloc voting against candidates who are the choice of members of minority groups.

(3) The electoral system to be used in the jurisdiction does not fairly reflect minority voting strength as it exists in the post-annexation jurisdiction.

Subpart G—Sanctions

§ 51.60 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including Section 5. See Section 12(d).

(b) Certain violations may be subject to criminal sanctions. See Sections 12 (a) and (c).

§ 51.61 Enforcement by private parties.

Private parties have standing to enforce Section 5.

§ 51.62 Bar to termination of coverage (bailout).

(a) Effective on and after August 5, 1984, Section 4(a) of the Act requires that a jurisdiction seeking to have its coverage under Section 5 terminated (or to "bail out") must demonstrate compliance with Section 5, as described in Section 4(a), during the ten years preceding the filing of the bailout action and during its pendency.

(b) For purposes of Section 4(a), a jurisdiction shall not be deemed to have failed to comply with Section 5 by reason of an objection interposed and subsequently withdrawn (see § 51.48) by the Attorney General.

(c) Notice of the filing of a bailout action will be given to interested parties registered under § 51.32.

Subpart H—Petition To Change Procedures

§ 51.63 Who may petition.

Any jurisdiction or interested individual or group may petition to have these procedural guidelines amended.

§ 51.64 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name, address, and telephone number of the petitioner, the change requested, and the reasons for the change.

§ 51.65 Disposition of petition.

The Attorney General shall promptly consider and dispose of a petition under this subpart and give notice of the disposition, accompanied by a simple statement of the reasons, to the petitioner.

Appendix—Jurisdictions Covered Under Section 4(b) of the Voting Rights Act, As Amended

The preclearance requirement of Section 5 of the Voting Rights Act, as amended, applies in the following jurisdictions. The applicable date is the date that was used to determine coverage and the date after which changes affecting voting are subject to the preclearance requirement.

Some jurisdictions, for example, Yuba County, California, are included more than once because they have been determined on more than one occasion to be covered under Section 4(b).

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Alabama	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Alaska	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Arizona	do	40 FR 43746	Sept. 23, 1975.
California:			
Kings County	do	40 FR 43746	Do.
Merced County	do	40 FR 43746	Do.
Monterey County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1976.
Yuba County	do	36 FR 5809	Do.
Yuba County	Nov. 1, 1972	41 FR 783	Jan. 5, 1976.
Florida:			
Collier County	do	41 FR 34329	Aug. 13, 1976.
Hardee County	do	40 FR 43746	Sept. 23, 1975.
Hendry County	do	41 FR 34329	Aug. 13, 1976.
Hillsborough County	do	40 FR 43746	Sept. 23, 1975.
Monroe County	do	40 FR 43746	Do.
Georgia	do	30 FR 9897	Aug. 7, 1965.
Louisiana	do	30 FR 9897	Do.
Michigan:			
Allegan County:			
Clyde Township	do	41 FR 34329	Aug. 13, 1976
Saginaw County:			
Buena Vista Township	do	41 FR 34329	Do.
Mississippi	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
New Hampshire:			
Cheshire County:			
Rindge Town	do	39 FR 16912	May 10, 1974.
Coos County:			
Millsfield Township	do	39 FR 16912	Do.
Pinkhams Grant	do	39 FR 16912	Do.
Stewartstown Town	do	39 FR 16912	Do.
Stratford Town	do	39 FR 16912	Do.
Grafton County:			
Benton Town	do	39 FR 16912	Do.
Hillsborough County:			
Antrim Town	do	39 FR 16912	Do.
Merrimack County:			
Boscawen Town	do	39 FR 16912	Do.
Rockingham County:			
Newington Town	do	39 FR 16912	Do.
Sullivan County:			
Unity Town	do	39 FR 16912	Do.
New York:			
Bronx County		36 FR 5809	Mar. 27, 1971.
Bronx County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
Kings County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Kings County	Nov. 1, 1972	40 FR 43746	Sept. 23, 1975.
New York County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
North Carolina:			
Anson County	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.
Beaufort County	do	31 FR 5081	Mar. 29, 1966.
Bertie County	do	30 FR 9897	Aug. 7, 1965.
Bladen County	do	31 FR 5081	Mar. 29, 1966.
Camden County	do	31 FR 3317	Mar. 2, 1966.
Caswell County	do	30 FR 9897	Aug. 7, 1965.
Chowan County	do	30 FR 9897	Do.
Cleveland County	do	31 FR 5081	Mar. 29, 1966.
Craven County	do	30 FR 9897	Aug. 7, 1965.
Cumberland County	do	30 FR 9897	Do.
Edgecombe County	do	30 FR 9897	Do.
Franklin County	do	30 FR 9897	Do.
Gaston County	do	31 FR 5081	Mar. 29, 1966.
Gates County	do	30 FR 9897	Aug. 7, 1965.
Granville County	do	30 FR 9897	Do.
Greene County	do	30 FR 9897	Aug. 7, 1965.
Guilford County	do	31 FR 5081	Mar. 29, 1966.
Halifax County	do	30 FR 9897	Aug. 7, 1965.
Harnett County	do	31 FR 5081	Mar. 29, 1966.
Hertford County	do	30 FR 9897	Aug. 7, 1965.
Hoke County	do	30 FR 9897	Do.
Jackson County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Lee County	Nov. 1, 1964	31 FR 5081	Mar. 29, 1966.
Lenoir County	do	30 FR 9897	Aug. 7, 1965.
Martin County	do	31 FR 19	Jan. 4, 1966.
Nash County	do	30 FR 9897	Aug. 7, 1965.
Northampton County	do	30 FR 9897	Do.
Onslow County	do	30 FR 9897	Do.
Pasquotank County	do	30 FR 9897	Do.
Perquimans County	do	31 FR 3317	Mar. 2, 1966.
Person County	do	30 FR 9897	Aug. 7, 1965.
Pitt County	do	30 FR 9897	Do.
Robeson County	do	30 FR 9897	Do.
Rockingham County	do	31 FR 5081	Mar. 29, 1966.
Scotland County	do	30 FR 9897	Aug. 7, 1965.
Union County	do	31 FR 5081	Mar. 29, 1966.
Vance County	do	30 FR 9897	Aug. 7, 1965.
Washington County	do	31 FR 19	Jan. 4, 1966.
Wayne County	do	30 FR 9897	Aug. 7, 1965.
Wilson County	do	30 FR 9897	Do.
South Carolina	do	30 FR 9897	Do.
South Dakota:			
Shannon County	Nov. 1, 1972	41 FR 783	Jan. 5, 1976.
Todd County	do	41 FR 783	Do.

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Texas	do	40 FR 43746	Sept. 23, 1975.
Virginia	Nov. 1, 1964	30 FR 9897	Aug. 7, 1965.

The following political subdivisions in States subject to statewide coverage are also covered individually:

Jurisdiction	Applicable date	Federal Register citation	
		Volume and page	Date
Arizona:			
Apache County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Apache County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Cochise County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Coconino County	do	36 FR 5809	Do.
Coconino County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Mohave County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Navajo County	do	36 FR 5809	Do.
Navajo County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Pima County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Pinal County	do	36 FR 5809	Do.
Pinal County	Nov. 1, 1972	40 FR 49422	Oct. 22, 1975.
Santa Cruz County	Nov. 1, 1968	36 FR 5809	Mar. 27, 1971.
Yuma County	Nov. 1, 1964	31 FR 982	Jan. 25, 1966.

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federal register

Monday
May 6, 1985

Part V

Environmental Protection Agency

40 CFR Part 12

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 12

[FRL 2622-1]

Enforcement of Nondiscrimination on the Basis of Handicap in the Environmental Protection Agency's Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Environmental Protection Agency.

