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Federal Register

Friday
June 7, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, New York, NY, and Washington, D.C., see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Federal Communications Commission

Alcohol and Alcoholic Beverages
Alcohol, Tobacco and Firearms Bureau

Aviation Safety
Federal Aviation Administration

Banks, Banking
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Coal
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Food Additives
Food and Drug Administration

Loan Programs—Agriculture
Farmers Home Administration

Marketing Agreements
Agricultural Marketing Service

Natural Gas
Federal Energy Regulatory Commission

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Public Lands
Land Management Bureau

Quarantine
Animal and Plant Health Inspection Service

Radioactive Materials
Nuclear Regulatory Commission

Seals and Insignia
Census Bureau

Surface Mining
Surface Mining Reclamation and Enforcement Office

Water Pollution Control
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: July 8 and 9; at 9 am (identical sessions)

WHERE: Room 1654, Insurance Exchange Building, 175 W. Jackson Blvd., Chicago, IL.

RESERVATIONS: Call the Chicago Federal Information Center, 312-353-4242.

NEW YORK, NY

WHEN: July 9 and 10; at 9 am (identical sessions)

WHERE: 2T Conference Room, Second Floor, Veterans Administration Building, 252 Seventh Avenue (between W. 24th and W. 25th Streets), New York, NY.

RESERVATIONS: Call Arlene Shapiro or Steve Colon, New York Federal Information Center, 212-264-4810.

WASHINGTON, DC

WHEN: September (two dates to be announced later).

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Presidential Documents

Title 3—

The President

Proclamation 5349 of June 4, 1985

Youth Suicide Prevention Month, 1985

By the President of the United States of America

A Proclamation

During the past 20 years, the suicide rate has tripled among young people aged 15–24. In fact, suicide has become the third leading cause of death in this age group. Last year alone, over 5,000 young Americans took their own lives, and many more attempted to do so.

When a young person commits suicide, it is a personal tragedy as well as a source of deep anguish for family, friends, and neighbors. But it is also a tragedy for society, which must cope not only with the loss of human potential that is the result of the death of any individual, but also with its responsibility to identify the causes of suicide and develop strategies to reduce its incidence. Although the issues involved in each case are complex and unique, we can draw encouragement from the fact that suicide is no longer a silent subject but a recognized public health problem that can and must be addressed.

Because the root causes of suicide involve so many different psychological, physical, social, and spiritual dimensions, successful preventive action requires the combined efforts of individuals, families, communities, organizations, and governments at all levels. Young people and families who have a member who may be contemplating suicide need to know that there are indeed places to turn for advice and assistance. People who come into contact with youth—educators, counselors, coaches, ministers, health care providers—can play a key role in helping a despondent young person by identifying the existence of a problem or contributing factors like drug abuse and family break-up. Government can assist through research and policies which strengthen the family unit and foster a sense of individual self-worth. In short, all of us have the opportunity and responsibility to help deal with this growing problem.

In recognition of the increase in suicide among America's youth and its consequences for our society, the Congress, by Senate Joint Resolution 53, has designated the month of June 1985 as "Youth Suicide Prevention Month" and authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of June 1985 as Youth Suicide Prevention Month. I call upon the Governors of the several States, the chief officials of local governments, all health care providers, educators, the media, public and private organizations, and the people of the United States to observe this month with appropriate programs and activities.

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

Ronald Reagan

[FR Doc. 85-13828
Filed 6-5-85; 10:59 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-334]

Subpart—Citrus Canker—Affirmation of Interim Rules

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on September 19, 1984, as subsequently amended by interim rules published in the **Federal Register** on October 29, 1984, and March 7, 1985. The interim rule published in the **Federal Register** on September 19, 1984, added new "Subpart—Citrus Canker" to the Domestic Quarantine Notices. The interim rule published in the **Federal Register** on October 29, 1984, amended "Subpart—Citrus Canker" by prohibiting the interstate movement of regulated articles originating in a quarantined area from an area not designated as a quarantined area into certain States and territories. Finally, the interim rule published in the **Federal Register** on March 7, 1985, amended "Subpart—Citrus Canker" by adding certain extraordinary emergency provisions relating to Departmental activities conducted within the State of Florida because of citrus canker, including provisions allowing the payment of compensation for plants ordered destroyed because of citrus canker. These actions were necessary in order to implement an effective eradication program, and in order to prevent the artificial spread of citrus canker into noninfested areas of the United States.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director, Survey and Emergency Response Staff, National Program Planning Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on September 19, 1984, (49 FR 36623-36626) amended the Domestic Quarantine Notices (7 CFR Part 301) by adding new "Subpart—Citrus Canker" (contained in 7 CFR 301.75 *et seq.*, and referred to below as the regulations). The regulations quarantined the State of Florida for Citrus Canker, *Xanthomonas campestris pv. citri* (Hasse) Dawson, a devastating bacterial disease, and designated the entire State of Florida as a "quarantined area", designated certain articles as "regulated articles", and established regulations governing the interstate movement from anywhere in Florida of articles designated as regulated articles except under certain conditions. Subsequently, on October 29, 1984, a document was published in the **Federal Register** (49 FR 43448-43449) amending "Subpart—Citrus Canker" by prohibiting the interstate movement of fruit designated as a regulated article from an area not designated as a quarantined area into American Samoa, Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, or Texas when such fruit originated in a quarantine area. Further, on March 17, 1985, a document was published in the **Federal Register** (50 FR 9261-9263) amending "Subpart—Citrus Canker" by adding extraordinary emergency provisions relating to Departmental activities within the State of Florida because of citrus canker. The document of March 7, 1985, included provisions allowing the payment of compensation for plants ordered destroyed because of citrus canker.

Comments were solicited for 60 days after the publication of each amendment. One comment was received from the California Farm Bureau Federation in response to the interim rule of September 19, 1984. This comment was in support of the interim rule but requested additional provisions to ensure that regulated articles transhipped through citrus producing States will not cause the spread of citrus canker to this area. No changes to the regulations have been made in response to this comment since the regulations, especially the provisions in § 301.75-4, are adequate to allow the imposition of any conditions considered necessary to prevent the spread of citrus canker to noninfested areas during shipment. Two comments were received in response to the document of March 7, 1985. These comments were in support of the amendment of March 7, 1985.

Further, the factual situations set forth in the documents of September 19, 1984, October 29, 1984, and March 7, 1985, still provide a basis for these amendments. Accordingly, it has been determined that the interim rule published in the **Federal Register** on September 19, 1984, should remain effective as revised by the interim rules published in the **Federal Register** on October 29, 1984, and March 7, 1985.

Executive Order and Regulatory Flexibility Act

These amendments have been issued in conformance with Executive Order 12291 and have been determined to be not "major rules." Based on information compiled by the Department, it has been determined that the amendments of September 19, 1984, and October 29, 1984, and March 7, 1985, will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that the amendments of September 19, 1984, and October 29, 1984, and March 7, 1985, will not have a significant economic impact on a substantial number of small entities. These actions primarily affected the interstate movement of regulated

articles from Florida to other areas in the United States.

Specifically, with regard to nursery stock designated as regulated articles, about 1.8 percent of all nurseries in Florida, and 3.1 percent of all wholesale and wholesale/retail nurseries in Florida are certified to produce nursery stock designated as regulated articles for commercial groves in Florida. In addition to these wholesale and wholesale/retail nurseries, other nurseries produce nursery stock for ornamental plantings. However, although many of the wholesale and wholesale/retail nurseries are small entities, the primary market for all nursery stock designated as regulated articles is in Florida. Only very small amounts of Florida nursery stock designated as regulated articles were sold for use in citrus groves in Louisiana, Texas, Hawaii, Puerto Rico, and American Samoa prior to the effective date of these regulations. Also, only an insignificant number of nurseries in Florida that produced nursery stock for ornamental plantings moved such nursery stock interstate prior to the effective date of these regulations.

With regard to fruit designated as regulated articles (primarily citrus fruit), only fresh fruit is designated as a regulated article, and less than 20 percent of Florida citrus fruit is sold fresh. Further, fresh fruit is permitted to be shipped interstate if certain conditions are met, including the requirement that the fresh fruit not be shipped directly or indirectly to other citrus producing States. Shipments of fresh fruit from Florida to other citrus producing States have historically only involved about 1 percent of the total Florida citrus production. Therefore, it has been determined that the amendments of September 19, 1984, October 29, 1984, and March 7, 1985, do not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in "Subpart—Citrus Canker" (7 CFR 301.75 *et seq.*) have been approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0579–0083.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 49 FR 36623–36626 on September 19, 1984, as amended by the interim rules published at 49 FR 43448–43449 on October 29, 1984, and at 50 FR 9261–9263 on March 7, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, and 162; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 4th day of June 1985.

Harvey L. Ford,

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

[FR Doc. 85–13766 Filed 6–6–85; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine, and Tangelo Reg. 6, Amdt. 36]

Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Amendment of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action lowers the minimum grade requirements for domestic and export shipments of Florida seedless grapefruit and for imports of seedless grapefruit from Improved No. 2, external to U.S. No. 2, Russet, external. This action also lowers the minimum grade requirements for domestic and export shipments of Florida Valencia oranges from U.S. No. 1 to U.S. No. 1, Golden through June 16, 1985, then lowers the minimum grade to U.S. No. 2, Russet, external. The minimum internal grade for Valencia oranges remains at U.S. No. 1. The change in minimum grade of such fruit recognizes the grade composition of the available fruit supply, and current and prospective demand conditions for these fruits.

EFFECTIVE DATE: June 3, 1985.

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

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

This amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

This action is based upon recommendations and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida seedless grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act. It is further found that regulation of Valencia oranges as hereinafter provided, will tend to avoid a disruption of the orderly marketing of those commodities and be in the public interest. This action was unanimously recommended by the Citrus Administrative Committee.

Florida Citrus Regulation 6 was issued on a continuing basis subject to modification, suspension or termination upon recommendation by the committee and approval by the Secretary. The committee meets prior to and during each season to consider recommendation for modification, suspension or termination of the regulatory requirements for Florida oranges, grapefruit, tangerines, and tangelos. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the act.

The minimum grade requirements, specified herein, reflect the committee's and the Department's appraisal of the need to revise the grade requirements applicable to fresh shipments of Florida white seedless grapefruit, pink seedless grapefruit, and Valencia oranges in recognition of the current and prospective supply and demand for such fruit. This action is necessary to permit shipment of the remaining supply of marketable fruit to meet demand.

This action lowers the minimum grade requirements for domestic and export shipments of Florida seedless grapefruit and for imports of seedless grapefruit from Improved No. 2, external to U.S. No. 2, Russet, external during the period June 3, 1985, through August 18, 1985. This action also lowers the minimum grade requirements for domestic and

export shipments of Florida Valencia oranges from U.S. No. 1 to U.S. No. 1, Golden during the period June 3, 1985 through June 16, 1985, then lowers the minimum grade to U.S. No. 2, Russet, external during the period June 17, 1985 through September 29, 1985. The minimum internal grade for Valencia oranges remains at U.S. No. 1. The change in minimum grade of such fruit recognizes the grade composition of the available fruit supply, and current and prospective demand conditions for these fruits.

Under section 8e of the act (7 U.S.C. 608e–1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. Thus, the grade requirement for imported seedless grapefruit will also change to conform to the grade requirement for domestic shipments of Florida seedless grapefruit.

It is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. This amendment relieves restrictions on shipments of white seedless grapefruit, pink seedless grapefruit and Valencia oranges. Handlers have been apprised of such provisions and the effective date and require no additional time to comply herewith.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

1. The authority citation for 7 CFR Part 905 continues to read as follows:

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

2. The provisions of § 905.306 are amended by revising the following entry in Table I, paragraph (a), applicable to domestic shipments, and Table II, paragraph (b), applicable to export shipments, to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (in.) (4)
* *	* *	* *	*
White seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external) U.S. No. 1 (internal)	3⅛
	On and after Aug. 19, 1985	Improved No. 2 (external) U.S. No. 1 (internal)	3⅛
Pink seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external) U.S. No. 1 (internal)	3⅛
	On and after Aug. 19, 1985	Improved No. 2 (external) U.S. No. 1 (internal)	3⅛
Valencia other late type oranges.	June 3, 1985 to June 16, 1985	U.S. No. 1, Golden	2⅝
	June 17, 1985 to Sept. 29, 1985	U.S. No. 2, Russet (external) U.S. No. 1 (internal)	2⅝
	On and after Sept. 30, 1985	U.S. No. 1	2⅝
* *	* *	* *	*

(b) * * *

TABLE II

Variety (1)	Regulation Period (2)	Minimum Grade (3)	Minimum Diameter (in.) (4)
* *	* *	* *	
White seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external) U.S. No. 1 (internal)	3⅛
	On and after Aug. 19, 1985	Improved No. 2 (external) U.S. No. 1 (internal)	3⅛
Pink seedless Grapefruit	June 3, 1985 to Aug. 18, 1985	U.S. No. 2, Russet (external) U.S. No. 1 (internal)	3⅛
	On and after Aug. 19, 1985	Improved No. 2 (external) U.S. No. 1 (internal)	3⅛
Valencia and other late type oranges.	June 3, 1985 to June 16, 1985	U.S. No. 1, Golden	2⅝
	June 17, 1985 to Sept. 29, 1985	U.S. No. 2, Russet (external) U.S. No. 1 (internal)	2⅝
	On and after Sept. 30, 1985	U.S. No. 1	2⅝
* *	* *	* *	

* * * * *

Dated: June 3, 1985.

Thomas R. Clark,

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

[FR Doc. 85–13728 Filed 6–6–85; 8: 45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Modification of the Procedural and Operational Details of the Raisin Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on modifications of the procedural and operational details of the Raisin Diversion Program (RDP). The amendments would (1) add a final date of June 1 for diversion; (2) add a liquidated damages provision; and (3) allow producers 10 days to agree with program changes or withdraw from the RDP. These refinements were recommended by the Raisin Administrative Committee (Committee) which works with the USDA in administering the order. This action is being issued on an interim final basis because of lateness of the season and the need for these refinements for 1985.

DATES:

Effective date: June 3, 1985.

Comments due: July 8, 1985.

ADDRESS: Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruits and Vegetables Division, Agricultural

Marketing Service USDA, Washington, D.C. 20250, telephone (202) 447–5053.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

It is found that is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The Raisin Administrative Committee approved a raisin diversion program for the 1985 crop to foster production cut-backs and assist growers with their current financial difficulties. The raisin industry desires to utilize these procedures for the 1985 program as well as future programs to improve efficiency of administration, program flexibility, and program compliance. There are approximately 1000 producers participating in the program representing over 30,000 acres that must be verified by Committee staff members. The Committee has an enormous task to complete with a limited staff and resources. In addition, the verification process must be completed in time to allow the Committee to prepare the diversion certificates which must be issued on or before October 5.

These refinements have been discussed extensively by the industry and no useful purpose would be served by providing a period for public input for the 1985 program, especially in view of the need for prompt implementation. However, the changes are permanent regulations which may be utilized in future crop years. Therefore, it is appropriate to request comments before determining whether to finalize the modifications on a permanent basis for future crop years.

This action would amend Subpart—Administrative Rules and Regulations (7 CFR 989.102–989.176; 50 FR 3879) by revising paragraph (h) of § 989.156 and adding new paragraphs (q) and (r) to that section. This subpart is operative pursuant to the marketing agreement and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

On January 23, 1985, the procedural and operational details of the RDP were established pursuant to § 989.56. The authority for the diversion program was added to the order when it was amended on January 8, 1985. The program gives the industry a means of correcting its serious over-supply situation by decreasing the quantity of raisin grapes grown for drying into raisins. Since implementation of the RDP, the raisin industry has been working to assure the success of this program to cutback production. As a result, several refinements designed to improve efficiency in administration, program flexibility, and program compliance were recommended by the Committee.

One refinement establishes June 1 as the final date that approved applicants can divert their acreage, thus qualifying for a diversion certificate. This refinement is included in § 989.156(h) and is necessary to give the Committee adequate time to verify diverted acreage.

A second refinement is in § 989.156(q) and would allow the Committee to collect liquidated damage from producers who fail to divert and deny them the opportunity to participate in future diversion programs. The intent of this refinement is to encourage successful applicants to take the necessary measures to preclude grapes from being produced and harvested. Failure by large numbers of raisin producers to carry out their commitment to divert would cause serious and substantial damage to the diversion program, and impair the achievement of program goals in 1985 and future years. Hence, measures to foster compliance are necessary and incidental to effectively carry out the diversion program. Moreover, without such measures, producers who intend to participate may be denied the opportunity in years when a lottery is held.

By applying to participate in a raisin diversion program, an applicant would execute an agreement with the Committee acknowledging that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will agree to pay liquidated damages and interest to the Committee, in the event of such failure to remove vines or grapes. Because it would be difficult, if not impossible, to determine a fair measure of damages not considered a penalty, the amount of such liquidated damages would be computed by multiplying the tonnage on the approved diversion application by a harvest cost determined by the Committee. Interest would be applied to liquidated damages not paid by July 1, and would be equal to the prime rate of the bank where the Committee has its reserve pool funds deposited, plus two percent. The interest charge is warranted because producers' income would be affected by producers failing to comply with the program.