DATES: To be assured of consideration, comments must be in writing and must be received on or before July 5, 1985. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to: Nathaniel Scurry, Director, Office of Civil Rights, Room 206 West Tower, 401 M Street, SW., Washington, D.C. 20460.

Comments received will be available for public inspection in the Public Information Reference Unit, Room 2904 Mall, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Copies of this notice are available on tape for those with impaired vision. The tape may be listened to in the Office of Civil Rights, EPA, at the above address. For information, please call 202/382-4575.

FOR FURTHER INFORMATION CONTACT: Ms. Nereid Maxey, Office of Civil Rights (A-105), Environmental Protection Agency, Room 211 West Tower, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4567, TDD (202) 382-4565.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by Environmental Protection Agency. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (section 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 12.101 Purpose.

Section 12.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 12.102 Application

The proposed regulation applies to all programs or activities conducted by the agency.

Section 12.103 Definitions.

"Agency." For purposes of this regulation "agency" means Environmental Protection Agency.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 12.160(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 12.170(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in § 12.150 and § 12.170(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504

coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified handicapped person is one who can achieve the purpose of the program without modifications in the program that would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id* at 410.

We have incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

We encourage comment on paragraph (1). The language we have proposed comes directly from the Supreme Court's interpretation of section 504. However, so long as the definition of "qualified handicapped person" remains faithful to the statute and current case law, we are receptive to alternative language.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 12.110 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app.) is applicable to the proposed consultation requirement. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

The self-evaluation will be concluded with a report to the Administrator of findings and recommendations. Within 60 days of the receipt of the report, the Administrator will direct that certain actions be taken as he/she deems appropriate.

Section 12.111 Notice.

Section 12.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 12.130 General prohibitions against discrimination.

Section 12.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 12.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 12.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question It woud be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to

admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 12.150–151) and communications (§ 12.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportuntity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 12.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 12.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified handicapped persons in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 12.140 Employment.

Section 12.140 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a recent decision of the Fifth Circuit that holds that, despite the resulting overlap of coverage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both section 504 and section 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employment in federally conducted programs or activities. In addition to this section, § 12.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

Section 12.149 Program accessibility: Discrimination prohibited.

Section 12.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 12.150 and 12.151. The Environmental Protection Agency (EPA) is committed to making its programs accessible to handicapped persons; however, it should be noted that its programs are designed to promote a cleaner and healthier environment. Thus, at this time we anticipate, in a nonemployment context, that this regulation will have its greatest impact on insuring that the various meetings, symposia, and hearings conducted by EPA are accessible. We invite public comment on any other EPA-conducted programs and activities that it is believed will be impacted by this regulation. Please note that EPA-assisted programs and activities are not covered by this regulation but are covered by a regulation found at 40 CFR Part 7. It is that regulation which applies to EPA assistance to build sewage treatment plants and the like.

Section 12.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–.58), with certain modifications. Thus, § 12.150 requires

that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 12.150(a)(1)). However, § 12.150, unlike 28 CFR 41.56–.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 12.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 12.160(e). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis* (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted:

> That at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might will violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities. 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 12.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 12.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 12.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days. The Department of Justice is considering whether and to what degree the Federal Advisory Committee Act (5 U.S.C. app. 2) is applicable to the proposed consultation requirement included in § 12.150(d).

Section 12.151 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 12.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 12.150.

Section 12.160 Communications.

Section 12.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 12.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an

opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 12.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 12.160(e). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 12.150(a)(2)). Unless not required by § 12.160(e), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 12.160 would in most cases not result in undue financial and adminstrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 12.160 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 12.170.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 12.160(a)(1)(ii). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signs at inaccessible facilities that directs users to locations with information about accessible facilities.

Paragraph (d) requires the agency to take appropriate steps to ensure that information regarding section 504 rights and protections that is supplied to employees, applicants, participants, beneficiaries, and other interested persons under § 12.111 is effectively communicated to handicapped persons.

Section 12.170 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 12.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 12.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 12.170(g)).

Paragraph (h) provides for the Judicial Officer to hear any appeal. The Judicial Officer is independent of the office which makes the initial determination of compliance or noncompliance.

Paragraph (i) requires appeals to be filed within 30 days of the initial decision. The complainant has an additional 30 days in which to file a statement or brief in support of any appeal taken (§ 12.170(i)(1)). The agency has 30 days in which to respond (§ 12.170(i)(2)). These times may be extended by the Judicial Officer, who must issue a decision within 30 days of receipt of all papers concerning the appeal (§ 12.170(j)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 40 CFR Part 12

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 12 of the Code of Federal Regulations is proposed to be amended as follows:

Part 12 is added to read as follows:

PART 12—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY

Sec.

Authority: 29 U.S.C. 794.

§ 12.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 12.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 12.103 Definitions.

For purposes of this part, the term—

"Agency" means Environmental Protection Agency.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's) interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 95–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 12.104–12.109 [Reserved]

§ 12.110 Self-evaluation.

(a) The agency shall, within 60 days of the effective date of this part, begin a nationwide evaluation, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, of its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part.

(b) The evaluation will be concluded within one year of the effective date of this part with a written report submitted to the Administrator that states the findings of the self-evaluation, any remedial action taken, and recommendations, if any, for further remedial action.

(c) The Administrator will, within 60 days of the receipt of the report of the evaluation and recommendations, direct that certain remedial actions be taken as he/she deems appropriate.

(d) The agency shall, for at least three years following completion of the evaluation required under paragraph (b) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made.

§ 12.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 12.112–12.129 [Reserved]

§ 12.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 12.131–12.139 [Reserved]

§ 12.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 12.141–12.148 [Reserved]

§ 12.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 12.150 and 12.151, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 12.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure

that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibliility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 12.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 19.607 (1982), apply to buildings covered by this section.

§§ 12.152–12.159 [Reserved]

§ 12.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The agency shall take appropriate steps to provide handicapped persons with information regarding their section 504 rights under the agency's programs or activities.

(e) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 12.161–12.169 [Reserved]

§ 12.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director of the Office of Civil Rights, EPA or his/her designate.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. The complainant may file a complete complaint at any EPA office. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction,

it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Timely appeals shall be accepted and processed by the Judicial Officer, Environmental Protection Agency.

(i) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 30 days of receipt from the agency of the letter required by § 12.170(g). The Judicial Officer may extend this time for good cause.

(1) Any statement or brief in support of the appeal should be submitted to the Judicial Officer and the agency within 30 calendar days of filing the appeal.

(2) Any agency response should be submitted to the Judicial Office and complainant within 30 days of receipt of the complainant's statement or brief. These times may be extended by the Judicial Officer.

(j) The Judicial Officer shall notify the complainant of the results of the appeal within 30 days of the receipt of the complainant's written statement or brief, if any, and the agency's response, if any. If the complainant files no statement or brief, the Judicial Officer shall notify the complainant of the results of the appeal within 30 days of the close of the time for filing such statement or brief.

(k) The time limits cited in (g) and (j) above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 12.171–12.999 [Reserved]

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Monday
May 6, 1985

Part VI

Department of Education

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 76 and 581

Emergency Immigrant Education Program; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Bilingual Education and Minority Languages Affairs

34 CFR Parts 76 and 581

Emergency Immigrant Education Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations to govern grants made under the Emergency Immigrant Education Program. This program provides financial assistance to State and local educational agencies for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public and nonpublic schools.

DATE: Comments must be received on or before June 6, 1985.

ADDRESS: All comments should be addressed to Director, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building). Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chang, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education and Minority Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building). Washington, D.C. 20202. Telephone (202) 732-1842.

SUPPLEMENTARY INFORMATION: The Emergency Immigrant Education Program is authorized under the Emergency Immigrant Education Act of 1984, Title VI of the Education Amendments of 1984, Pub. L. 98-511, 20 U.S.C. 4101-4108.

These proposed regulations establish a State-administered grant program authorizing grants to State educational agencies (SEAs) for such supplementary educational services as English language instruction, special materials and supplies and such other bilingual educational services as English as a Second Language (ESL), immersion programs, the use of the native tongue for instruction, as well as for the costs associated with providing such services for immigrant children. State educational agencies then make subgrants to local educational agencies (LEAs) that meet the eligibility requirement for numbers of immigrant children enrolled. To establish administrative procedures for this program that are consistent with procedures used for the Department's other State-administered grant programs, 34 CFR 76.102(x) of the Education Department General Administrative Regulations (EDGAR) is redesignated as 34 CFR 76.102(z) and a new provision is added at 34 CFR 76.102(y). This new provision adds the application submitted by a State under the Emergency Immigrant Education Program to the EDGAR definition of "State plan." As a result of this amendment all the administrative procedures set out in the EDGAR which govern State plans apply to the Emergency Immigrant Education Program.

To simplify the application process, the Secretary proposes that SEAs not be required to resubmit any assurances previously submitted to meet the General Education Provisions Act requirements governing programs under which Federal funds are made available to LEAs through or under the supervision of SEAs. The Secretary also proposes to separate requirements governing the SEAs submission of assurances and the submission of counts of immigrant children. Once an SEA has submitted the required assurances, resubmission of assurances would be necessary. The previously submitted assurances would govern all the awards made under the program. To make awards in a given fiscal year, the Secretary would request an SEA to submit a count, taken at any time during that current school year, that provides information on the enrollment of immigrant children.

The proposed regulations in § 581.4(b)(1) repeat the definition of "immigrant children" contained in section 602(1) of the Act and add the clarification that the term "immigrant" only includes persons who are "immigrants" under the Immigration and Nationality Act, as amended, 8 U.S.C. 1101(15). If the term "immigrant" were not interpreted in accordance with the Immigration and Nationality Act, persons could be counted and served contrary to the purpose of the program and Congressional intent, including United States citizens' children who were born abroad, e.g., while their parents were traveling abroad or serving with the armed forces overseas; and the children of persons temporarily residing in the United States, e.g., children of foreign diplomats. Thus the term "immigrant children" will include only the children, who are not United States citizens, of lawful permanent resident aliens, refugees, asylees, parolees, persons of other immigrant status, and immigrant residents in the United States without proper documentation.

The term will exclude children of foreign diplomats, United States citizens' children who were born abroad, and children of foreign residents temporarily in the United States for business or pleasure. This is not an exhaustive list of exclusions and only provides examples of the children who are not eligible for assistance under this program. For additional categories of ineligible children, please review the definition of "immigrant" under the Immigration and Nationality Act. A copy of the definition will be included in the program information package for this program.

In determining children who meet the definition of "immigrant children" in § 581.4(b)(1), a State must use the definition of "State" in 34 CFR 77.1(c) of EDGAR. EDGAR defines "State" as it is defined under Section 198(a) of the Elementary and Secondary Education Act of 1965 to mean "any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands." The proposed regulations in §581.4(a) incorporate by reference the definition of "State" contained in EDGAR.

Under 34 CFR 76.730-76.734 (made applicable by the proposed regulations in § 581.3(a)), a State and a subgrantee must keep records related to grant funds and compliance with program requirements. To ensure that eligible children are identified for program assistance, the proposed regulations contain provisions regarding determination of children who are eligible to be counted under the Emergency Immigrant Education Program that are similar to provisions in 34 CFR 204.30 of the regulations governing the count of eligible children under the Financial Assistance to State Educational Agencies to Meet Special Educational Needs of Migratory Children Program. The proposed regulations in § 581.51 require SEAs counting immigrant children for assistance under this program to determine that the children meet the definition of "immigrant children" in § 581.4(b)(1) of the proposed regulations and to make a record of the basis on which the children's eligibility was determined. The proposed regulations provide that, in determining eligibility, SEAs may rely on credible information

from any source, including information contained in previous school records and information provided by the child or child's guardian. The proposed regulations do not require an SEA to obtain documentary proof of either the child's eligibility or civil status from the child or the child's parent or guardian.

To receive information necessary to carry out the provisions in section 606(b)(3) of the Act, 20 U.S.C. 4105(b)(3), the Secretary proposes that, in submitting its count of immigrant children, the SEA must also report the number of children eligible under any legal authority, for which funds have been made available for the same fiscal year, that has the same purpose as this program. Funds for the same purpose as this program include, but may not be limited to, funds made available under section 412(d) of the Refugee Act of 1980, as amended (8 U.S.C. 1522) and funds made available under the Refugee Education Assistance Act of 1980, as amended (8 U.S.C. 1522 (note)). The Secretary proposes to identify in the application notice announcing the availability of funds for a given fiscal year any additional legal authorities and funding that may be established by Congress and that have the same purpose as the Emergency Immigrant Education Program.

The proposed regulations in § 581.20 implement the provisions in sections 606(b) and 603(b) of the Act, 20 U.S.C. 4105(b), 4102(b) and explain how the Secretary determines the amount of an award to a State. The proposed regulations in § 581.40 explain how a State determines the amount for subgrants to eligible LEAs that report immigrant children. Section 581.40 also implements section 604 of the Act, 20 U.S.C. 4103, which authorizes administrative costs for a State, not to exceed 1.5 percent of the State award. No allowances for indirect costs other than those included in the maximum 1.5 allowance under § 581.40(a) may be charged to the State grant.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and SEAs, they will not have an impact on small entities, since States and SEAs are not defined as small entities under the Act.

LEAs may apply for subgrants under this program. However, these regulations will not have a significant economic impact on the small LEAs affected because they impose minimal application and compliance requirements. Limitations on the eligibility of LEAs to participate in the program and provisions for the participation of immigrant children in elementary and secondary nonpublic schools are established in section 606(b) of the Act, 20 U.S.C. 4105(b).

Paperwork Reduction Act of 1980

Sections 581.10, 581.11, and 581.51(a)(2) contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provided early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporters Building, 300 7th Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 581

Education, Elementary and secondary education, Grants programs—education, Immigrants, Reports and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance number 84.162, Emergency Immigrant Education Program)

Dated: May 2, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for 34 CFR Part 76 would continue to read:

Authority: Section 408(a)(1) of Pub. L. 90-247, 88 Stat. 559, 560, as amended (20 U.S.C. 1221e-3(a)(1)), unless otherwise noted.

§ 76.1 [Amended]

2. In the table following § 76.1, Section A. Elementary and Secondary Education Programs is amended by adding the following language at the end of Section A:

Emergency Immigrant Education Program; Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108); Part 581; 84.162.

3. Section 76.102 is amended by redesignating paragraph (x) as paragraph (z) and adding a new paragraph (y) to read as follows:

§ 76.102 Definition of "State plan" for Part 76.

* * * * *

(y) *Emergency Immigrant Education.*

The application under the Emergency Immigrant Education Program.

* * * * *

§ 76.125 [Amended]

4. In the table following § 76.125, Other Elementary and Secondary Programs is amended by adding the following language at the end:

84.162 Emergency Immigrant Education Program; Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108); 581.

4. A new Part 581 is added to read as follows:

PART 581—EMERGENCY IMMIGRANT EDUCATION PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Subpart D—[Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

Subpart G—What Compliance Procedures Are Used by the Department of Education?

Authority: Emergency Immigrant Education Act of 1984, Title VI of Pub. L. 98–511, 20 U.S.C. 4101–4108, unless otherwise noted.

Subpart A—General

§ 581.1 What is the Emergency Immigrant Education Program?

This program provides financial assistance to State educational agencies (SEAs) for supplementary educational services and costs for immigrant children enrolled in elementary and secondary public schools under the jurisdiction of local education agencies (LEAs) in the States and in elementary and secondary nonpublic schools within the districts served by LEAs in the States.