There is ample precedent for a provision specifying liquidated damages in the event producers fail to follow through on their agreements with the Committee. Section 989.159(g)(2) of the administrative rules and regulations provides for liquidated damages in the event of the improper disposition of off-grade raisins, other failing raisins, and raisin residual material. Moreover, liquidated damages are included in other provisions to assure compliance with other programs administered by the Secretary.

A third refinement is in § 989.156(r) and allows applicants 10 days to withdraw from the program if any change is made in the terms and conditions of the program. If the producer fails to take action to withdraw from the program, the producer would automatically agree to the changes under this action.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, California.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.156(h) is revised and subparagraph (q) and (r) are added to read as follows:

Subpart—Administrative Rules and Regulations

§ 989.156 Raisin diversion program.

* * * * *

(h) *Methods of diversion.* An approved applicant shall be required to take the necessary measures to preclude grapes from being produced and harvested on the production unit involved in the program. These measures may include spur pruning the vines, chemically removing the crop before maturity, hand removing and destroying the bunches of grapes before

maturity, removing the vines, or any other method which prevents the grapes from maturing and being harvested. An approved applicant must remove the grapes within the production unit designated in its application not later than June 1 of the crop year when a raisin diversion program is implemented. Grafting vines to another varietal type does not constitute removal of the vines under the program. Any raisin producer who does not take the necessary measures to remove the vines or grapes on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the act, and may be denied the opportunity to participate in future diversion programs.

* * * * *

(q) *Liquidated damages and interest charges.* By applying to participate in a raisin diversion program, an applicant agrees that the failure of the approved applicant to timely remove the vines or grapes will cause serious and substantial damage to the program and the raisin industry and that, in consideration of the approval of the application, such applicant will pay liquidated damages and interest to the Committee, in the event of such failure to timely remove vines or grapes. Since it would be difficult, if not impossible, to determine the amount of such liquidated damages, the following amount, which is a fair measure of damages and not a penalty, shall apply:

(1) The amount of the liquidated damages shall be computed by multiplying the tonnage on the approved diversion application (Form RAC–1000) by the harvest cost determined and announced by the Committee.

(2) Each approved applicant shall, with the respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid.

(3) Liquidated damages and interest collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool.

(r) *Notification.* If any changes are made in the terms and conditions of the diversion program after a producer's application has been approved, the Committee will notify the producer of such changes and the producer will be given 10 calendar days to agree to the revised terms, or to withdraw from the program. Failure of the producer to notify the Committee in writing of its intention to withdraw from the program within 10 calendar days from the date of the Committee's notice will consitute agreement to the revised terms and conditions.

* * * * *

Dated: June 3, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–13729 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1872, 1900, 1901, 1944, 1951, 1955, and 1962

Property Management

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulations regarding property management. This action is necessary because the existing regulations have been in effect for several years and have been determined to be inconsistent with the present Agency need for effective property management. The intended effect of this action is to eliminate known deficiencies and to update and expand authorities and procedures. Terminology is made uniform and conforms to other published regulations; monetary authority for program decisions and approvals reflect price and mortgage escalations which have occurred since the previous regulations were published; and material in the subparts is organized and clarified to provide concise guidelines to field personnel in handling the acquisition, management and disposal of property.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: For Part 1955, Subparts A and B, and changes to other parts, Frances B. Calhoun, Chief, Property Management Branch; For Part 1955, Subpart C, Edward W. Nidever, Senior Realty Specialist; Single Family Housing Servicing and Property Management Division, Farmers Home Administration, Room 5309, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, D.C. 20250, Telephone: (202) 382–1452.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 which implements Executive Order 12291, and has been classified as "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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 document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Some of the FmHA programs and projects affected by these regulations are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities." These programs include Multiple Family Housing and Community and Business programs.

Subpart A of Part 1955 contains policies and procedures for liquidating loans secured by real estate by voluntary conveyance and foreclosure. It has been reorganized to place the required actions in chronological sequence. The majority of these liquidations result in Government acquisition of the property. Reporting and record keeping procedures have been revised and clarified.

Primary changes made in Subpart A of Part 1955 are:

(a) Sets monetary guidelines for settling junior liens in voluntary conveyance cases.

(b) Sets a monetary limit on a fee to a Trustee in Bankruptcy for a deed to security property.

(c) Provides guidance on acquisition of property by exercise of the Government's redemption rights.

(d) Authorizes the District Director to approve foreclosures and accelerate

accounts of Farmer Programs and Single Family Housing borrowers.

(e) Provides that foreclosure proceedings will be held in abeyance until appeals are concluded or the time for appeal or review has elapsed.

(f) Provides guidance on cases where the borrower files a petition in bankruptcy after acceleration of the account.

(g) Clarifies calculation of the Government's bid and bidding procedures.

(h) Provides that inventory accounts will be established at the lesser of the Government's investment or the market value of the property as of the date acquired.

(i) Establishes new policy for satisfying Single-Family Housing accounts after foreclosure unless a judgment will be pursued against the borrower in cases where the property value is less than the indebtedness.

(j) Establishes authority for the Administrator, FmHA, to make exception to any provision of this Subpart which is not inconsistent with the authorizing statute.

Subpart B of Part 1955 prescribes policies and procedures for management of inventory property as well as security property of which FmHA has taken custody after abandonment by the borrower.

Primary changes made in Subpart B of Part 1955 are:

(a) Clarifies responsibilities and actions necessary in taking into custody security real property which is abandoned by the borrower; allows the servicing official to take possession of abandoned real property securing loans to individuals after properly documenting the facts without the State Director's authorization.

(b) Clarifies policy on limitations on repairs to custodial property.

(c) Provides that eviction of persons from inventory property may be accomplished through State courts where State laws permit and authorization is obtained from the Regional Attorney of the Office of the General Counsel, USDA.

(d) Provides guidance and sets forth authority of various employees in determining suitability of property for program purposes.

(e) Establishes program authority for the County Supervisor and District Director in an aggregate amount of $15,000 per property for expenditures necessary to secure, maintain and repair inventory property.

(f) Expands on methods of management which may be used in connection with custodial and inventory property and outlines authority of various employees for entering into management contracts.

(g) Provides that inventory property may be leased with the option to purchase given.

(h) Clarifies policy on security deposits and provides guidance on handling and return.

(i) Permits the Administrator, FmHA, to make exception to any provision of this Subpart which is not inconsistent with the authorizing statute.

Subpart C of Part 1955 covers disposal of inventory property. The revisions clarify and reorganize existing procedures as well as provide for increased use of private-sector assistance. The revisions should substantially reduce the time inventory property is held by expanding the disposal authorities.

Primary changes made in Subpart C of Part 1955 are:

(a) Specifically defines responsibilities.

(b) Requires the repair of suitable single family housing property prior to marketing except under special circumstances.

(c) Provides program authority to dispose of all categories of property by sealed bid or auction.

(d) Provides time guidelines for the disposal of both real and chattel inventory property.

(e) Provides a longer retention period for sale of suitable single-family dwellings to purchasers on eligible terms *only*.

(f) Provides authority for use of balloon-type loans to purchasers on ineligible terms if required by economic conditions.

(g) Authorizes payment of discount points to facilitate sale of single-family inventory housing property.

(h) Provides alternate sales methods for chattel property.

(i) Authorizes use of private sector (contractor) specification writers, inspectors, appraisers, business brokers, exclusive real estate brokers, and auctioneers to expedite the sale of all categories of inventory property.

(j) Redefines circumstances requiring use of an Affirmative Fair Housing Marketing Plan.

(k) Addresses use of Environmental Assessments (EA) and Environmental Impact Statements (EIS) when disposing of property having controversial environmental implications or being located in areas having special characteristics.

(l) Requires the Government to provide certain certifications upon sale of inventory real property consistent with private sector practice.

(m) Provides for land acquisition necessary to effect a real property sale.

(n) Emphasizes and provides authority for advertising.

(o) Provides for administrative price reductions for certain real property in order to conform to changing market conditions and to expedite sales.

On June 6, 1984, a proposed rule was published in the **Federal Register** (49 FR 23359) for a 60-day review and comment period. Comments were received from six entities in the private sector, two Government agencies other than FmHA, and numerous employees in FmHA field offices throughout the country and in the National Office. The summary of the comments received from the private sector and other agencies are presented here, with discussion of the action taken or changes made or not made to the regulations in considering the comments.

Comments and suggestions concerning Subpart A of Part 1955 were:

Section 1955.10(d)(2). The requirement that borrowers give a warranty deed when the Government conveys property by quitclaim deed was questioned. The applicable laws prohibit the Government from obligating future appropriations which is what a warranty deed would do. It is customary in the private sector for property to be conveyed by warranty deed. Since to the agency's knowledge this has never presented a problem, either to the Government or to a borrower, we saw no reason to change this provision.

Section 1955.10(e). It was suggested that borrowers be advised of the FmHA appraisal prior to executing a voluntary conveyance offer. FmHA agrees there is a need for the borrower to be advised if there is apparent equity in the property. Knowing there is apparent equity in the property is most valuable to a borrower *before* servicing of the case has come to consideration of conveyance to FmHA. Therefore, we have incorporated into the proposed revision of Subpart G of Part 1951 of 7 CFR (now in clearance for publication as a proposed rule) the requirement for single-family housing borrowers to be advised of the approximate equity, if any, and be encouraged by FmHA to sell the property to realize that equity. Section 1955.10 is also slightly reworded to emphasize this point.

Section 1955.10(f) (1) and (2). It was suggested that explicit guidelines are needed for consistent implementation of the "good faith" determination. The wording used is almost verbatim from the Housing Act and the Consolidated Farm and Rural Development Act (CONACT), and the agency believes this

is clear enough for application of consistent judgments. Since individual borrower's circumstances are vastly different, the agency sees a need for judgment latitude rather than rigid guidelines which could never cover all borrowers' situations. The language was not changed.

Section 1955.10(f)(3)(i)(A). The requirement for the County Committee recommendation on release of liability for Multiple-Family Housing (MFH) borrowers was questioned. Since the Housing Act does not speak to release of liability for MFH borrowers, the provisions of Section 331(d)(2) of the CONACT apply, which requires a favorable recommendation of the County Committee when the property value is less than the debt, if the borrower is to be released from liability.

Section 1955.10(h)(5) [Also § 1955.10(d)(7).] Two entities suggested that Rental Assistance (RA) be retained during the Government's ownership so that tenants would not be adversely affected. Since RA is paid to the borrower rather than the tenants, it is not appropriate to be paid during this time. The term "cancelled" is changed to "suspended" and a provision is added that tenants will continue to pay in accordance with their leases (basic rent or 25 percent of their income).

Section 1955.12. One commentor pointed out that the Urban Recovery Act of 1983 deleted Sec. 414(a) of the Housing Act. Accordingly, § 1955.12 of the proposed rule was deleted.

Section 1955.15. One commentor urged FmHA forbearance to the greatest extent possible before initiating foreclosure. FmHA believes the lead paragraph of this section sets that policy.

Section 1955.15(a). Another commentor felt that giving the District Director authority to approve foreclosure "streamlines" the foreclosure process. The intent of this change was to have the line of authority proceed *upward* through the authority levels. That is, having the State Director as Hearing Officer at a level above the official who approves foreclosure rather than the opposite as it has previously been. As for "streamlining," this change has no impact on the time required to complete a foreclosure action.

Section 1955.15(d)(2). It was suggested the formats for acceleration notices should be published in the CFR. Since these are merely guides (as opposed to mandatory forms) there is substantial variation in the acceleration notices used throughout the country due to differences in State laws. The agency has adhered to the decision not to publish these Exhibits.

Section 1955.15(d)(3). One commenter believed this section generally prohibits acceptance of offers of less than payment in full after acceleration. This language is substantially similar to that which has been in the regulation for a number of years, and experience has shown it does not prohibit acceptance of offers other than payment in full. The paragraph has been slightly reworded in an effort to make clear that all offers will be fully considered. Another commentor stated that if a borrower makes a "good faith attempt," FmHA is statutorily obligated to reinstate the loan. Historically, reasonable offers for curing the default(s) in a foreclosure case have been favorably considered. Many foreclosures are withdrawn after acceleration based on borrower's offers to cure the default(s) in full at the time or over a reasonable period of time.

Section 1955.21. This was renumbered from § 1955.17 in the proposed rule. One commenter felt the Administrator's authority should be broadened to allow for exceptions where it will assist borrowers in achieving program objectives. We believe the provisions of § 1955.15(d)(3) as now written, as well as the provisions of the various program servicing regulations, provide sufficient flexibility for the agency to assist borrowers to be successful and that it is not necessary for the Administrator to be involved in individual decisions.

Comments and suggestions pertaining to Subpart B are:

Section 1955.52. Two commentors suggested language to expand on the policy statements to make clear that property was to be maintained for the benefit of low- or moderate-income persons. While this was not incorporated into this section § 1955.64 was reworded to speak more specifically to maintaining and repairing suitable property for retention in the Single Family Housing (SFH) program, and in § 1955.114(a) of Subpart C of Part 1955 provisions for a longer retention of suitable property for eligible applicants only indicates agency desire to retain suitable inventory homes for program-eligible people whenever practical.

Section 1955.61. Two commenters wrote concerning this section. One believed evictions should be carried out through Federal courts rather than state courts because state courts are "inadequate forums." In order for FmHA to use state courts, the permission of the U.S. Attorney in the particular jurisdiction must be obtained. FmHA believes state courts do provide due process. The other commentor suggested insertion of an FmHA policy to keep MFH projects in operation. Rather than place that policy in this section, a sentence to that effect was inserted in § 1955.52.

Section 1955.64. One commentor wrote to applaud FmHA's policy statement on repair and maintenance.

Section 1955.65. An objection was raised to the expanded authority to contract with professional farm management companies because of the fear that the goals of selling to farmers who are eligible for FmHA's farmer programs assistance would not be met. The authority in question has been retained due to the lack of sufficient FmHA staff to adequately perform these management functions and protect the Government's interests. However, in § 1955.66 concerning selection of lessees and § 1955.106 of Subpart C of Part 1955 concerning sale of property, FmHA's policy is expressed by giving preference to persons eligible for FmHA farmer programs loans. Another commenter felt that expanded authority to utilize private-sector expertise was good and urged retention of these provisions in the final rule. The authority has been retained.

Section 1955.66. The preference for cash rent was criticized. However, this provision was retained because FmHA field staffs do not have adequate time to supervise nonborrowers on crop-share leases. It is expected a lessee can project returns and obtain assistance from other lenders for cash rent where necessary. As stated in § 1955.66(b), a policy for assisting family farmers is expressed.

Section 1955.66(g)(1). There was a suggestion that when MFH inventory is managed by a contractor there was no need to send tenants' security deposits to the FmHA Finance Office. No change was made at this time, as the new accounting system for MFH will provide for ready return of security deposits.

Section 1955.71. The Office of Inspector General (OIG), USDA, pointed out a Departmental Regulation requiring notification of OIG in cases of vandalism and/or theft of inventory property. Language similar to that in the previous regulation was placed in the final rule.

Section 1955.72. One commentor suggested that a new paragraph be added to this section to authorize State Directors to make inventory property available to house homeless individuals. This concept is being tried at present in several states as a pilot program, and FmHA has decided to defer placing specific language in the regulation until the results of the pilot are known.

Comments and suggestions pertaining to Subpart C are:

Section 1955.103(e). One commentor said the definition of "eligible applicant" should not exclude income. We have changed this terminology altogether (though not due to the comment received) and that of "ineligible applicant" as well, and have instead referred to credit on eligible or ineligible *terms.* The definition now also requires that to get credit on eligible terms one must meet the eligibility requirements set forth in the respective program regulations.

Section 1955.106(b). One commentor was concerned that use of real estate brokers to market farm property would result in abrogation of the responsibility of Agency officials and County Committees to determine eligibility of buyers. Although real estate brokers who are engaged to list farm properties will be given guidelines for eligibility, the determination of eligibility will rest as always with the FmHA County Supervisor and County Committee. Another commentor felt that the expressed preference for sale of suitable farm property by FmHA employees should be liberalized and that real estate brokers should not be utilized as a last resort. After considerable deliberation, it was determined the section allows sufficient flexibility for the State Director to decide when use of brokers is in the best interest of the Government, and no change was made.

Section 1955.107. One commentor believed sale of surplus farm property through real estate brokers should be considered equally with other sales techniques. No change was made to this section because the CONACT specifically requires that surplus property be offered for public sale. Thus, the regulation requires the public sale offering (by auction or sealed bid) first, then permits the State Director to use brokers if no sale has resulted. Another commentor felt more specific guidelines should be given to Agency employees in the determination of whether or not farm property is suitable or surplus. Due to the extreme variations in considerations nationwide, it would be impossible to set forth meaningful and workable guidelines in a regulation. Rather, the local field staffs are knowledgeable of the farms, the farming enterprises in the area, and economic conditions and are thus better able to make the suitability determination. The National Office staff does monitor the sale of inventory property through its program assessments and other program visits and contacts on a continuing basis.