(20 U.S.C. 4106)

§ 581.2 Who is eligible to apply for a grant under the Emergency Immigrant Education Program?

An SEA may apply for a grant if it has one or more LEAs in which the sum of the number of immigrant children who are enrolled, during the fiscal year in which funds are made available under this program, in elementary and secondary public schools under jurisdiction of the LEA and in elementary or secondary nonpublic schools within the district served by the LEA, is equal to at least—

(a) Five hundred (500); or

(b) Three percent of the total number of students enrolled during that same fiscal year in public schools under the jurisdiction of the LEA and nonpublic schools within the district served by the LEA.

(20 U.S.C. 4105)

§ 581.3 What regulations apply to the Emergency Immigrant Education Program?

The following regulations apply to the Emergency Immigrant Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), 34 CFR Part 76 (State-Administered Programs), 34 CFR Part 77 (Definitions that apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this Part 581.

(20 U.S.C. 4101–4108)

§ 581.4 What definitions apply to the Emergency Immigrant Education Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Elementary school
Equipment
Fiscal year
Grant
Local educational agency
Nonpublic
Project
Public
Secondary school
Secretary
State
State educational agency
Subgrant
Supplies

(b) *Program definitions.* The following definitions apply to this part:

(1) "Elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1954.

(2)(i) "Immigrant children" means children who were not born in any State and who have been attending schools in any one or more States for less than three complete academic years.

(ii) For purposes of awards under this program, the term "immigrant" includes only persons who are "immigrants" under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(15)).

(20 U.S.C. 4101)

Subpart B—How Does a State Apply for a Grant?

§ 581.10 What assurances must a State submit to receive a grant?

An SEA must submit to the Secretrary the following assurances:

(a) An assurance that the educational programs, services, and activities for which payments under this program are made shall be administered by or under the supervision of the SEA.

(b) An assurance that payments under this program shall be used for supplementary educational services and costs for immigrant children.

(c) An assurance that payments made to an SEA under this program shall be distributed among LEAs within the State on the basis of the number of immigrant children counted in those LEAs, after adjusting each LEA's payment to reflect any reductions made to the SEA's award under § 581.20 (b) and (c), based on the level of appropriations for the fiscal year and the funds provided for immigrant children under programs with the same purpose.

(d) An assurance that the SEA shall not finally disapprove, in whole or in part, any application for funds received under this program without first affording the LEA reasonable notice and opportunity for a hearing.

(e) An assurance that the SEA shall submit those reports required by the Secretary under this program.

(f) The following assurances pertaining to the provisions of services to immigrant children enrolled in elementary and secondary nonpublic schools:

(1) An assurance that to the extent consistent with the number of immigrant children enrolled in the elementary or

secondary nonpublic schools within the district served by an LEA, the LEA, after consultation with appropriate officials of the schools, shall provide for the benefit of those children, secular, neutral, and nonideological services, materials, and equipment necessary for their education.

(2) An assurance that a public agency shall administer and maintain control of funds provided under this program and shall administer and maintain title to any materials, equipment, and property repaired, remodeled, or constructed with program funds.

(3) An assurance that—

(i) Services under this program shall be provided by employees of a public agency or through contracts by a public agency with a person, association, agency, or corporation who or which, in the provision of these services, is independent of nonpublic elementary or secondary schools and religious organizations; and

(ii) Any employment or contract as described in paragraph (f)(3)(i) of this section, be under the supervision of the public agency and that funds provided under employment or contract not be commingled with State or local funds.

(20 U.S.C. 4107)

§ 581.11 What counts must an SEA provide?

(a) An SEA shall provide a count, taken during the current school year, of the number of immigrant children enrolled in public and nonpublic elementary and secondary schools for those LEAs in the State, in which the number of immigrant children enrolled is at least—

(1) Five hundred; or

(2) Three percent of the total number of students enrolled in elementary and secondary public schools under the jurisdiction of an LEA and elementary and secondary nonpublic schools within the district served by the LEA.

(b)(1) For the immigrant children counted under paragraph (a) of this section, an SEA must also report the number of those children, who are eligible to receive services, and for whom funds are made available during the same fiscal year, under this program and other Federal programs—

(i) That have the same purpose as the Emergency Immigrant Education Program; and

(ii) For which funds are made available for that same purpose because of the immigrant status of the children eligible to be served by the funds.

(2) The Secretary identifies, for the purposes of counting children under paragraph (b)(1) of this section, the following Federal programs as programs that have the same purpose as the Emergency Immigrant Education Program:

(i) Program(s) implementing Section 412(d) of the Refugee Act of 1980, as amended, 8 U.S.C. 1522.

(ii) Program(s) implementing the Refugee Education Assistance Act of 1980, as amended, 8 U.S.C. 1522 (note).

(3) The Secretary identifies in the application notice announcing the availability of funds under the Emergency Immigrant Education Program any additional legal authorities that may be established by Congress that have the same purpose as the Emergency Immigrant Education Program.

(20 U.S.C. 4105(b)(3))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 581.20 How does the Secretary determine the amount of an award to a State?

To determine the amount of an award to an SEA, the Secretary—

(a) Multiplies by $500 the number of immigrant children reported by each SEA under § 581.11(a) who are enrolled in schools in LEAs that meet the enrollment threshold in § 581.2(b).

(b) Subtracts, from the product under paragraph (a) of this section, the amount of the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program;

(c) Determines each SEA's share of the total funds available under this program based on the ratio of the amount determined for an SEA under paragraph (b) of this section, to the total of the amounts determined for all SEAs under paragraph (b) of this section; and

(d) If necessary, reduces the allocations to the SEAs to the extent necessary to bring the total amount of awards for all SEAs within the limit of the amount appropriated for the fiscal year.

(20 U.S.C. 4102(b), 4103, 4105(b))

Subpart D—[Reserved]

Subpart E—How Does a State Make a Subgrant to an Applicant?

§ 581.40 How does a State determine the amount of a subgrant to an LEA?

(a) An SEA may reserve up to 1.5 percent of its award for the proper and efficient administration of this program.

(b) To determine the amount of a subgrant to an LEA, the SEA—

(1) Subtracts from the State grant, the administrative costs allowable under paragraph (a) of this section;

(2) Multiples by $500 the number of immigrant children reported by each LEA that meets the enrollment threshold in § 581.2;

(3) Subtracts, from the amount determined under paragraph (b)(2) of this section, the funds made available under any other Federal program(s) identified under § 581.11(b) for those immigrant children who are eligible to receive services under the identified program(s) and the Emergency Immigrant Education Program;

(4) Determines the LEA's share of the total funds available under this program based on the ratio of the amount determined for an LEA under paragraph (b)(3) of this section, to the total amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs in the State; and

(5) If necessary, reduces the allocations to the LEAs to the extent necessary to bring the total amount of subgrants to the LEAs within the amount determined under paragraph (b)(1) of this section to be available for subgrants to LEAs.

(20 U.S.C. 4102(b), 4105(b), 4107(a)(3))

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

§ 581.50 How may funds be used under this program?

Subgrants under this program may be used to meet the costs of providing for—

(a) Supplementary educational services necessary to enable immigrant children to achieve a satisfactory level of performance in schools, including but not limited to—

(1) English language instruction;

(2) Other bilingual educational services; and

(3) Special materials and supplies;

(b) Additional basic instructional services that are directly attributable to the presence of immigrant children in the school district, including the costs of providing—

(1) Classroom supplies;

(2) Overhead costs;

(3) Costs of construction;

(4) Acquisition or rental of space; and

(5) Transportation costs; and

(c) Essential inservice training for personnel who will be providing supplementary educational services or basic instructional services to immigrant children.

(20 U.S.C. 4106)

§ 581.51 How is the eligibility of an immigrant child determined?

(a) *Basic requirement.* An SEA may not count a child under § 581.11(a) until the SEA has—

(1) Determined that the child meets the definition of immigrant children in § 581.4(b)(2); and

(2) Made a record of how the child's eligibility was determined.

(b) *Informational basis.* (1) In determining eligibility, an SEA may rely on credible information from any source, including information contained in previous school records and information provided by the child or the child's parent or guardian.

(2) An SEA is not required to obtain documentary evidence of the child's civil status from the child or the child's parent or guardian.

(20 U.S.C. 4101(1), 4105(c))

§ 581.52 What requirements pertain to the participation of immigrant children in elementary and secondary nonpublic schools?

(a) An LEA is required, after consultation with appropriate officials of elementary and secondary nonpublic schools within the district served by the LEA, to provide for the benefit of immigrant children enrolled in those schools, secular, neutral, and nonideological services, materials, and equipment necessary for the education of these immigrant children.

(b) If by reason of any provision of law an LEA is prohibited from providing educational services to immigrant children enrolled in elementary and secondary nonpublic schools, or if the Secretary determines that an LEA has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in elementary or secondary nonpublic schools, the Secretary—

(1) May waive the requirement that the LEA serve those children; and

(2) Arrange for the provision of services to those children.

(c) Any waiver of the requirement that an LEA provide services to immigrant children enrolled in elementary and secondary nonpublic schools is subject to consultation, withholding, and notice requirements, in accordance with section 557(b) (3) and (4) of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3806 (b), and the regulations in §§ 581.53–581.59.

(20 U.S.C. 4107(a)(6), 4108(b))

§ 581.53 When does the Secretary implement a bypass?

(a) The Secretary implements a bypass if an LEA—

(1) Is prohibited by law from providing the services under this part for private school children on an equitable basis as required in § 581.52; or

(2) Has substantially failed or is unwilling to provide the services under this part for private school children on an equitable basis as required in § 581.52.

(b) If the Secretary implements a bypass, the Secretary waives the responsibility of the LEA for providing supplemental educational services for private school children and arranges to provide the required services. Normally, the Secretary hires a contractor to provide the supplementary educational services for private school children under a bypass. The Secretary deducts the cost of these services, including any administrative costs, from the appropriate allotment of Emergency Immigrant Education Program funds. In arranging for these services, the Secretary consults with appropriate public and private school officials.

(20 U.S.C. 4108(b))

§ 581.54 What notice does the Secretary give?

(a) Before taking any final action to implement a bypass, the Secretary provides the affected LEA, with written notice.

(b) In the written notice, the Secretary—

(1) States the reason for the proposed bypass in sufficient detail to allow the LEA, to respond;

(2) Cites the requirement with which the LEA allegedly failed to comply; and

(3) Advises the LEA that it has at least 45 days from receipt of the written notice to submit written objections to the proposed bypass and to request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the LEA by certified mail with return receipt requested.

(20 U.S.C. 4108(b))

§ 581.55 What bypass procedures does the Secretary follows?

Sections 581.56–581.58 contain the procedures that the Secretary uses in conducting a show cause hearing. These procedures may be modified by the hearing officer if all parties agree it is appropriate to modify them for a particular case.

(20 U.S.C. 4108(b))

§ 581.56 What are the functions of a hearing officer?

(a) If an LEA requests a show cause hearing, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the LEA, representatives of the private school children and the Department of Education of the time and place of the hearing.

(20 U.S.C. 4108(b))

§ 581.57 What are the hearing procedures?

(a) At the hearing a transcript is taken. The LEA and representatives of the private school children each may be represented by legal counsel, and each may submit oral or written evidence and arguments at the hearing.

(b) Within ten days after the hearing, the hearing officer indicates that a decision will be issued on the basis of the existing record, or requests further information from the LEA, representatives of the private school children, or Department of Education officials.

(20 U.S.C. 4108(b))

§ 581.58 What are the post-hearing procedures?

(a) Within 120 days after the hearing record is closed, the hearing officer issues a written decision on whether the proposed bypass should be implemented. The hearing officer sends copies of the decision to the LEA, representatives of private school children, and the Secretary.

(b) The LEA and representatives of private school children each may submit written comments on the decision to the Secretary within thirty days from receipt of the hearing officer's decision.

(c) The Secretary may adopt, reverse, or modify the hearing officer's decision.

(20 U.S.C. 4108(b))

Subpart G—What Compliance Procedure Are Used by the Department of Education?

§ 581.60 Under what conditions does the Secretary withhold funds?

(a) If the Secretary determines, after affording reasonable notice and opportunity for a hearing to an SEA, that the SEA has failed to meet the requirements of this program, the Secretary—

(1) Notifies the SEA that further payments under this program will not be made to the SEA; or

(2) Notifies the SEA that it may not make further payments under this

program to specified LEAs whose actions cause or are involved in the failure to meet program requirements.

(b) Payments withheld under paragraph (a) of this section, will not be resumed until the Secretary is satisfied that there is no longer a failure to comply.

(c)(1) If the Secretary determines, after reasonable notice and opportunity for a hearing to an SEA, that any amount of a payment made to a State will not be used by the State for carrying out the purposes of this program, the Secretary makes that amount available to one or more other States to the extent that the Secretary determines that those States are able to use additional funds for carrying out the purposes of the program.

(2) The Secretary considers any additional amount made available to an SEA under this provision from an appropriation for a fiscal year as part of that SEA's award for that fiscal year, but the additional amount remains available until the end of the succeeding fiscal year.

(d) The procedures in 34 CFR Part 78 (Education Appeal Board) governing the withholding of funds apply to any determinations made by the Secretary under paragraphs (a) and (c) of this section.

(20 U.S.C. 4104, 4105 (b) and (c))

[FR Doc. 85-11019 Filed 5-3-85; 8:45 am]

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federal register

Monday
May 6, 1985

Part VII

Central Intelligence Agency

32 CFR Part 1903
Security Protective Service; Final Rule

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1903

Security Protective Service

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: The Central Intelligence Agency has promulgated regulations which protect its foreign intelligence facilities within the United States. The classified and highly sensitive world-wide activities of the Agency are directed and supervised from these various facilities. Furthermore, all intelligence support functions, including training, for the conduct of the various foreign intelligence activities of the CIA are managed from these facilities. Pursuant to section 401 of the Intelligence Authorization Act for Fiscal Year 1985, the CIA was empowered to promulgate these regulations, which have the force of law and which are effective immediately.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT: David Holmes, Office of General Counsel, Central Intelligence Agency (703) 351-5648.

SUPPLEMENTARY INFORMATION: On 8 November 1984, Congress enacted the Intelligence Authorization Act for Fiscal Year 1985, which amend the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*) to permit the Director of Central Intelligence to authorize Agency personnel within the United States to perform functions identical to those performed by special police officers of the General Services Administration in order to protect the foreign intelligence facilities of the CIA.

The legislation empowering GSA special policemen is entitled "An Act to authorize the Federal Works Administrator or officials of the Federal Works Agency duly authorized by him to appoint special policemen for duty upon Federal property under the jurisdiction of the Federal Works Agency, and for other purposes" (40 U.S.C. 318). Under this Act, the Administrator of GSA is authorized to appoint uniformed guards as special policemen. Once appointed, the GSA special police are granted the same powers as sheriffs and constables upon property under GSA charge and control and are authorized to enforce laws enacted for the protection of persons and property, to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce with criminal penalties any rules and regulations made and promulgated by the Administrator of the General Services Administration.

The Central Intelligence Agency now has the authority to carry out the protective police functions set forth above with respect to property under its charge and control and has promulgated these regulations pursuant thereto.

List of Subjects in 32 CFR Part 1903

Security measures.

32 CFR is amended by adding a new Part 1903 to read as follows:

PART 1903—REGULATIONS TO IMPLEMENT SECTION 401 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1985

Sec.