Section 1955.112(b). One commentor suggested that the threshold for mandatory listing of property with brokers was too low, and believed FmHA staffs should make a greater effort to market single-family homes to eligible applicants. Listing with brokers actually provides an expanded exposure of the property to potential buyers, and since the time suitable properties are retained for buyers on eligible terms only was lengthened, eligible buyer opportunity is actually strengthened.

Section 1955.113. It was suggested that this section be amended to include the provision for additional price reductions when made administratively or just prior to consideration of sale by auction or sealed bid. This section was amended to include provision for administrative price reductions, but does not include a reference to sale by auction or sealed bid. Normally, sales by the latter two methods will be limited to unsuitable property which would not be considered for conversion to a rental project.

Section 1955.114. A commentor suggested that § 1955.112 of the regulation should be expanded to allow for sale of single-family dwellings to persons proposing to use it for multiple-family housing. Instead, a paragraph has been added to this section to include this provision.

Section 1955.114(a). One commentor suggested extending the time of retention for eligible sales only to 120 days. Another suggested 45 days. The concept of these suggestions was favorably considered, but the 120 days was considered excessive. As a result, the period of retention for eligible sales was lengthened to 30 days.

Section 1955.116. One commentor pointed out that the restrictions on occupancy of housing which does not meet decent, safe and sanitary standards applies equally to MFH. The language of this section was clarified.

Section 1955.118. One comment was received to the effect that the current Sec. 515 interest rate plus ½ percent appeared too high to be attractive to potential buyers on ineligible terms. Ineligible terms may never be more favorable than eligible terms, and the ½ percent higher rate is felt to be reasonable. The volume of MFH property sold on ineligible terms is expected to be minute.

Section 1955.128. One commentor suggested FmHA should not be so restrictive in allowing for fee appraisals. The authorization to obtain appraisals by contract is retained as in the proposed rule until FmHA has accumulated more experience in this area. We do not believe inclusion of appraisals as a basis for appeals is appropriate. Present regulations provide for review of appraisals by the State Director when questioned, and we believe that is sufficient. Appraisal is not an exact science, but is rather an estimate supported by verifiable data; therefore, there is no real basis for appeal.

Section 1955.133. It was suggested that if a broker is signatory to a HUD/NAR Voluntary Affirmative Marketing Agreement, there would be no need for an Affirmative Fair Housing Marketing Plan. The voluntary agreement simply provides for nondiscrimination in marketing, whereas a marketing plan provides for positive steps to be taken to reach socio-economic groups who might not normally apply for the housing being offered. No change was made in this section.

Section 1955.137(a)(3)(ii). One commentor felt the wording of this paragraph concerning credit sales in coastal barrier areas should be clarified. This has been done.

Several comments were received simply expressing positive reaction to policies proposed, among these: § 1955.114 and § 1955.140. Numerous comments were received from FmHA personnel, some of which resulted in changes and some of which were not adopted because it was deemed they did not fit within the scope of these regulations or were otherwise not appropriate.

Since publication of the proposed rule, FmHA has reconsidered some of the requirements contained in that proposal, specifically: (1) That all purchasers of inventory property (including those obtaining credit on eligible terms under one of FmHA's loan programs) must pay closing costs from their own resources; and (2) that earnest money in the estimated amount of closing costs would be required at the time of execution of a sales contract, whether the contract was originating through a real estate broker or with FmHA personnel. The regulation has now been changed to provide that: (1) Earnest money will be required only in connection with contracts originated with a real estate broker; (2) Earnest money will be $50 for single-family and two- and four-family dwellings and the greater of the estimated closing costs or ½ of 1 percent of the sale price for other types of property; and (3) When necessary, FmHA may make a loan to a qualified purchaser of a single-family dwelling to pay closing costs not to exceed 1 percent of the sale price.

The changes in Subpart A of Part 1955 require conforming changes in other FmHA regulations to reflect the authority being given to District Directors to approve foreclosure and

accelerate accounts for Farmer Programs and Single Family Housing loans. The other FmHA regulations requiring conforming changes are: Subpart A of Part 1872, Subparts A and B of Part 1900, Subpart E of Part 1901, Subpart A of Part 1944, Subparts F and G of Part 1951, and Subpart A of Part 1962 of this chapter. Authorities for sale or disposition of government inventory property outlined in Subpart C of Part 1955 also require amendment to Subpart A of Part 1900 of this chapter.

Catalog of Federal Domestic Assistance Titles and Numbers

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—agriculture, Rural areas.

7 CFR Part 1900

Appeals, Credit, Loan programs—agriculture, Loan programs—housing and community development.

7 CFR Part 1901

Civil Rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1944

Loan programs—housing and community development, Low and moderate income housing—mortgages, Rural housing, Subsidies.

7 CFR Part 1951

Account servicing, Loan programs—agriculture, Low and moderate income housing loans—servicing, Rural areas.

7 CFR Part 1955

Foreclosure, Government acquired property, Government property management, Sale of government acquired property, Surplus government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural Areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

§ 1872.1 [Amended]

1. Section 1872.1 (e)(1) is amended in the first sentence by changing "§ 1955.6" to "§ 1955.5 (a) of Subpart A of Part 1955 of this chapter."

§ 1872.2 [Amended]

2. Section 1872.2 (c)(1) is amended in the first sentence by inserting "the applicable portions of" before "§ 1955.15" and by changing "(d) (8) and (9)" after "§ 1955.15" to read "of Subpart A of Part 1955 of this chapter."

3. Section 1872.2 (c)(1)(iv)(A) is amended by inserting "the applicable portion of" before "§ 1955.15" and by changing "(d)(1)" after "§ 1955.15" to read "of Subpart A of Part 1955 of this chapter."

4. Section 1872.2 (e) is amended in the last sentence by changing "465–7" to read "1955–2" and by changing the last phrase "submitted through the District Director to the State Director for his consideration" to read "distributed according to the FMI."

§ 1872.15 [Amended]

5. Section 1872.15 (a) is amended in the last sentence by changing "§ 1955.15 (d)(8) and (9)" to "§ 1955.15 (f)(5) and (6) of Subpart A of Part 1955 of this chapter."

6. Section 1872.17 is amended by revising paragraphs (b), (c) and (d) to read as follows:

§ 1872.17 Liquidation action.

* * * * *

(b) *Problem case report.* If the borrower is unwilling to take any of the actions specified in § 1872.17(a) or fails to carry out any such actions within 60 days, the County Supervisor will complete Form FmHA 1955–2 and submit it according to § 1955.15 of Subpart A of Part 1955 of this chapter.

(c) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable portion of § 1955.15 of Subpart A of Part 1955 of this chapter.

(d) *Voluntary liquidation after acceleration.* If after the notice of acceleration has been sent to the borrower as outlined in § 1955.15 of Subpart A of Part 1955 of this chapter, arrangements are made to have the account voluntarily liquidated, the official who approved the foreclosure may give the borrower time beyond the date listed in the notice of acceleration to accomplish voluntary liquidation. The official who approved the foreclosure will inform the borrower of this decision in a separate letter, which will also place a time limit on the borrower which should not exceed 3 months from the date of the letter agreeing to allow the borrower to voluntarily liquidate. The original period established plus any extensions determined necessary by the approval official should in no case exceed 1 year. Prior to granting any extension after the original period established, the approval official will request a report from the servicing official concerning the actions taken by the borrower to liquidate. If a sale is involved, the servicing official's report should indicate whether the borrower's asking price is reasonable and whether the asking price is delaying the sale unreasonably. Acceleration or granting time for voluntary liquidation as provided for in this paragraph will not preclude exercise of the authority in paragraph (g) of this section. However, the authority outlined herein should not be used for the purpose of extending the correction period under paragraph (f) of this section. If the borrower has not voluntarily liquidated within the time period (including any extensions) granted, foreclosure should proceed according to § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

PART 1900—GENERAL

Subpart A—Delegations of Authority

8. Section 1900.2 is amended by revising paragraphs (e)–(k) to read as follows:

§ 1900.2 National office staff and State Directors.

* * * * *

(e) Consent to sale or assignment of, or sell or assign, direct or insured loans and security instruments, endorsements, reinsurance agreements, or other instruments in connection therewith; and execute agreements to insure and reinsure, and to purchase and repurchase insured loans and security instruments.

(f) Compromise, adjust, cancel or charge off indebtedness.

(g) Modify contracts and other instruments and compromise claims owed to the Farmers Home Administration and covered by the Federal Claims Collection Act of 1966 and the joint regulations issued under it by the Attorney General and the Comptroller General as provided for in applicable program regulations.

(h) Perform all actions pertaining to the sale (or other disposal) of real or chattel property or interests therein and to execute and deliver bills of sale or other insturments to effect such sale (or disposition), which includes but is not limited to offering property for sale; advertising; receiving and accepting offers or bids; and closing sale transactions, including the collection of sale proceeds, and delivery of quitclaim deeds, easements, and right-of-way conveyances after those documents have been executed. The authority to execute any deeds of conveyance of inventory real property, including quitclaim deeds, easements, rights-of-way, or sale of any use rights is reserved to the State Director, and this authority may not be redelegated.

(i) Approve and consent to transfers of security property to other parties with or without assumption of debts; and approve and accept transfers of security property or interests therein to the United States of America, and execute release from liability after determination is made in accordance with applicable program regulations.

(j) Execute and deliver, or approve in writing, suspensions, releases or terminations of assignments, of income, renewals, extensions, partial and full releases and satisfactions of security, and personal or indemnity liability for indebtedness, waivers, subordination agreements, severance agreements, affidavits, acknowlegements, certificates of residence, evidence of consent, and other instruments or documents.

(k) Accelerate and declare entire real estate or chattel indebtedness due and payable, foreclose or request foreclosure of real estate security instruments by exercise of power of sale or otherwise, and bid for and purchase at any foreclosure or other sale or otherwise acquire real property pledged, mortgaged, conveyed, attached, or levied upon to collect indetedness, and accept title to any property so purchased or acquired.

* * * * *

9. Section 1900.3 is revised to read as follows:

§ 1900.3 State, District, and County Office employees.

The following officials and employees of the Farmers Home Administration, in accordance with applicable laws, and the regulations implementing these laws, for and on behalf of, and in the name of the United States of America or the Farmers Home Administration, are also severally authorized within the area of their respective jurisdictions to perform the acts specified in paragraphs (g) through (r) of § 1900.2; and within their loan approval authority to sell or otherwise dispose of real or chattel property or interests therein and to execute and deliver bills of sale or other instruments to effect such sale or disposition: Chief, Farmer Programs/Specialist; Chief, Rural Housing/Specialist; Chief, Community Programs/Specialist; Chief, Business and Industry/Specialist; Chief, Community and Business Programs/Specialist; each District Director, Assistant District Director, Loan Specialist General, County (including Parish) Supervisor, Emergency Loan Supervisor, Assistant Emergency Loan Supervisor, or other supervisor or assistant supervisor; and in the absence or disability of any such official or employee, the person acting in the position.

Subpart B—Farmers Home Administration Appeal Procedure

10 Section 1900.56 is amended by revising paragraphs (a)((3) and (a)(4) to read as follows:

§ 1900.56 Appeal from an initial FmHA decision.

(a) * * *

(3) In acceleration notices, the letter will read substantially as found in Exhibit B or C, "Notice of Acceleration . . .," Subpart A, Part 1955 of this Chapter or Form FmHA 455–21, "Notice of Acceleration and Demand for Payment," with attachment Exhibit B-4 or B–5 as appropriate. The following language or other similar language mandated by FmHA instructions, must be included in the acceleration notice: "The request for this hearing must be made within 30 calendar days from the date of this notice."

(4) Any offer by the borrower for partial payment of (or curing) the default after acceleration of a loan secured by real estate will be referred to the official who approved foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter.

* * * * *

11. The table in Exhibit D is revised to read as follows:

EXHIBIT D TO SUBPART B—HEARING/REVIEW OFFICER DESIGNATIONS

Decision maker or decision	Hearing officer	Review officer
County Supervisor	District Director or person designated by State Director.	State Director or designee (who has not been significantly involved with the case).
County Committee	State Director or designee	Deputy Administrator, Program Operations or designee.
District Director	State Director or designee	Deputy Administrator, Program Operations or designee.
State Director	Deputy Administrator, Program Operations or designee.	(No review.)
Division Director or Assistant Administrator.	Deputy Administrator, Program Operations or designee.	(No review.)
Deputy or Associate Administrator	Administrator or designee	(No review.)
Decision to foreclose chattels	District Director	State Director or designee.
Decision to foreclose real estate (for accounts other than single-family housing serviced in the county office.	District Director from another district or other person not involved in the initial decision-designated by the State Director.	Deputy Administrator, Program Operations or designee.
Decision to foreclose real estate:		
For single-family housing accounts	State Director or designee [1]	Deputy Administrator, Operations or designee.
For accounts serviced in the district office.	Deputy Administrator, Program Operations or designee.	(No review.)

[1] The individual designated as Hearing Officer may not be an employee who is supervised by the person who approved the foreclosure and accelerated the account, nor can the designee have been involved in the decision to foreclose.

Notes.—1. District Director also means Assistant District Director or District Loan Specialist.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. Designee is the person designated by the Hearing/Review Officer to conduct a hearing or review. The designee signs the decision letter to the appellant without the concurrence of the original Hearing/Review Officer except:

a. For hearings on County Committee decisions. For these hearings the State Director or Acting State Director may designate other persons to act on his or her behalf in conducting the hearing; however, the State director or Acting State Director must sign the hearing decision letter.

b. When the Hearing/Review Officer, designated by the Deputy Administrator, Program Operations, is not a member of the National Office staff, the complete case file,

hearing notes, tape recordings, and a recommended decision will be sent to the Deputy Administrator, for review and a final decision.

c. When the Hearing/Review Officer is a member of the National Office Staff, after the decision is written, but prior to notification of the applicant, in all cases requiring corrective actions or training (e.g., reversals or other problems which may become evident) the Hearing/Review Officer will brief the Deputy Administrator, Program Operations, concerning the decision and will notify the State Director involved that the decision will be reversed or modified, and will advise the State Director of what corrective action will have to be taken.

4. For decisions not directly covered above, the Hearing/Review Officer is the person in the next higher level of FmHA authority.

PART 1901—PROGRAM RELATED INSTRUCTIONS

Subpart A—Loan and Grant Approval Authorities

§ 1901.2 [Amended]

12. Section 1901.2 is amended by changing the reference in the last sentence from "Exhibits A, B, C, and D" to "Exhibits A, B, C, D, and E."

§ 1901.5 [Amended]

13. Section 1901.5 is amended by changing the reference from "Exhibits A, B, C, and D" to "Exhibits A, B, C, D, and E."

Subpart E—Civil Rights Compliance Requirements

14. Section 1901.203 is amended by revising paragraphs (c)(2)(ii), (c)(4)(iv), (c)(5)(iv), and by removing paragraph (c)(4)(v) to read as follows:

§ 1901.203 Title VIII of the Civil Rights Act of 1968.

* * * * *

(c) * * *

(2) * * *

(ii) An Affirmative Fair Housing Marketing Plan is required to be prepared and submitted to FmHA by the contractor when:

(A) A real estate broker is offering five or more single-family dwellings located in the same subdivision for sale under an exclusive listing contract with FmHA.

(B) An auctioneer under contract with FmHA is offering five or more single-family dwellings located in the same subdivision for sale by public auction.

(C) A contractor under a contract with FmHA is managing a multiple-family housing project of five or more units or five or more single-family dwellings located in the same subdivision.

(3) * * *

(4) * * *

(iv) For real estate brokers listing housing properties on an exclusive basis, at the time of execution of Form FmHA 1955–43, "Exclusive Real Property Master Listing Agreement."

(5) * * *

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing agreement on Form FmHA 1955–43, one year.

* * * * *

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.10 [Amended]

15. Section 1944.10 (g)(3) is amended by changing the reference from "§ 1955.103 (e)" to "§ 1955.103 (q)."

16. Section 1944.17 is amended by adding paragraph (d) to read as follows:

§ 1944.17 Maximum loan amounts.

* * * * *

(d) When a subsequent loan is made simultaneously with a credit sale of a single-family dwelling from FmHA inventory for loan closing costs only as provided in § 1955.117(f) of Subpart C of Part 1955 of this chapter, the total indebtedness may exceed the market value of the security property by no more than 1 percent of the sale price of the property.

PART 1951—SERVICING AND COLLECTIONS

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

17. Section 1951.262 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 1951.262 Action when borrower fails to cooperate, respond and/or graduate.

(a) * * *

(1) Provide information following receipt of both FmHA Guide Letters No. 1951–1 and 1951–2, or letters of similar format, such borrowers will not be asked to graduate. They are, at that point, in default of their security instruments, which require the borrower to comply with all future FmHA regulations not inconsistent with the security instruments. The servicing official will, based on the borrower's failure to supply information in accordance with § 1951.261(e) of this subpart, prepare the required documents recommending legal action and submit them together with the borrower's case file to the official authorized in § 1955.15 of Subpart A of Part 1955 of this chapter to approve foreclosure of the loan type involved (approval official) with a written report outlining credit sources contacted by FmHA and the borrower, the reasons given by the borrower for failure to graduate, action taken by FmHA to verify the availability of credit, and the borrower's available financial resources along with any data pertinent to the case. The approval official may, with the concurrence of Regional Attorney, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters No. 1951–5 and 1951–6, or letters of similar format, such borrowers will not be given further notice to graduate but at that point are in default under the graduation requirement of their security instruments. The servicing official will prepare the required documents to recommend legal action and submit them to the approval official as outlined in paragraph (a)(1) of this section.

(b) The official authorized to approve foreclosure will review those cases submitted to his/her office and determine what action must be taken on the basis of the FmHA notes, security instruments, and/or loan agreements signed by the borrower and the facts and recommendations provided by the servicing official.

(1) If the approval official determines the borrower is unable to graduate, the graduation request may be withdrawn. The approval official will request the servicing official to notify the borrower and withdraw the graduation request in accordance with § 1955.261(g)(5)(i) of this Subpart.

(2) If the approval official determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter. If the borrower's account(s) are accelerated, the borrower will be given the right to appeal the decision in accordance with Subpart B of Part 1900 of this Chapter. The advice of the Regional Attorney is required before accelerating the account.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

18. Section 1951.312 is amended by revising paragraph (e)(4) to read as follows:

§ 1951.312 Servicing.

* * * * *

(e) * * *

(4) *Borrower fails to keep appointments or defaults on payment agreements.* If the borrower has failed to

keep appointments or make payments according to previous agreements (including the promissory note), the County Supervisor will prepare and send a completed Form FmHA 1955–2, "Report on Real Estate Problem Case," to the District Director with a recommendation for foreclosure of the loan. The District Director will review the file and decide if appropriate action has been taken by the County Supervisor to adequately service the account in an effort to give the borrower an opportunity to become a successful homeowner. If the District Director determines that appropriate action has been taken in servicing the account and that further servicing efforts will not result in the borrower meeting loan obligations, foreclosure action will be initiated. If the District Director determines that additional servicing efforts are appropriate, the County Supervisor will be instructed regarding actions to be taken. (Guide Letter 1951–G–5 may be used if the District Director chooses to write the borrower prior to acceleration.) If the County Supervisor cannot work out an agreement with the borrower, the file will be returned to the District Director for initiation of foreclosure action.

* * * * *

19. Part 1955 is revised to read as follows:

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Sec.
1955.1 Purpose.
1955.2 Policy.
1955.3 Definitions.
1955.4 Redelegation of authority.
1955.5 General actions.
1955.6–1955.9 [Reserved]
1955.10 Voluntary conveyance of real property by the borrower to the Government.
1955.11 Conveyance of property to FmHA by trustee in bankruptcy.
1955.12 Acquisition of property which served as security for a loan guaranteed by FmHA or at sale by another lienholder, bankruptcy trustee, or taxing authority.
1955.13 Acquisition of property by exercise of Government redemption rights.
1955.14 [Reserved]
1955.15 Foreclosure by the Government of loans secured by real estate.
1955.16–1955.17 [Reserved]
1955.18 Actions required after acquisition of property.
1955.19 [Reserved]
1955.20 Acquisition of chattel property.
1955.21 Exception authority.
1955.22 State Supplements.
1955.23–1955.49 [Reserved]
1955.50 OMB control number.

Subpart B—Management of Property

1955.51 Purpose.
1955.52 Policy.
1955.53 Definitions.
1955.54 Redelegation of authority.
1955.55 Taking abandoned real or chattel property into custody and related actions.
1955.56 Real property located in Coastal Barrier Resources System (CBRS).
1955.57–1955.59 [Reserved]
1955.60 Inventory real property subject to redemption by the borrower.
1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.
1955.62 Removal and disposition of nonsecurity personal property from inventory real property.
1955.63 Suitability determination.
1955.64 Securing, maintaining, and repairing inventory property.
1955.65 Management of inventory and/or custodial real property.
1955.66 Lease of real property.
1955.67 Payment of liens.
1955.68 Payment of taxes.
1955.69 Insurance.
1955.70 Inspection of property.
1955.71 Vandalism or theft.
1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).
1955.73–1955.79 [Reserved]
1955.80 Management of inventory chattel property.
1955.81 Exception authority.
1955.82 State Supplements.
1955.83–1955.99 [Reserved]
1955.100 OMB control number.

Subpart C—Disposal of Inventory Property

1955.101 Purpose.
1955.102 Policy.
1955.103 Definitions.
1955.104 Authorities and responsibilities.

Consolidated Farm and Rural Development Act (CONACT) Real Property

1955.105 Real property affected (CONACT).
1955.106 Sale of suitable property (CONACT).
1955.107 Sale of surplus property (CONACT).
1955.108 Processing and closing (CONACT).
1955.109 [Reserved]

Rural Housing (RH) Real Property

1955.110 Sale of real estate that secured RH loans (housing).
1955.111 Property repair (housing).
1955.112 Method of sale (housing).
1955.113 Price (housing).
1955.114 Sales steps for suitable property (housing).
1955.115 Sales steps for unsuitable property (housing).
1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).
1955.117 Processing credit sales on eligible terms (housing).
1955.118 Processing cash sales or credit sales on ineligible terms (housing).
1955.119 Payment of discount points (housing).
1955.120 [Reserved]

Chattel Property

1955.121 Sale of acquired chattels (chattel).
1955.122 Method of sale (chattel).
1955.123 Sale procedures (chattel).
1955.124 Sale with inventory real estate (chattel).
1955.125–1955.26 [Reserved]

Use of Contractors To Dispose of Inventory Property

1955.127 Selection and use of contractors to dispose of inventory property.
1955.128 Appraisers.
1955.129 Business brokers.
1955.130 Real estate brokers.
1955.131 Auctioneers.
1955.132 [Reserved]

General

1955.133 Nondiscrimination.
1955.134 Loss, damage, or existing defects in inventory real property.
1955.135 Taxes on inventory real property.
1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).
1955.137 Real property located in special areas or having special characteristics.
1955.138 Property subject to redemption rights.
1955.139 Disposition of real property rights.
1955.140 Sale in parcels.
1955.141 Transferring title.
1955.142 Reporting sale.
1955.143 Report on inventory property not sold.
1955.144 Disposal of surplus property to, through, or acquired from other agencies.
1955.145 Land acquisition to effect sale.
1955.146 Advertising.
1955.147 Sealed bid sales.
1955.148 Auction sales.
1955.149 Exception authority.
1955.150 State Supplements.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301, sec. 10; Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23; 7 CFR 2.70, 29 FR 14764, 33 FR 9650.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

§ 1955.1 Purpose.

This subpart delegates authority and prescribes procedures for the liquidation of Farmers Home Administration (FmHA) loans identified in § 1955.3 (d) and (e) of this subpart and acquisition of property by voluntary conveyance to the Government, by foreclosure of security instruments, by exercise of the

Government's redemption rights, and certain other actions which result in acquisition of property by the Government. When FmHA elects to liquidate a guaranteed loan *other than Business and Industrial (B&I)* under the contract of guarantee, the liquidation will be completed according to this subpart. Liquidation of guaranteed B&I loans will be effected upon direction from the Assistant Administrator, Community and Business Programs. For Community Programs and insured B&I actions involving loans secured by other than real or chattel property, the case will be forwarded to the National Office for prior review and guidance.

§ 1955.2 Policy.

When it has been determined in accordance with applicable loan servicing regulations that further servicing will not achieve loan objectives and that voluntary sale of the property by the borrower (except for Multiple Family Housing (MFH) loans subject to prepayment restrictions) cannot be accomplished, the loan(s) will be liquidated through voluntary conveyance of the property to FmHA or by foreclosure as outlined in this Subpart. For MFH loans subject to the prepayment restrictions, voluntary liquidation may be accomplished only through voluntary conveyance to FmHA in accordance with applicable portions of § 1955.10 of this subpart.

§ 1955.3 Definitions.

As used in this subpart, the following definitions apply:

(a) *Closing agent.* A designated attorney or title insurance company which is approved as a loan closing agent in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1).

(b) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act. Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

(c) *Government.* The United States of America acting through the Farmers Home Administration (FmHA), U.S. Department of Agriculture; used interchangeably herein with "FmHA."

(d) *Loans to individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Land Conservation and Development (LCD), Economic Opportunity (EO), Operating (OL), Emergency (EM), and Economic Emergency (EE), whether to individuals or entities, herein referred to as Farmer Programs (FP) loans; and Single-family Housing (SFH), including both Section 502 and 504 loans.

(e) *Loans to organizations.* Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); insured Business and Industrial (B&I) both to individuals and groups; loans to associations for Irrigation and Drainage (I&D) and other Soil and Water conservation measures; loans to Indian Tribes and Tribal Corporations; Shift-In-Land-Use (Grazing Association); Economic Opportunity Cooperative (EOC); Rural Housing Site (RHS); Rural Cooperative Housing (RCH); Rural Rental Housing (RRH) and Labor Housing (LH) to both individuals and groups. The housing-type organization loans identified here are referred to in this subpart collectively as Multiple-family Housing (MFH) loans.

(f) *Market value.* The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(g) *Nonrecoverable costs.* Costs incurred after Government acquisition of title to the property and charged to an inventory account.

(h) *OGC.* The Office of the General Counsel, U.S. Department of Agriculture; refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

(i) *Prior lien.* A security instrument (such as a mortgage or deed of trust) or a judgment which was of public record before the FmHA security instrument(s) as well as real estate taxes or assessments which are or will become a lien against the property which is superior to FmHA's security instrument(s).

(j) *Recoverable costs.* Costs charged to a borrower's account paid or incurred prior to Government acquisition of title to the property.

(k) *Servicing official.* For loans to individuals as defined in paragraph (d) of this section, the servicing official is the County Supervisor for all other types of loans except insured B&I, the servicing official is the District Director. For insured B&I Loans, the servicing official is the State Director.

§ 1955.4 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program requirements and available resources.

(a) The State Director is authorized to redelegate, in writing, any authority in this subpart to a Program Chief or Program Specialist on the State Office staff; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(2) of this subpart may not be redelegated. However, a duly-designated Acting State Director may approve or disapprove foreclosure.

(b) The District Director is authorized to redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist determined by the District Director to be qualified; except the authority to approve or disapprove foreclosure as outlined in § 1955.15(a)(1) of this subpart may not be redelegated. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories.

(c) The County Supervisor is authorized to redelegate in writing any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(d) The monetary limitations on acceptance of voluntary conveyance as provided for in § 1955.10(a) of this subpart may *not* be redelegated from a higher-level official to a lower-level official.

§ 1955.5 General actions.

(a) *Assignment of notes to FmHA.* When liquidation action is approved and the insured note is not held in the County or District Office, the approval official will request the Finance Office to purchase the note and forward it to the appropriate office. Voluntary conveyance may be closed pending receipt of the note(s), and foreclosure may also be processed pending receipt of the note(s), unless the original note is required in connection with the foreclosure action.

(b) *Execution of documents.* (1) After liquidation of loans to individuals has been approved by the appropriate official, the County Supervisor is authorized to execute all necessary forms and documents except notices of acceleration required to complete transactions covered by this subpart.

(2) After liquidation of loans to organizations has been approved by the appropriate official, the District Director

is authorized to execute all forms and documents for completion of the liquidation except:

(i) Notice of acceleration; or

(ii) Other form or document which specifically required State or National Office approval because of monetary limits or policy statement established elsewhere in this subpart.

(c) *Unused loan funds.* (1) Funds remaining in a supervised bank account will be handed in accordance with § 1902.15 of Subpart A of Part 1902 of this chapter before a voluntary conveyance or foreclosure is processed.

(2) Funds remaining in a construction or other account will be applied to the borrower's FmHA accounts.

(d) *Payment of costs.* Costs related to liquidations of a loan or acquisition of property will be paid by preparation of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," Standard Form 1143, "Advertising Order," or Form FmHA 120–10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice," and submission of Form FmHA 2024–1, "Miscellaneous Payment System," according to FmHA Instruction 2024–P (available in any FmHA office) and the respective Forms Manual Insert (FMI) as either a recoverable or nonrecoverable cost as defined in § 1955.3 (g) and (j) of this subpart.

§ 1955.6–1955.9 [Reserved]

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

The servicing official will not attempt to have the borrower voluntarily convey the security property to FmHA until all available servicing actions outlined in the respective program servicing regulations have been used or considered and it is determined the borrower will not be successful. The borrower should also have been encouraged to transfer or sell the property (subject to any prepayment restrictions of the respective loan program). The borrower will be informed by the servicing official of apparent equity in the property, if any.

(a) *Authority.*—(1) *Loans to individuals.* The County Supervisor and District Director are authorized to accept voluntary conveyance if the total indebtedness against the property (including prior and junior liens) does not exceed the respective loan approval authority for the type of loan (or combination of types) involved as outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office). The State Director is authorized to approve voluntary conveyance regardless of amount of indebtedness.

(2) *Loans to organizations.* (i) The State Director is authorized to approve voluntary conveyance of property securing Farmer Programs and EOC loans regardless of amount of indebtedness.

(ii) The State Director is authorized to approve voluntary conveyance of property securing MFH loans if the total indebtedness against the property, including prior and junior liens, does not exceed his/her approval authority for the type loan involved. Loan approval authorities are outlined in Exhibits A through E of FmHA Instruction 1901–A (available in any FmHA office).

(iii) Offers to convey property securing loans other than those outlined in paragraphs (a)(2)(i) and (ii) of this section will be submitted to the Administrator for approval prior to acceptance of the conveyance. In these cases the State Director will forward the voluntary conveyance offer, a statement of essential facts and his/her recommendations to the National Office, Attn: appropriate program division, along with the borrower's case file. An OGC opinion on settling any prior and/or junior liens will be included.

(b) *forms and documents.* All forms and documents in connection with voluntary conveyance will be prepared and distributed in accordance with the respective FMI or applicable OGC instructions. For loans to individuals when the County Supervisor has approval authority, the facts will be documented in the running record of the borrower's case file. For all other loans, the servicing official will submit the voluntary conveyance offer, the case file and a narrative report to the appropriate approval official.

(c) *Liens against the property other than FmHA liens.*—(1) *Prior liens.* (i) The approval official will determine whether or not prior liens will be paid. Normally, the Government will pay prior liens in full prior to acquisition if:

(A) A substantial recovery on the Government's investment plus the amount of the prior lien(s) can be obtained; and

(B) The holder of the prior lien(s) objects to the Government accepting voluntary conveyance subject to the prior lien(s), if consent of the prior lienholder(s) is required.

(ii) If property is acquired subject to prior lien(s), payment of installments on the lien(s) will be made while title to the property is held by the Government in accordance with § 1955.67(a) of Subpart B of Part 1955 of this chapter.

(2) *Junior liens.* The borrower must satisfy junior liens on the property (except FmHA liens) and pay real estate taxes or assessments which are or will become a lien on the property. However, if the borrower is unable or unwilling to do so, settlement of the liens may be made by FmHA if settlement would be in the best interest of the Government, considering all factors such as length of time required to foreclose, vandalism or other deterioration of the property which might occur, and effect on management of a MFH project and its tenants. An FmHA official will contact junior lienholders, negotiate the most favorable settlement possible, and determine whether it is in the Government's best interest to settle the junior liens and accept the voluntary coveyance.

(i) For loans to individuals, the approval official is authorized to settle junior liens in the smallest amount possible, but not to exceed an aggregate amount of $1,000 in each SFH case or $5,000 for other type loans. For junior liens in greater amounts when the approval official is the County Supervisor or District Director, prior authorization must be obtained from the State Director.

(ii) For loans to organizations, the State Director will determine whether or not junior liens will be settled and voluntary conveyance accepted.

(3) *Payment of liens.* A lien to be settled in accordance with paragraphs (c)(1)(i) or (c)(2) of this section will be paid as outlined in § 1955.5(d) of this subpart and charged to the borrower's account as a recoverable cost.

(d) *Offer of voluntary conveyance.* An offer of voluntary conveyance will consist of the following:

(1) Form FmHA 1955–1, "Offer to Convey Security."

(2) Warranty deed, or other deed approved by OGC to comply with State Laws. The deed will not be recorded until it is determined the voluntary conveyance will be accepted. At the time of the offer, the borrowers will be informed that the conveyance will not be accepted until the property has been appraised and a lien search has been obtained. If the voluntary conveyance is not accepted, the deed and Form FmHA 1955–1, properly executed, will be returned to the borrower along with a memorandum stating the reason(s) for nonacceptance.

(3) A current financial statement containing information similar to that required to complete Form FmHA 410–1, "Application for FmHA Services"; 410–4, "Application for Rural Housing Assistance (Nonfarm Tract); or 1930–1, "Balance Sheet;" and information on

present income and potential earning ability.

(4) For organization borrowers, a duly-adopted Resolution by the governing body authorizing the conveyance and certified by the attesting official with the corporate seal affixed. The Resolution will indicate which officials are authorized to execute the offer to convey and the deed on behalf of the borrower. If shareholder approval is necessary, the Resolution will specifically recite that shareholder approval has been obtained.