Authority: Sec. 401, Intelligence Authorization Act for Fiscal Year 1985.

§ 1903.1 Applicability.

These regulations apply to all property under the charge and control of the Security Protective Service of the Central Intelligence Agency and to all persons entering in or on such property (hereinafter referred to as "protected property"). Employees of the Central Intelligence Agency and any other persons entering upon protected property shall be subject to these regulations.

§ 1903.2 Control of activities on protected property.

Persons in and on protected property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of Security Protective Officers and any other duly authorized personnel.

§ 1903.3 Restrictions on admission to protected property.

Access to protected property shall be restricted to ensure the orderly and secure conduct of Agency business. Admission to protected property will be restricted to employees and other persons with proper authorization who shall, when requested, display government or other identifying credentials to the Security Protective Officers or other duly authorized personnel when entering, leaving, or while on the property.

§ 1903.4 Control of vehicles on protected property.

Drivers of all vehicles entering or while on protected property shall comply with the signals and directions of Security Protective Officers or other duly authorized personnel and any posted traffic instructions. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on protected property is prohibited. Driving a non-emergency vehicle above the prescribed speed limit is prohibited. All vehicles shall be driven in a safe and careful manner at all times.

§ 1903.5 Enforcement of parking regulations.

For reasons of security, parking regulations shall be strictly enforced. Except with proper authorization, parking on protected property is not allowed without a permit. Parking without a permit or other authorization, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owner's risk, which shall be in addition to any penalties assessed pursuant to § 1903.19. The Agency assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This paragraph may be supplemented from time to time with the approval of the CIA Director of Security by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part hereof. Proof that a vehicle was parked in violation of these regulations or directives may be taken as *prima facie* evidence that the registered owner was responsible for the violation.

§ 1903.6 Security inspection.

Any personal property, including but not limited to any packages, briefcases, containers or vehicles brought into, while on, or being removed from protected property are subject to inspection. A search of a person may accompany an investigative stop or an arrest.

§ 1903.7 Prohibition on weapons and explosives.

No persons entering or while on protected property shall carry or possess, either openly or concealed, firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, except as authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.8 Prohibition on photographic, transmitting and recording equipment, and "Walkman-type" radios.

No persons entering or while on protected property shall bring or possess any photographic, transmitting, or recording equipment of any kind, or any "Walkman-type" radio, except as specifically authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.9 Prohibition on narcotics and illegal substances.

Entering or while on protected property under the influence of, or using or possessing, any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines is also prohibited. The above prohibitions shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician.

§ 1903.10 Prohibition on alcohol.

Entering or while on protected property under the influence of alcoholic beverages is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on protected property is also prohibited, except on occasions and on protected property for which the CIA Deputy Director for Administration or his designee has delegated in writing to the head of an office or division the authority to grant approval for such use, and approval has been granted. A copy of all such written delegations shall be provided to the CIA Director of Security.

§ 1903.11 Restrictions on the taking of photographs.

In order to protect the security of the Agency's facilities, photographs on protected property may be taken only with the consent of the CIA Director of Security. The taking of photographs includes the use of television cameras, video taping equipment, and motion picture cameras.

§ 1903.12 Physical protection of facilities.

The willful destruction of, or damage to any protected property, or any buildings or personal property thereon, is prohibited. The theft of any personal property, the creation of any hazard on protected property to persons or things, and the throwing of articles of any kind at buildings or persons on protected property are prohibited. The improper disposal of trash or rubbish on protected property is also prohibited.

§ 1903.13 Disturbances on protected property.

Any conduct which impedes or threatens the security of protected property, or any buildings thereon, or which disrupts performance of official duties by Agency employees, or which interferes with ingress to or egress from protected property is prohibited. Also prohibited is any disorderly conduct, any failure to obey an order to depart the premises, unwarranted loitering or other behavior which creates loud or unusual noise or nuisance, or any conduct which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots.

§ 1903.14 Prohibition on gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery, or the selling or purchasing of numbers tickets, in or on protected property is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act, as amended (20 U.S.C. 107a(a)(5)).

§ 1903.15 Restriction regarding animals.

No animals except guide dogs for the blind or Agency guard or search dogs shall be brought upon protected property, except as authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.16 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms on protected property is prohibited. This does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service," issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the Central Intelligency Agency; and (b) concessions on personal notices posted by employees or authorized bulletin boards.

§ 1903.17 Distribution of unauthorized materials.

Distributing, posting or affixing materials, such as pamphlets, handbills, or flyers, on protected property is prohibited, except as provided by § 1903.16, as authorized by the CIA Director of Security or his designee at each Agency facility, or when conducted as part of authorized Government activities.

§ 1903.18 Nondiscrimination.

There shall be no unlawful discrimination by segregation or otherwise, because of race, creed, sex, color, or national origin against any person or persons admitted upon protected property in furnishing or by refusing to furnish to such person or persons the use of any services, privileges, accommodations, or activities provided on the protected property.

§ 1903.19 Penalties and the effect on other laws.

Whoever shall be found guilty of violating while on any protected property any provision of these regulations is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both. Nothing in these regulations shall be construed to abrogate or supersede any other Federal laws or any State and local laws or regulations applicable to any area in which the protected property is situated.

Pursuant to delegated authority, issued on 2 May 1985 by:

William R. Kotapish,

Director of Security.

[FR Doc. 85-11047 Filed 5-3-85; 10:35 am]

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federal register

Monday
May 6, 1985

Part VIII

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Importation of Mangoes From Belize; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-328]

Importation of Mangoes From Belize

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the "Subpart—Fruits and Vegetables" regulations by adding provisions to allow the entry into the United States of mangoes from Belize if the mangoes originate from premises that have been subjected to specified aerial applications of technical malathion bait spray, and meet certain other conditions. This action appears to be necessary to continue to allow mangoes from Belize to be imported into the United States.

DATE: Written comments concerning this proposed rule must be received on or before May 21, 1985.

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

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

SUPPLEMENTARY INFORMATION:

Background

The "Subpart—Fruits and Vegetables" regulations (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations), among other things, regulate the importation of mangoes into the United States from Belize because of fruit flies of the genus *Anastrepha*. These fruit flies can ruin the marketability of the fruit.

Currently, mangoes from Belize are prohibited from being imported into the United States under the regulations unless, among other things, they are treated against fruit flies of the genus *Anastrepha*. The only approved treatments (see 7 CFR 319.56-2h) for mangoes from Belize are fumigation with ethylene dibromide (EDB) in accordance with the following:

Fruit load in a chamber	Dosage of EDB in ounces per 1,100 cubic feet per 2 hours		
	50 °F to 60 °F	Above 60 °F to 70 °F	70 °F or above
25 percent or less	12	10	8
More than 25 percent to 50 percent	14	12	10
50 percent to 80 percent	16	14	12

Recently the Environmental Protection Agency, established a tolerance for the residues of EDB per se in mangoes at .03 ppm, and further provided that effective September, 1, 1985, such tolerance for residues of EDB would be reduced to zero in mangoes (see 50 FR 2547).

Because of the requirement that the EDB residues be no greater than .03 ppm, it is to longer commercially feasible for mango producers and shippers in Belize to use EDB treatments. Once mangoes are treated with the EDB treatment it is necessary to hold the treated mangoes in cold storage and allow the EDB residues to dissipate. Without being held in cold storage while the residues dissipate, the mangoes would overripen and become unmarketable before they could reach the residue level of .03 ppm of EDB. There are no refrigeration facilities in Belize that could feasibly be used for holding the mangoes for this purpose, and it appears that there are no feasible methods that could be used otherwise for holding the mangoes in cold storage.

An importer of fruits and vegetables has requested that the regulations be amended to establish procedures that could be conducted in Belize and which would be adequate to allow mangoes from Belize to be imported into the United States without presenting a risk of causing the introduction into the United States of fruit flies of the genus *Anastrepha*.