(5) If water rights, mineral rights, development rights, or other use rights are not fully covered in the deed, the advice of OGC will be obtained and appropriate documents to transfer rights to the Government will be obtained before the voluntary conveyance is accepted. The documents will be recorded, if necessary, in connection with closing the conveyance.

(6) If property is under lease, an assignment of the lease to the Government will be obtained with the effective date being the date the voluntary conveyance is closed. If an oral lease is in force, it will be reduced to writing and assigned to the Government.

(7) The borrower may be required to provide title insurance when the State Director determines it is necessary to protect the Government's interest.

(8) For MFH loans, assignment of Housing Assistance Payment (HAP) Contracts will be obtained. Rental Assistance will be retained until the State Director is advised by OGC that FmHA has title to the property, but may be suspended while the conveyance is pending according to Exhibit E of Subpart C of Part 1930 of this chapter.

(e) *Appraisal of property.* As soon as practicable after an offer of voluntary conveyance, but before acceptance by FmHA, an appraisal of the property will be made to establish the market value of the property in its existing condition if an appraisal reflecting current value is not part of the file. If a qualified FmHA appraiser is not available to appraise property securing a loan other than SFH or MFH, the State Director may obtain an appraisal from a qualified appraiser outside FmHA in accordance with Subpart D of Part 1955 of this chapter. For property securing SFH or MFH, prior authorization must be obtained from the Assistance Administrator, Housing, to secure an appraisal from a source outside FmHA.

(f) *Processing offer to convey security and acceptance by FmHA.* If a borrower has both SFH and other type loans, the portion of this paragraph dealing with the loan(s) other than SFH will be followed.

(1) *SFH loans.* The policy is to accept an offer of voluntary conveyance of property securing SFH loans in full satisfaction of the debt regardless of market value of the property if the County Supervisor determines the borrower has cooperated in good faith, satisfactorily maintained the property and otherwise fulfilled the covenants of the loan to the best of the borrower's ability. If the County Supervisor cannot make these determinations affirmatively, the offer for full satisfaction of the debt will not be accepted unless the value of the property is at least equal to the debt. However, the borrower may make a new offer for a credit equal to the value of the property as determined by FmHA. The conveyance will be processed as follows:

(i) Before accepting the offer, the County Supervisor will transmit the deed to a closing agent requesting a title search covering the period of time since the latest title opinion in the case file. The same agent who closed the loan should be used, if possible; otherwise one will be selected from the approved list of closing agents, taking care that cases are distributed fairly among approved agents. The closing agent may be instructed that the County Supervisor considers the voluntary conveyance offer conditionally approved, and the closing agent may record the deed after the title search if there are no liens against the property other than:

(A) The FmHA lien(s);

(B) Prior liens when FmHA has advised the closing agent that title will be taken subject to the prior lien(s) or has told the closing agent that the prior lien(s) will be handled in accordance with § 1955.10(c)(1) of this subpart; and/or

(C) Real estate taxes and/or assessments which must be paid when title to the property is transferred.

(ii) If junior liens are discovered, the closing agent will be requested to provide FmHA with the lienholder's name, amount of lien, date recorded, and the recording information (recording office, book and page), return the unrecorded deed to FmHA, and await further instructions from FmHA. In such cases, the County Supervisor will proceed in accordance with § 1955.10(c)(2) of this subpart. If agreement has been reached with the lienholder(s) for settling the junior lien(s) in order to accept the conveyance, the deed will be returned to the closing agent for a title update and recording.

(iii) The closing agent will be requested to provide a certification of title to FmHA after recordation of the deed. A certification of title is a statement that fee title is vested in the Government subject only to the FmHA lien(s) and prior liens previously approved by FmHA. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with § 1955.10(h) of this subpart.

(2) *Consolidated Farm and Rural Development Act (CONACT) loans to individuals.* For CONACT loans to individuals as defined in § 1955.3 of this subpart where the FmHA indebtedness plus any prior liens exceeds the market value of the property, the County Committee must make the following certification if it is to recommend that the borrower and any cosigner be released from liability. The certification will be made on Form FmHA 440–2, "County Committee Certification or Recommendation", in the blank space following Item No. 10:

> In our opinion *(Name of Borrower(s) and any cosigner)* does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government.

If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, and the borrower will determine if he/she wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account as outlined in § 1955.18(f) of this subpart. When the FmHA debt less the market value and prior liens exceeds $25,000, release of liability must be approved by the Administrator; otherwise the official who accepts the voluntary conveyance may approve the release of liability.

(i) *Loans which are within the County Supervisor's approval authority.* The same procedure outlined in paragraph (f)(1)(i) through (f)(1)(iii) of this section will be followed. The conveyance will be accepted in full satisfaction of the indebtedness unless:

(A) The market value of the property to be conveyed is less than the total of FmHA indebtedness and prior lien(s), if any, and the County Committee has *not* recommended the borrower be released from liability; or

(B) The borrower has made a new offer agreeing to accept a credit in the amount of the market value of the security property less prior lien(s), if any, in which case the conveyance will be accepted for the market value of the property conveyed to FmHA less prior lien(s), if any.

(ii) *Loans which are NOT within the County Supervisor's approval authority* (A) When an offer to convey is received from the borrower, the County Supervisor will request a closing agent, selected in accordance with paragraph (f)(1)(i) of this section, to make a title search covering the period of time since the latest title opinion in the case file. The case file containing the following will be forwarded to the appropriate approval official:

(*1*) Form FmHA 1955–2, "Report on Real Estate Problem Case;"

(*2*) Report of title search;

(*3*) Borrower's offer of voluntary conveyance consisting of applicable items outlined in paragraphs (d)(1) through (d)(7) of this section;

(*4*) Current appraisal of property;

(*5*) Unpaid balance on FmHA indebtedness and other liens, both prior and junior, if any;

(*6*) Form FmHA 440–2 executed in accordance with the FMI concerning release from liability if property value is less than the debt plus prior liens, if any;

(B) If the approval official determines the conveyance should be accepted, the file will be returned to the County Supervisor with a memorandum of conditional approval. The same conditions for release of liability apply an in Paragraph (f)(2)(i) of this section. If the approval official does not concur in acceptance of the conveyance, the file will be returned with a memorandum stating the reasons for rejecting the offer and giving instructions to the County Supervisor for further servicing of the account.

(C) After the approval official has conditionally approved the conveyance, the County Supervisor will forward the deed to a closing agent with instructions to record it provided no liens have been recorded since the recent title search. The closing agent will be requested to provide a certification of title to FmHA after recordation of the deed. After receipt of the certification of title, the County Supervisor will notify the borrower that the conveyance has been accepted in accordance with paragraph (h) of this section.

(3) *Loans to organizations.* When an offer of voluntary conveyance is received from an organization borrower, the servicing official will submit the offer and the case file containing the items outlined in paragraphs (f)(3)(ii) or (f)(3)(iii) of this section, as applicable, to the State Director. The State Director will obtain the advice of OGC on all offers of voluntary conveyance from organization borrowers. OGC will be requested to issue instructions for processing and closing the conveyance. When the market value of the property being conveyed (less prior liens, if any) is less than the FmHA debt, full consideration must be given to the borrower's present situation and future prospects for paying all or a part of the FmHA debt. In such a case, the County Committee must make a favorable recommendation if the borrower is to be released from liability; and if the FmHA debt less the market value and prior liens exceeds $25,000, release of liability must be approved by the Administrator.

(i) *Items to be included in the borrower's case file for MFH loans:*

(A) Report on Multiple-Family Housing Problem Case, (Exhibit A to this subpart available in any FmHA office);

(B) Liquidation and management plan with specific recommendations of the District Director;

(C) Form FmHA 1955–1;

(D) Resolution authorizing the conveyance, if applicable;

(E) Report of title search from an approved closing agent covering the period of time since the latest title opinion is the case file;

(F) Form FmHA 1930–7, "Statement of Budget and Cash Flow," (operating budget for first year and typical year);

(G) Form FmHA 1930–8, "Year End Report and Analysis for Fiscal Year Ending ———," (Balance Sheet Portion);

(H) Current appraisal prepared by a MFH designated appraiser;

(I) Balance on FmHA account(s) and other liens, if any;

(J) Assignment of Housing Assistance Payment (HAP) contracts, if applicable, along with evidence of contract with HUD;

(K) Current statement of account from the Finance Office;

(L) Development plan with breakdown of costs, if applicable; and

(M) Form FmHA 440–2, executed in accordance with paragraph (f)(3) of this section and the FMI, when applicable.

(ii) Items to be included in the borrower's case file for loans other than MFH:

(A) Report on Servicing Action (Exhibit A to Subpart E of Part 1951 of this Chapter, available in any FmHA office);

(B) Liquidation and management plan;

(C) Form FmHA 1955–1;

(D) Organization's Resolution authorizing the conveyance;

(E) Report of title search from an approved closing agent covering the period of time since the latest title opinion in the case file;

(F) Form FmHA 442–3, "Balance Sheet";

(G) Current appraisal;

(H) Statement showing income and expenses due but unpaid;

(I) Balance on FmHA account(s) and other liens, if any; and

(J) Form FmHA 440–2, executed in accordance with the FMI concerning release from liability if property value is less than the FmHA indebtedness plus prior liens, if any.

(g) *Closing of conveyance.* (1) The conveyance to the Government will be considered closed when the recorded deed has been returned to FmHA, a certification of title is received from the closing agent that title is vested in the Government with no outstanding encumbrances other than the FmHA lien(s) or previously approved prior liens, and the borrower is notified of the acceptance of the conveyance. For loans to organizations, OGC will be requested to review the case to verify that it was closed properly.

(2) When costs incident to the completion of the transaction are to be paid by the Government, the servicing official will prepare and process the necessary documents as outlined in § 1955.5(d) of this subpart and the costs will be charged to the borrower's account as recoverable costs. This includes taxes and assessments, water charges which protect the right to receive water, other liens, closing agent's fee, and any other costs related to the conveyance.

(h) *Actions to be taken after closing conveyance.* (1) When the FmHA account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released From Liability," and the statement must be signed by the FmHA official authorized to approve release of liability in accordance with § 1955.10(f)(1), (2), or (3) of this subpart.

(2) When the FmHA account is not satisfied and the borrower is not released from liability, the note(s) will be retained by FmHA.

(3) The servicing official will release the lien(s) of record, indicating that the debt was satisfied by surrender of security or that the lien is released but the debt not satisfied, whichever is

applicable. If the lien is to be released but the debt not satisfied, OGC will provide the type of instrument required to comply with applicable State laws.

(4) After release of the lien(s), the servicing official will return the following to the borrower:

(i) If borrower is released from liability, the satisfied note(s) and a copy of Form FmHA 1955–1 showing acceptance by the Government; or

(ii) If borrower is not released from liability, a copy of Form FmHA 1955–1 showing acceptance by the Government.

(5) For MFH loans, the State Director will cancel any interest credit and suspend any rental assistance. These actions will be accomplished by notifying the Finance Office unit which handles MFH accounts. In the interm the tenants will continue rental payments in accordance with their lease.

(6) Actions outlined in § 1955.18 of this subpart will be taken, as applicable

§ 1955.11 Conveyance of property to FmHA by trustee in bankruptcy.

(a) *Authority.* With the advice of OGC (and prior approval of the National Office for MFH, Community Programs, and insured B&I loans), the State Director within his/her authority is authorized to accept a conveyance of property to the Government by the Trustee in Bankruptcy, provided:

(1) The Bankruptcy Court has approved the conveyance;

(2) The conveyance will permit a substantial recovery on the FmHA debt; and

(3) FmHA will acquire title free of all liens and encumbrances except FmHA liens.

(b) *Fees and deed.* (1) FmHA may pay any necessary and proper fees in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of $300 for any loan type(s) other than Farmer Programs or $1,000 for Farmer Program loans, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in § 1955.5(d) of this subpart for payment of fees as recoverable costs.

(2) Conveyance may be by Trustee's Deed instead of a warranty deed. If upon advice of OGC it is determined a deed from any other person or entity (including the borrower) is necessary to obtain clear title, a deed from such person or entity will be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA account(s) as set forth in § 1955.18(e)(4) of this subpart.

(d) *Reporting.* Acquisition of property under this section will be reported in accordance with § 1955.18(a) of this subpart.

§ 1955.12 Acquisition of property which served as security for a loan guarantee by FmHA or at sale by another lienholder, bankruptcy trustee, or taxing authority.

When the servicing regulations for the type of loan(s) involved permit FmHA to acquire property by one of these methods, the acquisition will be reported in accordance with § 1955.18(a) of this subpart.

§ 1955.13 Acquisition of property by exercise of Government redemption rights.

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 USC § 2410) may be waived without consideration. If a State law right of redemption exists and may be sold, it will not be disposed of for less than its value.

§ 1955.14 [Reserved]

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; and when either a net recovery can be made or when failure to foreclose would adversely affect FmHA programs in the area:

(a) *Authority.*—(1) *Loans to individuals.* The District Director is authorized to approve or disapprove foreclosure and accelerate the account.

(2) *Loans to organizations.* (i) The State Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA secured debt does not exceed the loan approval authority of the State Director; and I&D, Shift-in-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

(ii) For all other organization loans, foreclosure will not be initiated without prior approval of the Administrator. The State Director will obtain OGC's opinion on the steps necessary to foreclose the loan, and forward the appropriate problem case report, a statement of essential facts, his/her recommendation, a copy of the OGC opinion, and the borrower's case file to the Administrator, Attn: Assistant Administrator (appropriate loan division) with a request for authorization to initiate foreclosure.

(b) *Problem case report.* When foreclosure is recommended, the servicing official will prepare Form FmHA 1955–2 for Farmer Programs or SFH loans, Exhibit A of this subpart for MFH loans, or Exhibit A of FmHA Instruction 1951–E (available in any FmHA office) for other organization loans. For loans other than housing, Community Programs, and insured B&I, the recommendation of the County Committee must be included. If chattel security is also involved, Forms FmHA 455–1, "Request for Legal Action"; 455–2, "Evidence of Conversion"; and 455–22, "Information for Litigation"; as applicable to the case, will be prepared in accordance with the respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA loan servicing regulations have been taken and all required notices given to the borrower.

(1) *Appraisal.* The market value of the property may be estimated in completing the problem case report unless there are one or more prior liens other than current-year real estate taxes. Where such prior liens are involved, an appraisal report reflecting market value in existing condition will be included in the case file as a basis for determining the Government's prospects for financial recovery through foreclosure.

(2) *Recommendation for deficiency judgment.* If the debt will not be satisfied by the foreclosure, the borrower's financial situation will be assessed to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the applicable problem case report. For SFH loans

subject to recapture of subsidy, the debt includes total interest credit granted and principal reduction attributed to subsidy in addition to unpaid principal and interest. However, a deficiency judgment will not be recommended in a SFH case to recapture subsidy or where the borrower was granted a moratorium provided the borrower faithfully tried to meet loan obligations. In crediting security value against indebtedness, credit will be given first to interest, principal and recoverable costs and then to recapture of subsidy.

(c) *Submission of problem case.* The servicing official will submit the completed problem case docket to the official authorized to approve the foreclosure (approval official). Before approval of foreclosure and acceleration of the account, the approval official is responsible for review of the problem case report to see that all items are complete and that all required servicing actions have been taken and all required notices given the borrower. The narrative portion of the report should provide complete information on the borrower's financial condition, deficiency judgment in case the debt is not satisfied by the foreclosure, and other pertinent background items. The approval official will approve or disapprove the foreclosure, or make a recommendation and refer the case to the National Office, if not within his/her approval authority. If foreclosure is not approved, the case will be returned to the originating office with instructions for further servicing. Problem case submission is as follows:

(1) *For loans to individuals.* The County Supervisors will submit the case to the District Director.

(2) *For loans to organizations.* The District Director will submit the case to the State Director along with a proposed liquidation and management plan covering the time the foreclosure is in process. The State Director will obtain the advice of OGC if required in connection with the type of loan being liquidated.

(d) *Approval of foreclosure.* When foreclosure is approved, it will be handled as follows:

(1) *Prior lien (s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA loan(s), either settling the prior lien or foreclosing subject to it. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to Exhibit B or Exhibit C of this subpart (available in any FmHA office) to be signed by the official who approved the foreclosure. The notice will be sent by certified mail, return receipt requested, to each obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official, and the hearing officer identified in the notice according to Subpart B of Part 1900 of this chapter. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(i) Where monetary default is involved, the account may be accelerated immediately after approval of foreclosure.

(ii) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(iii) If borrower obtained the loan while a civilian, entered military service after the loan was closed, the FmHA has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(3) *Offers by borrower after acceleration of account.* After the account is accelerated, the servicing official will accept no payment for less than the upaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State Supplement is issued to specify this requirement. If payments are *mistakenly* accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or convenant in the real estate instruments will result and FmHA may proceed as though no such payment had been made. The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). The approval official will decide whether or not the borrower's offer will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer from the borrower is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. In all cases the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be advised when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on a SFH loan. When granting interest credit in such a case:

(i) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(ii) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(iii) For MFH loans with rental assistance, after acceleration and any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim the tenants will continue rental payments in accordance with their lease.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA 451–10, "Request for Statement of Account," will be forwarded to the Finance Office by the approval official requesting a statement of account

including all loans being foreclosed. For SFH loans subject to recapture of subsidy, a request should be placed in the "Remarks" section of Form 450–10 that the total interest credit granted and principal reduction attributed to subsidy be shown. When an official statement of account is not required for foreclosure proceedings, account balances and subsidy information may be obtained through the Inquiry Station of the Finance Office.

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed.

(6) *Petition in bankruptcy filed by borrower after acceleration of account.*

(i) When bankruptcy is filed after an account has been accelerated, the foreclosure action must be suspended until:

(A) The bankruptcy case is *dismissed* or *closed* (a discharge of debtor does not close the case);

(B) An Order lifting the automatic stay is obtained from the Bankruptcy Court; or

(C) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(ii) The State Director will request the assistance of OGC in obtaining the Order(s) described in paragraph (c)(6)(i)(B) of this section.

(e) *Referral of case.* If the borrower fails to satisfy the account during the period of time specified in the acceleration notice, and no appeal is pending, the foreclosure process will continue:

(1) If the District Director is the approval official, he/she will forward the case file with all pertinent documents and information concerning the foreclosure action and appeal, if any, to the State Director for completion of the foreclosure.

(2) If the State Director is the approval official, or in cases referred by the District Director under paragraph (e)(1) of this section, the State Director will forward to OGC the case file and all documents needed by OGC to process the foreclosure. A State Supplement will be issued, with the advice and assistance of OGC, to reflect the make-up of the foreclosure docket. Since foreclosure processing varies widely from State to State, each State Supplement will be explicit in outlining step-by-step procedures. At the time indicated by OGC in the foreclosure instructions, Form FmHA 1951–6, "Borrower Account Description Flag," will be prepared and distributed according to the FMI advising the Finance Office to flag the borrower's account indicating foreclosure action is pending (FAP). After referral to OGC, further actions will be in accordance with OGC's instructions for completion of the foreclosure. If prior approval of the Administrator is obtained, nonjudicial foreclosure for monetary default may be handled as outlined in a State Supplement approved by OGC without referral to OGC before foreclosure.

(f) *Completion of foreclosure.*—(1) *Foreclosure advertisement for organization loans subject to Title VI of the Civil Rights Act of 1964.* The advertisement for foreclosure sale of property subject to Title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other similary that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later. The purchaser will be required to sign Form FmHA 400–4, "Assurance Agreement," if the property will be used for its original or similar purposes.

(2) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in § 1955.5(d) of this Subpart. Costs will be charged to the borrower's account as recoverable costs unless otherwise directed by OCG.

(3) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA 1962–20, "Notice of Judgment," will be completed and distributed according to the FMI. This will enable the Finance Office to establish the judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

(4) *Gross investment.* The gross investment is the sum of the following:

(i) The unpaid balance of one of the following, as applicable:

(A) In States with nonjudicial foreclosure, the borrower's FmHA account balance reflecting secured loan(s) and advances; and where State law permits, unsecured debts; or

(B) In States with judicial foreclosure, the judgment account established as a result of the foreclosure judgment in favor of FmHA.

(ii) All recoverable costs charged (or to be charged) to the borrower's account in connection with the foreclosure action and other costs which OGC advises must be paid from proceeds of the sale before paying the FmHA secured debt, including but not limited to payment of real estate taxes and assessments, prior liens, legal fees including U.S. Attorney's and U.S. Marshal's, and management fees; and

(iii) If a SFH loan subject to recapture of interest credit is involved, the total amount of subsidy granted and principal reduction attributed to subsidy.

(5) *Amount of Government's bid.* Except as modified by paragraph (f)(6)(ii) of this section, the Government's bid will be the amount of FmHA's gross investment or the market value of the security, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current appraisal (in existing condition) as a basis for determining the Government's bid.

(6) *Bidding.* The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings provide for someone other than an FmHA employee to enter the Government's bid. When the State Director determines attendance of an FmHA employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid made will result in the property being sold for less than the bid authorized in paragraph (f)(5) of this section.

(i) When FmHA is the senior lienholder, only one bid will be entered, and that will be for the amount authorized by the State Director.

(ii) When FmHA is not the senior lienholder *and* OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, the State Director may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, the State Director's

instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

(g) *Reports on sale and finalizing foreclosure.* Immediately after a foreclosure sale at which the State Director has designated a person to bid on behalf of the Government, the servicing official will furnish the State Director a report on the sale. The State Director will forward a copy of this report to OGC and, for MFH loans, to the National Office. Based on OGC's instructions, a State supplement will provide a detailed outline of actions necessary to complete the foreclosure.

§§ 1955.16–1955.17 [Reserved]

§ 1955.18 Actions required after acquisition of property.

(a) *Reporting acquisition.* When real or chattel property is acquired by the Government, the servicing official will prepare and distribute Form FmHA 1955–3, "Advice of Property Acquired," or Form FmHA 1965–19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired," according to the FMI immediately after a voluntary conveyance is closed, a foreclosure sale is completed, or property is acquired by any other means. The date of acquisition will be the date the deed to the Government is recorded for a voluntary conveyance; the date of the foreclosure sale; or for chattels, the date the bill of sale (and title, if applicable) is executed transferring ownership to FmHA. Form FmHA 1955–3 or Form FmHA 1965–19 will be submitted promptly without waiting for the final report on sale from OGC where required. The State Director will assign an advice number to the property and complete distribution according to the FMI. For MFH loans, the State Director will forward a copy of Form FmHA 1965–19 to the National Office for monitoring purposes. For MFH projects with rental assistance, Form FmHA 1944–55, "Multiple Family Housing Transfer of Rental Assistance," must be attached to Form 1965–19 indicating the status of the rental assistance while the property is in inventory.

(b) *Existing lease.* If property acquired by FmHA is under an existing written lease, a copy of the lease will be attached to Form FmHA 1955–3 or Form FmHA 1965–19. Any oral lease in effect will be reduced to writing on Form FmHA 1955–20, "Lease of Real Property." The Finance Office will establish a lease account in the lessee's name. If an existing lease if terminated by foreclosure, a new lease may be considered pursuant to § 1955.66 of Subpart B of Part 1955 of this chapter, except for MFH property for which leasing as a project is generally not authorized.

(1) The servicing official will notify the lessee in writing that the Government has acquired the former lessor's rights under the lease and direct the lessee to remit all payments to FmHA. Receipts for collections will read: "Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (lessee's name)." All lease proceeds collected will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(2) Payments under an existing lease which were due and payable *before* the date the property is acquired will be applied to any unsatisfied balance on the FmHA account. If there is a surplus, the Finance Office will forward a refund check payable to the former borrower to the County or District Office for delivery to the former borrower.

(3) Payments under an existing lease which are due and payable *after* the date the property is acquired will be applied to the lease account.

(c) *Existing management agreement.* For MFH, if a property is being managed prior to acquisition on behalf of the borrower, the State Director will request the assistance of the National Office in determining if the agreement should be cancelled or extended. In any event, management services should be obtained as soon as possible in accordance with § 1955.65 of Subpart B of Part 1955 of this chapter.

(d) *Inventory account.* The Finance Office will establish an inventory account under the Advice Number assigned by the State Director. The value of the property entered into the inventory account will be the lesser of market value as of the date acquired (less outstanding liens if the property was acquired subject to any liens) or the gross investment as defined in § 1955.15(f)(4) of this subpart, excluding SFH subsidy granted and principal reduction attributed to subsidy.

(e) *Credit to the borrower's account or foreclosure judgment account.*

(1) *For SFH accounts.* When FmHA acquired the property, the account will be satisfied unless:

(i) In a voluntary conveyance case where the debt exceeds the market value of the property and the borrower is *not* released from liability, in which case the account credit will be the market value (less outstanding liens if any); or

(ii) In a foreclosure where the bid is less than the account balance and a deficiency judgment will be sought for the difference, in which case the account credit will be the amount of FmHA's bid.

(2) *For all types of accounts other than SFH.* When FmHA acquired the property, the account credit will be as follows:

(i) In a voluntary conveyance case:

(A) Where the market value of the property equals or exceeds the debt or where the borrower is released from liability for any difference, the account will be satisfied.

(B) Where the debt exceeds the market value of the property and the borrower is *not* released from liability, the account credit will be the market value (less outstanding liens, if any).

(ii) In a foreclosure, the account credit will be the amount of FmHA's bid *except* when incremental bidding as provided for in § 1955.15(f)(6)(ii) of this subpart was used, in which case the account credit will be the maximum bid that was authorized by the State Director.

(3) *For all types of accounts when FmHA did not acquire the property.* The sale proceeds will be handled in accordance with applicable State laws with the advice and assistance of OGC including remittance of funds, application of the borrower's account credit, and disbursement of any funds in excess of the amount due FmHA.

(4) *In cases where FmHA acquired security property by means other than voluntary conveyance or foreclosure.* In these cases, such as conveyance by a bankruptcy trustee or by Court Order, the account credit will be as follows:

(i) If the market value of the acquired property equals or exceeds the debt, the account will be satisfied.

(ii) If the debt exceeds the market value of the acquired property, the account credit will be the market value.

, (f) *Unsatisfied account.* Unsatisfied account balances will be settled in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) or the account will be reclassified to collection-only by submitting Form FmHA 404–1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," or for MFH, Form FmHA 1944–54, "Multiple Family Housing Change of Borrower Name/Case Number/Project Number/Loan Number," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this chapter.

(g) *Deficiency judgment.* When a deficiency judgment is to be sought, the

State Director will initiate action pursuant to § 1962.49 of Subpart A of Part 1962 of this chapter. When a judgment is obtained, the State Director will prepare and distribute Form FmHA 1962–20 which will establish a judgment account to be serviced pursuant to § 1962.49(e) of Subpart A of Part 1962 of this chapter. For MFH cases, the State Director should contact the MFH Unit in the Finance Office for instructions on altering Form 1962–20 to the requirements of the Automated Multiple Family Housing Account System (AMAS). If attempts to obtain a judgment are not successful, the remaining debt will be settled or serviced pursuant to § 1951.7 of Subpart A of Part 1951 of this chapter.

§ 1955.19 [Reserved]

§ 1955.20 Acquisition of chattel property.

Every effort will be made to avoid acquiring chattel property by having the borrower or FmHA liquidate the property according to Subpart A of Part 1962 of this chapter and apply the proceeds to the borrower's account(s). Methods of acquisition authorized are:

(a) *Purchase at the following types of sale:*

(1) Execution sale conducted by the U.S. Marshal, sheriff or other party acting under Court order to satisfy judgment liens.

(2) FmHA foreclosure sale conducted by the U.S. Marshal or sheriff in States where a State Supplement provides for sales to be conducted by them.

(3) Sale by trustee in bankruptcy.

(4) Public sale by prior lienholder.

(5) Public sale conducted under the terms of Form FmHA 455–4, "Agreement for Voluntary Liquidation of Chattel Security," the power of sale in security agreements or crop and chattel mortgage, or similar instrument, if authorized by State Supplement.

(b) *Voluntary conveyance.* Voluntary conveyance of chattels will be accepted only when the borrower can convey ownership free of other liens *and* the borrower can be released from liability under the conditions set forth in § 1955.10(f)(2) of this subpart. Payment of other lienholders' debts by FmHA in order to accept voluntary conveyance of chattels is not authorized.

(1) *Offer.* The borrower's offer of voluntary conveyance will be made on Form FmHA 1955–1. If it is determined the conveyance offer can be accepted, the borrower will execute a bill of sale itemizing each item of chattel property being conveyed and will provide titles to vehicles or other equipment, where applicable.

(2) *Acceptance of offer and release from liability.* Before accepting an offer to convey chattels to FmHA, the concurrence of the State Director must be obtained. When chattel security is voluntarily conveyed to the Government and the borrower and cosigner(s), if any, are to be released from liability, the servicing official will stamp the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability". The servicing official is authorized to sign the release of liability statement except when the FmHA debt secured by the chattels less their market value exceeds $25,000, the release of liability statement must be signed by the Administrator. Form FmHA 1955–1 will be executed by the servicing official showing acceptance by the Government, and the satisfied note(s) and a copy of Form FmHA 1955–1 will be furnished to the borrower.

(3) *Release of lien(s).* When an offer has been accepted as outlined in paragraph (b)(2) of this section, the servicing official will release any liens of record which secured the satisfied indebtedness.

(4) *Rejection of offer.* If it is determined an offer of voluntary conveyance will not be accepted, the servicing official will indicate on Form FmHA 1955–1 that the offer is rejected, execute the form, and furnish a copy to the borrower.

(c) *Attending sales.* The servicing official will:

(1) Attend all sales described in paragraph (a)(5) of this section unless an exception is authorized by the State Director because of physical danger to the FmHA employee or adverse publicity would be likely.

(2) Attend public sales by prior lienholders when the market value of the chattel property is significantly more than the amount of the prior lien(s).

(3) Obtain the advice of the State Director on attending sales described in paragraphs (a) (1), (2), and (3) of this section.

(d) *Appraising chattel property.* Prior to the sale, the servicing official will appraise chattel property using Form FmHA 440–21, "Appraisal of Chattel Property."

(e) *Abandonment of security interest.* The State Director may authorize abandonment of the Government's security interest when chattel property, considering costs of moving or rehabilitation, has no market value and obtaining title would not be in the best interest of the Government.

(f) *Bidding at sale.*

(1) The servicing official is authorized to bid at sales described in paragraph (a) of this section. Ordinarily, only one bid will be made on items of chattel security unless the State Director authorizes incremental bidding. Bids will be made only when no other party bids or when it appears bidding will stop and the property will be sold for less than the amount of the Government's authorized bid. When the State Director determines attendance of an FmHA employee might pose physical danger, a written bid may be submitted to the party holding the sale. The bid(s) will be the lesser of:

(i) The market value of the item(s) less the estimated costs involved in the acquisition, care, and sale of the item(s) of security; or

(ii) The unpaid balance of the borrower's secured FmHA debt plus prior liens, if any.

(2) Bids will not be made in the following situations unless authorized by the State Director:

(i) When chattel property under prior lien has a market value which is not significantly more than the amount owed the prior lienholder. If FmHA holds a junior lien on several items of chattel property, advice should be obtained from the State Director on bidding.

(ii) After sufficient chattel property has been bid in by FmHA to satisfy the FmHA debt; prior liens, and cost of the sale.

(iii) When the sale is being conducted by a lienholder junior to FmHA.

(iv) At a private sale.

(v) When the sale is being conducted under the terms of Form FmHA 455–3, "Agreement for Public Sale by Borrower."

(g) *Payment of costs.* Costs to be paid by FmHA in connection with acquisition of chattel property will be paid as outlined in § 1955.5(d) of this subpart as recoverable costs.

Note.—Payment of other lienholders' debts in connection with voluntary conveyance of chattels is not authorized.

(h) *Reporting acquisition of chattel property.* Acquisition of chattel property will be reported by use of Form FmHA 1955–3 prepared and distributed in accordance with the FMI.

§ 1955.21 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the

community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the appropriate program Assistant Administrator; or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.22 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

§§ 1955.23–1955.49 [Reserved]

§ 1955.50 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0109.

Subpart B—Management of Property

§ 1955.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for:

(a) Management of real property which has been taken into custody by the Farmers Home Administration (FmHA) after abandonment by the borrower;

(b) Management of real and chattel property which is in FmHA's inventory.

(c) Management of real and chattel property which was security for a guaranteed loan liquidated by FmHA (or which FmHA is in the process of liquidating).

§ 1955.52 Policy.

Inventory and custodial real property will be effectively managed to preserve its value and protect the Government's financial interests. Properties owned or controlled by FmHA will be maintained so that they are not a detriment to the surrounding area and they comply with State and local codes. Generally, FmHA will continue operation of Multiple Family Housing (MFH) projects which are acquired or taken into custody. Servicing of repossessed or abandoned chattel property is covered in Subpart A of Part 1962 of this chapter, and management of inventory chattel property is covered in § 1955.80 of this subpart.

§ 1955.53 Definitions.

As used in this subpart, the following definitions apply:

(a) *CONACT or CONACT property.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

(b) *Contracting officer (CO).* CO means an FmHA employee designated to enter into or administer contracts and make related determinations and findings. Only the CO and his/her designated representative are authorized to conduct official business with the contractor in administration of a contract.

(c) *Custodial property.* Borrower-owned real property and improvements which serve as security for an FmHA loan, having been abandoned by the borrowers, and of which FmHA has taken possession.

(d) *Government.* The United States of America, acting through the FmHA, U.S. Department of Agriculture.

(e) *Inventory property.* Real and chattel property and related rights to which the Government has acquired title.

(f) *Loans to Individuals.* Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Land Conversation and Development (LCD), Economic Opportunity (EO), Operation (OL), Emergency (EM), and Economic Emergency (EE) whether to individuals or entities, herein referred to as Farmer Programs (FP) loans and Single-Family Housing (SFH), including both Sections 502 and 504 loans.