Based on a review of this situation, it is proposed to amend the regulations by adding a new § 319.56-2u which would provide a means for allowing the importation into the United States of mangoes from Belize. Proposed § 319.56-2u reads as follows:

§ 319.56 Administrative instructions concerning the importation of mangoes from Belize.

(a) Mangoes from Belize shall be allowed to enter the United States at any port of entry referred to in § 319.37-14 of this part if the mangoes meet all of the applicable conditions set forth in other sections of this subpart and if the following conditions have been met:

(1) The mangoes originate from a premises determined to be free of any fruit fly infestations of the genus *Anastrepha*, (i) based on a finding by an inspector, that such premises and a buffer zone of at least ⅛ of a mile all around such premises were subjected to aerial applications of technical malathion bait spray at a ratio of 12 ounces per acre (2.4 ounces of malathion and 9.6 ounces of protein bait) every 7-10 days beginning at the time fruit setting starts and continuing until the mangoes were shipped to the United States and (ii) based on the absence of a finding of infestations of fruit flies of the genus *Anastrepha*, during the harvest period;

(2) No pulpy fruits or vegetables (such as citrus, melons, and tomatoes) are grown commercially or otherwise within two miles of the area subjected to such aerial applications of bait spray;

(3) The mangoes had been packed for shipment to the United States in a facility which is located within the area subjected to such aerial application of malathion bait spray and which has all outside openings screened with a mesh not greater than 1/16 inch;

(4) The mangoes were not taken out of such area subjected to such applications of malathion bait spray except for immediate shipment to the United States in an enclosed container or wrapped in 6 mil polyethylene wrap;

(5) The mangoes were grown, packed, and moved from the packing facility to the port of export only by persons who operate pursuant to a valid written compliance agreement with the Animal and Plant Health Inspection Service whereby such persons have agreed to allow Plant Protection and Quarantine inspectors to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(6) The mangoes were grown on premises where inspectors of Plant Protection and Quarantine and persons authorized by inspectors of Plant Protection and Quarantine were allowed to install and service survey traps and to conduct examination of mangoes (including the cutting of mangoes) as determined to be necessary by Plant Protection and Quarantine as a precautionary measure for determining whether any infestations of fruit flies of the genus *Anastrepha* occur on the premises; and

(7) The mangoes are accompanied by a certificate endorsed by a Plant Protection and Quarantine inspector in the country of origin, representing a finding based on monitoring inspections that the conditions in this section are being met.

(b) Persons requesting that services be performed by officials of Plant Protection and Quarantine under this section shall bear the cost for Plant Protection and Quarantine personnel to perform inspections, surveys, and other activities pursuant to this section, including travel, salary, subsistance, and administrative overhead.

(c) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant

to such provisions. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

It appears that compliance with these provisions would be adequate to allow mangoes from Belize to be imported into the United States without presenting a risk of causing the introduction into the United States of fruit flies of the genus *Anastrepha*. Further, it appears that these provisions would provide commercially feasible procedures for the importation of such mangoes.

Based on research and experience, it has been determined that the specified aerial applications of malathion bait spray would be adequate to destroy any fruit fly infestations on the premises subjected to such treatment. Further, the specified applications of malathion bait spray in a ⅛ mile buffer zone and the establishment of a two mile area outside the treatment area where pulpy fruits or vegetables would not be grown would be adequate to ensure that the premises would not be attacked by vagrant flies of the genus *Anastrepha* during the mango growing period.

Compliance with the packing and shipping provisions would add precautionary measures against the mangoes becoming infested with fruit flies of the genus *Anastrepha* during packing, and help ensure that the mangoes would not become infested with fruit flies of the genus *Anastrepha* during shipment to the United States.

It appears that the compliance agreement provisions are necessary to ensure that persons growing, packing, and shipping the mangoes are knowledgeable with respect to the requirements for the importation of mangoes from Belize, and have agreed to comply with them; and to ensure that Plant Protection and Quarantine (PPQ) inspectors are allowed to take actions as necessary to ensure that the requirements for the importation of the mangoes are being met. Proposed § 319.56–2u also contains provisions for cancelling compliance agreements.

The provisions concerning trapping and examinations (including the cutting of mangoes) appear to be necessary as a precautionary measure to help ensure that the aerial applications of malathion bait spray have been effective.

The provisions for the mangoes to be accompanied by a certificate endorsed by a PPQ inspector appear to be necessary to ensure that such an inspector would monitor the growing, packing, and shipping operations and would determine, based on monitoring inspections, that the requirements for the importation of the mangoes are being met.

The proposal also contains provisions that would require persons who have requested that services be preformed in Belize by officials of PPQ to bear the PPQ costs associated with the operations in Belize.

Although this proposal sets forth provisions which only relate to the importation of mangoes from Belize, consideration will be given to amending the regulations to allow the importation of mangoes from other countries if requests are made to do so.

Comments

Written comments are solicited for 15 days following publication of this document. As indicated above, the EDB treatments are no longer feasible for treating mangoes from Belize against fruit flies of the genus *Anastrepha*. Further, if the proposal were to be adopted in time to allow mangoes from Belize to be imported into the United States during the 1985 mango season, it must be adopted as soon as possible.

Executive Order and Regulatory Flexibility Act

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

The proposed rule would allow mangoes from Belize to continue to be imported into the United States. Further, it is anticipated that the amount of mangoes imported into the United States from Belize would be less than one percent of the amount of mangoes imported into the United States from all countries.

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

List of Subjects in 7 CFR Part 319

Agricultural comodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mangoes.

PART 319—FOREIGN QUARANTINE NOTICES

Accordingly, this document proposes to amend "Subpart—Fruits and Vegetables" (7 CFR 319.56 *et seq.*) as follows:

1. The authority citation for 7 CFR Part 319 would be revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 7 CFR 2.17, 2.51, and 371.2(c).

2. A new § 319.56–2u would be added to read as follows:

§ 319.56–2u Administrative instructions concerning the importation of Mangoes from Belize.

(a) Mangoes from Belize shall be allowed to enter the United States at any port of entry referred to in § 319.37–14 of this part if the mangoes meet all of the applicable conditions set forth in other sections of this subpart and if the following conditions have been met:

(1) The mangoes originate from a premises determined to be free of any fruit fly infestations of the genus *Anastrepha*, (i) based on a finding by an inspector, that such premises and a buffer zone of at least ⅛ of a mile all around such premises were subjected to aerial applications of technical malathion bait spray at a ratio of 12 ounces per acre (2.4 ounces of malathion and 9.6 ounces of protein bait) every 7–10 days beginning at the time fruit setting starts and continuing until the mangoes were shipped to the United States and (ii) based on the absence of a finding of infestations of fruit flies of the genus *Anastrepha* during the harvest period;

(2) No pulpy fruits or vegetables (such as citrus, melons, and tomatoes) are grown commercially or otherwise within two miles of the area subjected to such aerial applications of bait spray;

(3) The mangoes had been packed for shipment to the United States in a facility which is located within the area subjected to such aerial application of malathion bait spray and which has all

outside openings screened with a mesh not greater than 1/16 inch;

(4) The mangoes were not taken out of such area subjected to such applications of malathion bait spray except for immediate shipment to the United States in an enclosed container or wrapped in 6 mil polyethylene wrap;

(5) The mangoes were grown, packed, and moved from the packing facility to the port of export only by persons who operate pursuant to a valid written compliance agreement with the Animal and Plant Health Inspection Service whereby such persons have agreed to allow Plant Protection and Quarantine inspectors to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(6) The mangoes were grown on premises where inspectors of Plant Protection and Quarantine and persons authorized by inspectors of Plant Protection and Quarantine were allowed to install and service survey traps and to conduct examination of mangoes (including the cutting of mangoes) as determined to be necessary by Plant Protection and Quarantine as a precautionary measure for determining whether any infestations of fruit flies of the genus *Anastrepha* occur on the premises; and

(7) The mangoes are accompanied by a certificate endorsed by a Plant Protection and Quarantine inspector in the country of origin, representing a finding based on monitoring inspections that the conditions in this section are being met.