(g) *Loans to organizations.* Community Facility (CF), Water and Waste Disposal (WWD), Association Recreation, Watershed (WS), Resource Conservation and Development (RC&D), loans to associations for Irrigation and Drainage and other Soil and Water Conservation measures, loans to Indian Tribes and Tribal Corporations, Shift-in-Land-Use) Grazing Associations); Business and Industrial (B&I) to both individuals and groups, Economic Opportunity Cooperative (EOC), Rural Housing Site (RHS), Rural Cooperative Housing (RCH), and Rural Rental Housing (RRH) and Labor Housing (LH) to both individual and groups. The housing-type loans identified here are referred to in this subpart collectively as MFH loans.

(h) *Nonrecoverable costs.* Costs incurred after Government acquisition of title to the property and charged to an inventory account.

(i) *Office of the General Counsel (OGC).* The OGC, U.S. Department of Agriculture, refers to the Regional Attorney or Attorney-in-Charge in an OGC field office unless otherwise indicated.

(j) *Recoverable costs.* Costs charged to a borrower's account paid or incurred prior to Government acquisition of the property.

(k) *Servicing official.* For loans to individuals as defined in paragraph (f) of this section, the servicing official is the County Supervisor; for all other types of loans except insured B&I, the servicing official is the District Director. For insured B&I loans, the servicing official is the State Director.

(l) *Suitable property.* Property that can be used to carry out the objectives of an FmHA loan programs with financing provided through that program. Inventory housing property located in an area whose designation has been changed from rural to nonrural and which is otherwise suitable property will be considered as if it were still in a rural area.

(m) *Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in paragraph (a) of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

(n) *Unsuitable property.* Property acquired pursuant to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this chapter. It may be an otherwise-suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.54 Redelegation of authority.

Authorities will be redelegated to the extent possible, consistent with program objectives and available resources.

(a) The State Director may redelegate, in writing, any authority delegated to the State Director in this subpart, unless specifically excluded, to a Program

Chief, Program Specialist, or Property Management Specialist on the State Office staff.

(b) The District Director may redelegate, in writing, any authority delegated to the District Director in this subpart to an Assistant District Director or District Loan Specialist. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

(c) The County Supervisor may redelegate, in writing, any authority delegated to the County Supervisor in this subpart to an Assistant County Supervisor, GS–7 or above, who is determined by the County Supervisor to be qualified. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories.

§ 1955.55. Taking abandoned real or chattel property into custody and related actions.

(a) *Determination of abandonment.* When it appears a borrower has abandoned security property, the servicing official shall make a diligent attempt to locate the borrower to determine what the borrower's intentions are concerning the property. This includes making inquiries of neighbors, checking with the Postal Service, utility companies, employer(s) if known, and schools, if the borrower has children, to see if the borrower's whereabouts can be determined and an address obtained. A State Supplement may be issued if necessary to further define "abandonment" based on State law. If the borrower is not occupying or is not in possession of the property but has it listed for sale with a real estate broker or has made other arrangements for it care or sale, it will not be considered abandoned so long as it is adequately secured and maintained, and the case will be handled in accordance with § 1872.17 of Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1, paragraph XVII), or § 1965.75 of Subpart B of Part 1965 of this chapter. If the borrower has made no effort to sell the property and can be located, an opportunity to voluntarily convey the property to the Government will be offered the borrower in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter.

(b) *Taking security property into FmHA custody.* When security property is determined to be abandoned, the running record in the borrower's file will be fully documented with the facts substantiating the determination of abandonment, and the servicing official shall proceed as follows without delay:

(1) For loans to individuals, if there are no prior liens, or if a prior lienholder will not take the measures necessary to protect the property, the County Supervisor shall take custody of the property, and a problem case report will be prepared recommending foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter, unless the borrower can be located and voluntary liquidation accomplished.

(2) For MFH loans, if there are no prior liens, the District Director will immediately notify the State Director, who will request guidance from OGC and may also request advice from the National Office. The State Director, with the advice of OGC, will advise the borrower by writing a letter, certified mail, return receipt requested, at the address currently used by Finance Office, outlining proposed actions by FmHA to secure, maintain, and operate the project.

(i) If the unpaid loan balance plus recoverable costs do not exceed the State Director's loan approval authority, the State Director will authorize the District Director to take custody of the property, make emergency repairs if necessary to protect the Government's interest, and will advise how the property is to be managed in accordance with Subpart C of Part 1930 of this Chapter.

(ii) If the unpaid loan balance plus recoverable costs exceed the State Director's loan approval authority, the State Director will refer the case to the National Office for advice on emergency actions to be taken. The docket will be forwarded to the National Office with detailed recommendations for immediate review and authorization for further action, if requested by the MFH staff.

(iii) Costs incurred in connection with procurement of such things as management services and obtaining audits of the borrower's accounts will be handled in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(iv) The District Director will prepare a problem case report to initiate foreclosure in accordance with § 1955.15 of Subpart A of Part 1955 of this Chapter and submit the report to the State Director along with a proposed plan for managing the project while liquidation is pending.

(3) For organization loans other than MFH, if there are no prior liens, the District Director will immediately notify the State Director that the property has been abandoned and recommend action which should be taken to protect the Government's interest. After obtaining the advice of OGC and the appropriate staff in the National Office, the State Director may authorize the District Director to take custody of the property and give instructions for immediate actions to be taken as necessary. The District Director will prepare a Report on Servicing Action (Exhibit A of Subpart E of Part 1951 of this chapter) recommending that that foreclosure be initiated in accordance with § 1955.15 of Subpart A of Part 1955 of this chapter and submit the report to the State Director, along with a proposed plan for management and/or operation of the project while liquidation is pending.

(c) *Protecting custodial property.* The FmHA official who takes custody of abandoned property shall take the actions necessary to secure, maintain, preserve, lease, manage, or operate the property.

(1) *Nonsecurity personal property on premises.* If a property has been abandoned by a borrower who left nonsecurity personal property on the premises, the personal property will not be removed and disposed of *before* the real property is acquired by the Government. If the premises are in a condition which presents a fire, health or safety hazard, but also contains items of value, only the trash and debris presenting the hazard will be removed. The servicing official may request advice from the State Director as necessary. The servicing official shall check for liens on nonsecurity personal property left on abandoned premises. If there is a known lienholder(s), the lienholder(s) will be notified by certified mail, return receipt requested, that the borrower has abandoned the property and that FmHA has taken the real property into custody. Actions by FmHA must not damage or jeopardize livestock, growing crops, stored agricultural products, or any other personal property which is not FmHA security.

(2) *Repairs to custodial property.* Repairs to custodial property will be limited to those which are essential to prevent further deterioration of the property. Expenditures in excess of an aggregate of $1,000 per property must have prior approval of the State Director.

(d) *Costs and income.* Expenditures will be charged to the borrower's account as recoverable costs. Income from the property will be remitted according to FmHA Instructions 1951–B (available in any FmHA office) and applied to the borrower's account as an extra payment. Payment for advances made by FmHA while the property is

owned by the borrower will be made by preparation of SF–1034, "Public Voucher for Purchases and Services Other than Personal," for taxes, assessments, utilities, other similar costs, or Form FmHA 120–10, "Solicitation, Quotation, Purchase Order, Inspection, and Invoice," for securing the property, maintenance, essential repairs, and management services obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office). In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be prepared and distributed according to the Forms Manual Insert (FMI) for payment according to FmHA Instruction 2024–P (available in any FmHA office).

§ 1955.56 Real property located in Coastal Barrier Resources System (CBRS).

(a) *Approval official's scope of authority.* Any action that is not in conflict with the limitations set forth in paragraphs (a)(1), (a)(2), or (a)(3) of this section shall not be undertaken until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed action does not violate the provisions of the Coastal Barrier Resources Act (CBRA). Pursuant to the requirements of the CBRA, and except as specified in paragraphs (b) and (c) of this section, no maintenance or repair action may be taken for property located within a CBRS where:

(1) The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be improved to the extent required to meet health and safety requirements but may not be improved or expanded to serve additional users, patients, or residents;

(2) The action is inconsistent with the purposes of the CBRA; or

(3) The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

(b) *Administrator's review.* Any proposed maintenance or repair action that does not conform to the requirements of paragraph (a) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of the Interior, that the proposed action does not violate the provisions of the CBRA.

(c) *Emergency provisions.* In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property or the disruption of utility service, the approval official may take whatever minimum steps are necessary to prevent such loss or damage without first consulting with the appropriate Regional Director of the U.S. Fish and Wildlife Service. However, the Regional Director must be immediately notified of any such emergency action.

§§ 1955.57–1955.59 [Reserved]

§ 1955.60 Inventory real property subject to redemption by the borrower.

If inventory property is subject to redemption rights, the State Director, with prior approval of OGC, will issue a State Supplement giving guidance concerning the former borrower's rights, whether or not the property may be leased or sold by the Government, payment of taxes, maintenance, and any other items OGC deems necessary to comply with State laws. If the former borrower with redemption rights has possession of the property or has a right to lease proceeds, FmHA will not lease the property until the redemption period has expired unless the State Director obtains prior authorization from OGC. Further guidance on sale subject to redemption rights is set forth in § 1955.138 of Subpart C of Part 1955 of this chapter.

§ 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.

Advice and assistance will be obtained from OGC when eviction from realty or dispossession of chattel property action is necessary. Where State laws permit and *OGC has given authorization,* eviction may be effected through State courts rather than Federal courts. In those cases, a State Supplement will be issued to provide explicit instructions. For MFH, eviction applies to tenants and will be handled in accordance with Subpart L of Part 1944 of this Chapter and with the terms of the tenant's lease. If no written lease exists, the State Director will obtain advice from OGC.

§ 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.

If the former borrower has vacated the inventory property but left items of value which do not customarily pass with title to the real estate, such as furniture, personal effects, and chattels not covered by an FmHA lien, the personal property will be handled as outlined below unless otherwise directed by a State Supplement approved by OGC which is necessary to comply with State law. For MFH, the removal and disposition of nonsecurity personal property will be handled in accordance with the tenant's lease or advice from OGC. When property is deemed to have no value, it is recommended that it be photographed for documentation before it is disposed of. The FmHA official having custody of the property may request advice from the State Office staff as necessary. Actions to effect removal of items of value from inventory property shall be as follows:

(a) *Notification to owner or lienholder.* The servicing official will check the public records to see if there is a lien on any of the personal property.

(1) If there is a lien(s) of record, the servicing official will notify the lienholder(s) by certified mail, return receipt requested, that the personal property will be disposed of by FmHA unless it is removed from the premises within 7 days from the date of the letter.

(2) If there are no liens of record, or if a lienholder notified in accordance with paragraph (a)(1) of this section fails to remove the property within the time specified, the servicing official will notify the former borrower at the last known address by certified mail, return receipt requested, that the personal property remaining on the premises will be disposed of by FmHA unless it is removed within 7 days from the date of the letter. If no address can be determined, a copy of the letter should be posted on the front door of the property and documentation entered in the running record of the FmHA file.

(b) *Disposal of unclaimed personal property.* If the property is not removed by the former borrower or a lienholder after notification as outlined in paragraphs (a)(1) and (a)(2) of this section, the servicing official shall list the items with clear description, estimated value, and indication of which are covered by a lien, if any, and submit the list of the State Director with a request for authorization to have the items removed and disposed of. Based on advice from OGC, the State Director will give authorization and provide instructions for removal and disposal of the personal property. If approved by OGC, the property may be disposed of as follows:

(1) If a reasonable amount can likely be realized by FmHA from sale of the personal property, it may be sold at public sale. Items under lien will be sold first and the proceeds up to the amount of the lien paid to the lienholder(s) less a pro rata share of the sale expenses. Proceeds from sale of items not under lien and proceeds in excess of the amount due a lienholder will be remitted

according to FmHA Instruction 1951–B (available in any FmHA office) and applied in the following order:

(i) To the inventory account up to the amount of expenses incurred by the Government in connection with sale of the personal property (such as advertising and auctioneer, if used).

(ii) To an unsatisfied balance on the FmHA loan account, if any.

(iii) To the borrower, if whereabouts is known.

(2) If personal property is not sold, a mover or hauler may be authorized to take the items for moving costs; or, if necesaary, payment may be made by use of Form FmHA 120–10 to contract for its removal.

(c) *Payment of costs.* Upon payment of all expenses incurred by the Government in connection with the personal property, FmHA will allow the former borrower or a lienholder access to the property to reclaim the personal property at any time prior to its disposal.

(d) *Removal of abandoned motor vehicles from inventory property.* Since State laws vary concerning disposal of abandoned motor vehicles, the State Director shall, with the advice of OGC, issue a State Supplement outlining the method to be followed which will comply with applicable State laws.

§ 1955.63 Suitability determination.

As soon as real property is acquired, a determination must be made as to whether or not the property is suitable for program purposes. The suitability determination will be recorded in the running record of the case file.

(a) *Property other than housing.* Property which secured loans or was acquired under the CONACT will be classified as "suitable" or "surplus." Properties acquired under the CONACT which are originally classified as suitable may be reclassified as surplus because of physical damage which occurs or change in economic conditions which affect its suitability for program purposes; and, if not sold within 3 years after acquisition, it must be declared surplus. If the property is offered for sale as surplus and the purchaser is eligible for FmHA program assistance, it may be reclassified as suitable if it is in fact suitable for program purposes.

(b) *Housing property.* Property which secured housing loans will be classified as "suitable" or "unsuitable" except for MFH property acquired by voluntary conveyance when the value was less than the debt and the borrower was *not* released from liability, which must be classified and disposed of under the CONACT provisions. Location, size, design, possible health and safety risks to occupants, and functional and economic obsolescence must be considered in determining suitability. It is not intended to classify an otherwise-suitable dwelling as unsuitable simply because it contains more than 1400 square feet of living area or design features which would not be permitted in a new dwelling or an existing dwelling not in the FmHA program. Although a property can be made suitable, repairs necessary to render it so must be economically feasible. Ordinarily, the cost of repairs should enhance the value so that the return on investment will be as great or greater than it would be if the repairs were not made. SFH property originally classified as suitable may be reclassified as unsuitable if physical damage occurs which is not economically feasible to repair. Where a SFH property is situated on land in excess of a minimum adequate site as defined in §1944.11 of Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum adequate site for another dwelling. It is not intended to classify an otherwise-suitable dwelling as unsuitable solely because if is situated on more than a minimum adequate site. Consideration must be given to such things as zoning requirements, road or street access, and marketability of portions separately, if subdivided. If the excess land cannot be sold separately as a minimum adequate site for another dwelling, the property may be sold as a single tract to an eligible applicant. Surveys required to divide tracts will be obtained by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office) and charged to the inventory account as a nonrecoverable cost.

(c) *Authority for determining suitability.*— (1) *County Supervisor.* The County Supervisor will determine suitability of SFH and farm property, with the advice of the District Director or State Director if the County Supervisor is uncertain of the proper classification.

(2) *District Director.* The District Director will assist the County Supervisor in determining suitability of SFH and farm property as provided in paragraph (c)(1) of this section.

(3) *State Director.* The State Director will determine suitability of all types of property other than farm or SFH with the recommendations of the District Director and will make the determination on farm or SFH property when requested to do so.

§ 1955.64 Securing, maintaining, and repairing inventory property.

When property is acquired, the servicing official shall inspect the property and take the necessary steps to see that it is secured and maintained. "NO TRESPASSING," "FOR SALE," or other appropriate signs may be posted on the property at the discretion of the responsible official. The servicing official is responsible for initiating actions to assure that the value of inventory property is preserved. Property will not be allowed to stand unsecured and unmanaged. Substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in Exhibit C, Paragraph 3(b) (1) and (2) of Subpart G of Part 1940 of this chapter, and § 1955.56 of this subpart.

(a) *Basic repair policies.* Repair policies for various property types are:

(1) *SFH.* SFH inventory property which is suitable for retention in the program will be repaired, renovated, and/or improved as necessary to meet program standards for existing housing, to enhance buyer appeal, and to make the maximum recovery on the Government's investment, with the objective being to sell the property at the earliest possible time. Attention should be given to the interior and exterior of the structure(s), landscaping, driveways, walks, and other site development in order to have a desirable property. Exceptions to this policy are authorized only when a prospective buyer has indicated a willingness to buy "as is" and make needed repairs with his/her own resources or with a subsequent loan made simultaneously with the credit sale, or when the property is likely to be vandalized before it can be sold. Unsuitable property which does not meet the "decent, safe, and sanitary" (DSS) standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter will be repaired to meet those standards when economically feasible; otherwise, the restrictions on occupancy as set forth in § 1955.116 of Subpart C of Part 1955 of this chapter will apply. To be economically feasible, repairs should increase the expected "as is" price by at least the cost of the repairs.

(2) *MFH.* MFH property should be evaluated to determine if repairs are necessary or if a prospective buyer may wish to rehabilitate the property after purchasing it in "as is" condition. Property which does not meet the DSS standards outlined in § 1955.103(f) of Subpart C of Part 1955 of this chapter is subject to the occupancy restrictions set

forth in § 1955.116 of Subpart C of Part 1955 of this chapter.