(b) Persons requesting that services be performed by officials of Plant Protection and Quarantine under this section shall bear the cost for Plant Protection and Quarantine personnel to perform inspections, surveys, and other activities pursuant to this section, including travel, salary, subsistence, and administrative overhead.

(c) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant to such provisions. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writng, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

Done at Washington, D.C., this 3rd day of May 1985.

H.L. Ford,

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

[FR Doc. 85-11068 Filed 5-3-85; 12:01 pm]

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Reader Aids

Federal Register

Vol. 50, No. 87

Monday, May 6, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
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Single copies, back copies of FR	783-3238
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, MAY

18445-18626.....1
18627-18848.....2
18849-18984.....3
18985-19160.....6

CFR PARTS AFFECTED DURING MAY

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

The President

Executive Orders:
12348 (Revoked by EO 12512).....18453
12511.....18449
12512.....18453
12513.....18629

Proclamations:
5331.....18445
5332.....18447
5333.....18451
5334.....18627

7 CFR

800.....18985
810.....18455
908.....18814
910.....18979
911.....18849
925.....18849
944.....18849
989.....18631
1032.....18459
1106.....18460

Proposed Rules:
52.....18865
319.....19158
1040.....18677
1124.....18495
1207.....19026
1423.....19026

9 CFR

166.....18632

Proposed Rules:
92.....18865
327.....19029

10 CFR

2.....18852
50.....18852

11 CFR

Proposed Rules:
110.....18678

12 CFR

268.....18768

Proposed Rules:
564.....19030

14 CFR

39.....18853-18857
71.....18857, 18858, 18989

Proposed Rules:
Ch. I.....18869
23.....19108
39.....18870-18875, 19033
71.....18877
91.....19108

15 CFR

90.....18989
376.....18461
379.....18858
399.....18461, 18858

16 CFR

239.....18462
455.....18471

Proposed Rules:
702.....18495

17 CFR

4.....18858
140.....18858
210.....18990
229.....18990
230.....18990, 19010
239.....18990, 19010
240.....18990
249.....18990

Proposed Rules:
210.....19035
231.....19035
241.....19035
275.....18500

21 CFR

179.....18859
556.....18471
558.....18471, 18859, 18860

22 CFR

1501.....18860
1503.....18634

Proposed Rules:
1502.....18678
1504.....18878

24 CFR

232.....18472
235.....18472

Proposed Rules:
25.....18680
200.....18680
203.....18680
205.....18680
207.....18680
213.....18680
221.....18680
227.....18680
232.....18680
234.....18680
242.....18680
244.....18680

26 CFR

1.....18473, 18861
5.....18473

602 18473

Proposed Rules:

1 18884

28 CFR

Proposed Rules:

51 00000

30 CFR

Proposed Rules:

701 19037
736 19037
740 19037
746 19037
750 19037
772 19037
913 18536
935 18885

31 CFR

103 18478

32 CFR

169 18886
199 18888
1903 19154

33 CFR

110 18635
117 ..... 18479, 18635
165 18635
181 18636
183 18636

Proposed Rules:

100 18688-18692

34 CFR

Proposed Rules:

76 19146
581 19146

37 CFR

308 18480

40 CFR

52 18482-18484
60 ..... 18636, 19022
81 18485
180 18485
439 18486
712 18861
716 18861

Proposed Rules:

12 19136
52 ..... 18537, 18693, 18889, 19038
81 ..... 18890, 19038
261 18622
721 19039

43 CFR

Public Land Orders:

6602 18487

Proposed Rules:

3040 18614
3100 18614
3130 18614
3200 18614

44 CFR

55 18487
56 18487
57 18487
67 ..... 19022, 19024

Proposed Rules:

67 ..... 19039, 19044

45 CFR

Proposed Rules:

30 18694
201 18704

47 CFR

0 18487
1 18637
2 18662
63 18637
69 19025
73 18818
76 18637
78 18637
83 18489
97 ..... 18662, 18665

Proposed Rules:

Ch. I 18537, 19050
1 ..... 18705, 18706
43 ..... 18705, 18706
76 18538

48 CFR

232 18666
252 18666

Proposed Rules:

Ch. 5 18708
Ch. 44 18802

49 CFR

23 18493
173 18667
175 18667

Proposed Rules:

Ch. V 18708
1241 ..... 18539, 18891

50 CFR

661 18672
663 18668

Proposed Rules:

17 ..... 18893, 18968
216 18713
630 18717
682 18983

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 May 3, 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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1, 2 (2 Reserved)	$6.00	Jan. 1, 1984
3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
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)	7.50	Jan. 1, 1985
7 Parts:		
0-45	14.00	Jan. 1, 1985
46-51	13.00	Jan. 1, 1985
52	14.00	Jan. 1, 1985
53-209	14.00	Jan. 1, 1985
210-299	13.00	Jan. 1, 1985
300-399	8.00	Jan. 1, 1985
400-699	12.00	Jan. 1, 1985
700-899	14.00	Jan. 1, 1985
900-999	14.00	Jan. 1, 1985
1000-1059	12.00	Jan. 1, 1985
1060-1119	9.50	Jan. 1, 1985
1120-1199	8.00	Jan. 1, 1985
1200-1499	13.00	Jan. 1, 1985
1500-1899	7.50	Jan. 1, 1985
1900-1944	12.00	Jan. 1, 1985
1945-End	13.00	Jan. 1, 1985
8	7.50	Jan. 1, 1985
9 Parts:		
1-199	13.00	Jan. 1, 1985
200-End	9.50	Jan. 1, 1985
10 Parts:		
0-199	17.00	Jan. 1, 1985
200-399	9.50	Jan. 1, 1985
400-499	12.00	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
11	7.50	Jan. 1, 1985
12 Parts:		
1-199	8.00	Jan. 1, 1985
200-299	14.00	Jan. 1, 1985
300-499	9.50	Jan. 1, 1985
500-End	14.00	Jan. 1, 1985
13	13.00	Jan. 1, 1985
14 Parts:		
1-59	13.00	Jan. 1, 1984
60-139	13.00	Jan. 1, 1985
140-199	7.50	Jan. 1, 1985
*200-1199	15.00	Jan. 1, 1985
1200-End	8.00	Jan. 1, 1985
15 Parts:		
0-299	6.50	Jan. 1, 1985
300-399	13.00	Jan. 1, 1985
400-End	12.00	Jan. 1, 1985
16 Parts:		
0-149	9.00	Jan. 1, 1985
150-999	10.00	Jan. 1, 1985
1000-End	13.00	Jan. 1, 1985
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
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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

Title	Price	Revision Date
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
500–End	7.50	Dec. 31, 1984
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, 1984
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
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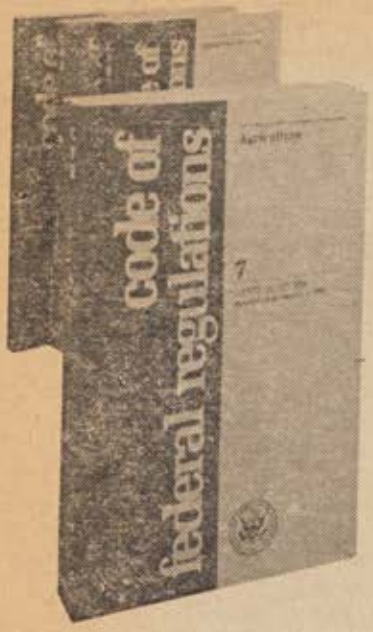

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