(3) *Farm property.* Only the farm service buildings and facilities typically essential for the type of farming in the area will be repaired, renovated, and/or improved as necessary to place in saleable condition. Conservation of soil, water, and forest resources will be considered and actions will be taken to correct severe problems upon advice of the Soil Conservation Service (SCS). Chattel property will be managed as outlined in § 1955.80 of this subpart.

(4) *Property other than housing and farms.* Each property will be evaluated individually to determine whether repairs should be made or the property offered for sale "as is." The State Director will obtain advice from the appropriate division in the National Office as necessary in making these determinations.

(b) *Program authority.* (1) The County Supervisor and District Director have program authority to approve expenditures for securing, maintaining, and repairing inventory properties in an aggregate amount not to exceed $15,000 per property. If expenditures in excess of $15,000 per property are necessary and are economically feasible, the servicing official may request additional program authority from the State Director, outlining the purpose(s) for which the additional monies will be spent.

(2) The State Director or any member of State Office staff duly designated by the State Director, has unlimited program authority to approve expenditures in connection with inventory property.

(c) *Contracting authority.* All contracts for securing, maintaining, and repairing inventory property will be handled in compliance with FmHA Instruction 1955–D (available in any FmHA office), subject to the limitations assigned to each position in FmHA Instruction 2024–A (available in any FmHA office). Costs incurred under this section will be charged to the inventory account as nonrecoverable costs.

§ 1955.65 Management of inventory and/or custodial real property.

(a) *Authority.*—(1) County Supervisor. The County Supervisor, with the assistance of the District Director and State Office program staff as necessary, will select the management method(s) used for property which secures (or secured) loans to individuals as defined in this subpart.

(2) *State Director.* The State Director will select the management method to be used for property which secures (or secured) loans to organizations as defined in this subpart. The State Director shall also provide guidance and assistance to County Supervisors and District Directors as necessary to insure that property under their jurisdiction is effectively managed.

(b) *Management methods.* Management methods and requirements will vary depending on such things as the number of properties involved, their density of location, and market conditions. Management tools which may be used effectively range from contracts to secure an individual property, have the grass cut, or winterize a dwelling; a simple management contract to provide maintenance and other services on a group of properties (including but not limited to specification writing, inspection or repairs, and yard and directional signs and their installation), or manage an MFH project; blanket-purchase arrangement contracts to obtain services for more than one property; to a broad-scope management contract with a real estate broker or management agent which may include inspection and specification-writing services, making simple repairs, obtaining lessees, collecting rents, coordination with listing brokers in marketing the properties, and effecting eviction of tenants when necessary. A contractor may handle evictions only where State laws permit the contractor to do so in his/her own name; a contractor may not pursue eviction in the name of the Government (FmHA). Custodial property may be managed in the same manner as inventory property except that it may be leased only if it is habitable without repairs in excess of those authorized in § 1955.55(c) of this subpart. Farm or organization property, such as rental housing and community facilities, may be operated under a management contract if the State Director has determined it is appropriate to have the property in operation. In any case, the primary consideration in selecting the method of management to be used is to protect the Government's interest. If property to be operated or leased under a management contract is located in an area identified by the Federal Insurance Administration as a special flood or mudslide hazard area, lessees or tenants must be notified to that effect in accordance with § 1955.66(d) of this subpart. A management contract which covers property in such a hazard area may provide for the contractor to issue the required notices.

(c) *Obtaining services for management and/or operation of properties.* Services for management, repair, and/or operation of properties will be obtained by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(1) *Management contracts.* Management contracts are flexible instruments which may be tailored to meet the specific needs of almost any situation involving custodial or inventory property. This type of contract may be used to manage and maintain SFH properties, farms, and any other type of facility for which FmHA is responsible. Organization-type properties will be secured, maintained, repaired, and operated if authorized, in accordance with a management plan prepared by the District Director and approved by the State Director if the amount of total debt does not exceed the State Director's loan approval authority, or by the Administrator. For MFH this plan should follow the guidance provided by Subpart C of Part 1930 of this chapter. An audit of the borrower's records may be required if recent financial information is not available. For MFH projects, tenant occupancy and selection will be in accordance with the occupancy standards set forth in Subpart C of Part 1930 of this chapter. Tenants will be required to sign a written lease if one does not exist when the property is acquired or taken into custody. If a contract involves management of a MFH project with 5 or more units, or 5 or more single-family dwellings located in the same subdivision, the contractor must furnish Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," Subject to FmHA's approval.

(2) *Authority to enter into management contracts.* (i) The County Supervisor may enter into a management contract for basic services involving farms or not more than 25 single-family dwellings; however, the aggregate amount paid under a contract may not exceed the contracting authority limitation for County Supervisors outlined in FmHA Instruction 2024–A (available in any FmHA office).

(ii) A District Director may enter into a management contract for basic maintenance and management services for a MFH project within the contracting authority outlined in FmHA Instruction 2024–A (available in any FmHA office). The aggregate amount of any contract may not exceed that contracting authority.

(iii) A CO in the State Office may enter into a management contract for basic services involving more than 25 single-family dwellings, a more complex management contract for SFH property, or an appropriate contract for

management or operation of farm or organization-type property. The aggregate amount paid under a contract may not exceed the contracting authority limitations for State Office staff outlined in FmHA Instruction 2024–A (available in any FmHA office).

(iv) If a proposed management contract will exceed the contracting authority for State Office staff within a short time, a request for contract action will be forwarded to the Administrator, to the attention of the appropriate program division.

(3) *Specifications of services.* All management contracts will provide for termination by either the contractor or the Government upon 30 days written notice. Contracts providing for management of multiple properties will also provide for properties to be added or removed from the contractor's assignment whenever necessary, such as when a property is acquired or taken into custody during the period of a contract or when a property is sold from inventory. If a contractor prepares repair specifications, that contractor will be excluded from the solicitation for making the repairs to avoid a conflict of interest. If a management contract calls for specification writing services, a clause must be inserted in the contract prohibiting the preparor or his/her associates from doing the repair work. Examples of both basic and more complex management contracts are included in Exhibit A to FmHA Instruction 1955–D (available in any FmHA office).

(4) *Costs.* Costs incurred in management of property will be paid according to FmHA Instruction 2024–P (available in any FmHA office) by completion of Form FmHA 120–10 or SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property, costs will be charged to the inventory account as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager by use of Form FmHA 120–10 and Form FmHA 2024–1 prepared and distributed according to the FMIs.

(d) *Additional management services.* Additional types of management services and supplies for which the State Director may authorize acquisition include: Appraisal services (except for MFH), security services, newspaper copy preparation services, market data and comparable list acquisition, and tax data acquisition. If the State Director believes there is a need to acquire other services not listed in this paragraph or authorized elsewhere in this subpart, the State Director should make a written request to the Assistant Administrator (appropriate program) for consideration and/or authorization.

§ 1955.66 Lease of real property.

When inventory real property, other than MFH properties, cannot be sold promptly, or when custodial property is subject to lengthy liquidation proceedings, leasing may be used as a management tool when it is clearly in the best interest of the Government. Leasing will not be used as a means of deferring other actions which should be taken, such as liquidation of loans in abandonment cases or repair and sale of inventory property. Leases will provide for cancellation by the lessee of FmHA on 30-day written notice unless Special Stipulations in an individual lease for good reason provide otherwise. If extensive repairs are needed to render a custodial property suitable for occupancy, this will preclude its being leased since repairs must be limited to those essential to prevent further deterioration of the security in accordance with § 1955.55(c) of this subpart.

(a) *Authority to approve lease of property.*— (1) *Custodial property.* Custodial property may be leased pending foreclosure with the servicing official approving the lease on behalf of FmHA.

(2) *Inventory property.*—(i) *SFH.* The County Supervisor may approve the lease of single-family dwellings.

(ii) *MFH.* MFH projects will generally not be leased, although individual living units may be leased under a management agreement. After the property is placed under a management contract, the contractor will be responsible for leasing the individual units in accordance with Subpart C of Part 1930 of this Chapter. In cases where an acceptable management contract cannot be obtained, the District Director may execute individual leases.

(iii) *Farm property.* The County Supervisor may approve the lease of farm property. Special Stipulations will be made a part of farm leases to provide that the Government may terminate the lease in order to sell the farm, but in that event the lessee will retain the right to harvest growing crops. Rental payment will be prorated between the Government and the purchaser of the property. The County Supervisor shall report all leases of farms to the local Agricultural Stabilization and Conservation Service (ASCS) office and all subsequent changes in leases or sale of the property. Leases for mineral exploration and/or development will be on a form approved by OGC. In approval of a lease for mineral purposes, consideration will be given to the impact on the environment, preservation of land for agricultural purposes as required by Subpart G of Part 1940 of this chapter, as well as effect on sale of the property. The Administrator may issue directives (available in any affected FmHA office) restricting the leasing of property which could be used to produce agricultural products determined to be in surplus supply. Chattel property will not normally be leased unless it is attached to the real estate as a fixture or would normally pass with the land.

(iv) *Organization property other than MFH.* Only the State Director, with the advice of appropriate National Office staff, may approve the lease of organization property other than MFH, such as community facilities, recreation projects, and businesses. Lease of utilities may require approval by State regulatory agencies. OGC assistance will be requested in preparation of the lease for property in this category.

(b) *Selection of lessees.* When the property to be leased is residential, a special effort will be made to reach prospective lessees who might not otherwise apply because of existing community patterns. A lessee will be selected considering the potential as an eligible applicant for purchase of the property (if property is suitable for program purposes) and ability to preserve the property. Every effort will be made to lease farm property to family-size farmers. When family-size farmers are not available or interested in leasing the farm, larger-than-family-size farmers may be considered. The leasing official may require verification of income and/or a credit report (to be paid for by the prospective lessee) as he/she deems necesary to assure payment ability and creditworthiness of the prospective lessee.

(c) *Lease amount.* Inventory property will be leased for an amount equal to that for which similar properties in the area are being leased or rented (market rent). In no case will inventory property be leased for a token amount.

(1) *Farm property.* The County Supervisor will make a survey of lease amounts of farms in the immediate area with similar soils, capabilities, and income potential to arrive at a market rent amount. While cash rent is preferred, lease of a farm on a crop-share basis may be approved if this is

the customary method in the area. If the lease amount is to be a share of the crop, this must be outlined in detail in Special Stipulations in to the lease in accordance with the FMI for Form FmHA 1955–20, "Lease of Real Property." The lessee will in these cases market the crop(s), provide FmHA with documented evidence of crop income, and pay the pro rata share of the income to FmHA. The leasing official is responsible for seeing that crops are properly accounted for and collecting the lease money.

(2) *SFH property.* If the lessee is a potential eligible applicant for a loan to purchase the house, the lease amount may be set at an amount approximating the monthly loan payment if a loan were made (reflecting interest credits, if any) calculated on the basis of price of the house and income of the lessee, plus 1/12 of the estimated real estate taxes, property insurance, and maintenance which would be payable by a homeowner.

(3) *Property other than farm or SFH.* Any inventory property other than a farm or single-family dwelling will be leased for market rent for that type property in the area.

(4) *Mineral leases.* The consideration for mineral leases will be what is typical in the area for the type activity proposed. Before approval of a lease for minerals with bonus rentals, the servicing official will make a survey of similar leases and contact the State Director for guidance, subject to the provisions set forth in paragraph (a)(2)(iii) of this section.

(d) *Property in flood or mudslide hazard area.* Inventory property located in an area identified by the Federal Insurance Administration as special flood or mudslide hazard areas will not be leased or operated under a management contract without prior written notice of the hazard to the prospective lessee or tenant. If property is leased by FmHA the servicing official will provide the notice, and if property is leased under a management contract, the contractor must provide the notice in compliance with a provision to that effect included in the contract. The notice must be in writing, signed by the servicing official or the contractor, and delivered to the prospective lessee or tenant at least one day before the lease is signed. A copy of the notice will be attached to the original and each copy of the lease.

(e) *Lease with option to purchase.* For inventory property *only*, a lessee may be given the option to purchase. Terms of the option will be set forth as part of the lease in accordance with the FMI for Form FmHA 1955–20. The purchase price (option price) will be the market value. A lease with option to purchase suitable farm property will normally not exceed 1 year, but may in justifiable cases be for a period not longer than 3 years. The lease payments will not be applied toward the purchase price.

(f) *Costs.* The cost of repairs to leased property will be paid by the Government. However, the Government will not pay costs of utilities or any other costs of operation of the property by the lessee. Repairs will be obtained pursuant to FmHA Instruction 1955–D (available in any FmHA office). Expenditures on custodial property as limited in § 1955.55(c)(2) of this subpart will be charged to the borrower's account as recoverable costs; and on inventory property, they will be charged to the inventory account as nonrecoverable costs.

(g) *Security deposit.* A security deposit in at least the amount of 1 month's rent will be required from all lessees of SFH properties. The security deposit for farm property should be determined by considering only the improvements or facilities which might be subject to misuse or abuse during the term of the lease. For all other types of property, the leasing official may determine whether or not a security deposits will be required and the amount of the deposit with advice from the State Office staff if requested. Security deposit will be remitted according to FmHA Instruction 1951–B (available in any FmHA office) and held by the Finance Office until the leasing official determines to return or otherwise to dispose of the security deposit. The Finance Office Property Accounting Unit will be requested by memorandum to return the deposit to the servicing office for delivery to the lessee; or, if the deposit is to be retained by FmHA, to apply it to the borrower's account (for custodial property) or to the inventory account, as appropriate. For MFH projects, either the security deposit policy may be suspended or the deposits will be handled as follows:

(1) Form FmHA 1944–9, "Multiple Housing Certification and Payment Transmittal," prepared according to the FMI must be forwarded to the Finance Office for every tenant from whom a deposit is required. A notation will be entered under the tenant's name that it is a security deposit for inventory property, Advice No. ____, formerly owned by _____.

(2) If security deposits are no longer to be required and there are outstanding deposits which should be refunded, requests will be handled as they would have been prior to acquisition of the property.

(h) *Lease form.* Form FmHA 1955–20, prepared according to the FMI, or other form approved by OGC, will be used by FmHA to lease property. The lease will be prepared, executed, and distributed according to the FMI depending on whether it is custodial or inventory property. On receipt of a lease of inventory property, the Finance Office will establish a lease account in the lessee's name.

(i) *Lease income.* Lease proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office).

(1) *Custodial property.* The proceeds from lease of custodial property will be applied to the borrower's account as an extra payment unless foreclosure proceedings require that such payments be held in suspense. OGC will be consulted as to the procedure to be followed in each State and instructions will be given in a State Supplement.

(2) *Inventory property.* The proceeds from lease of inventory property will be applied to the lease account.

(j) *Termination of lease of inventory property.* When a lease is terminated; or when the property is sold before expiration of the term shown on the lease submitted to the Finance Office, the servicing official will notify the Finance Office of the termination and the effective date of termination according to the FMI for Form FmHA 1955–20.

§ 1955.67 Payment of liens.

(a) If real estate was acquired subject to a lien, the FmHA official who approved the acquisition will authorize the payment of installments that may include escrow payments to the prior lienholder for taxes, if the property is taxable. Payment will be made according to FmHA Instruction 2024–P (available in any FmHA office) by preparation of SF–1034 and submission of Form FmHA 2024–1 prepared and distributed according to the FMIs. The payment will be charged to the inventory account as a nonrecoverable cost.

(b) If the State Director determines that paying a lien in full would be in the best interest of the Government, he/she will obtain the advice of OGC with respect to the procedures for paying the lien in full and having the mortgage released or assigned to the Government. The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and process SF–1034 and Form FmHA 2024–1 to request payment to the lienholder which will be charged to the inventory account as a nonrecoverable cost.

§ 1955.68 Payment of taxes.

Property acquired by FmHA is subject to taxation by State and local political jurisdictions in the same manner and to the same extent as other property of the same kind, unless State law specifically exempts property owned by the Government from taxation. Where jurisdictions change their law or codes to begin taxing Government-owned property, only taxes accruing after the effective date of the change may be paid. A State Supplement may be issued with the advice of OGC to cover individual State laws. The servicing official shall notify the appropriate taxing authority(ies) in writing when title to real estate is acquired by the Government and shall advise that claims for taxes, if applicable, during the Government's ownership should be billed to FmHA at the County Office or District Office address. When inventory property is taxable, payment will be as follows:

(a) *Suitable property.* When property is classified as suitable for program purposes, the servicing official will prepare SF–1034 and submit Form FmHA 2024–1 for payment of taxes when due, charging them as nonrecoverable costs to the inventory account. If property was acquired subject to a prior lien, the prior lienholder will be contacted before submitting a voucher to see if that lienhoder will pay the taxes.

(b) *Surplus property.* When inventory property acquired under provisions of the CONACT is classified as surplus, taxes will be paid as outlined in paragraph (a) of this section.

(c) *Unsuitable housing property.* When property is classified as unsuitable for program purposes and the value is limited to the extent that taxes which accure before disposal may exceed the value of the property, payment of taxes will be deferred until the property is sold. If the taxing authority schedules a tax sale before FmHA can sell the property, the value will be weighed against the taxes and the decision made whether to pay the taxes and continue sales efforts or to let the property go for the delinquent taxes. The decision made should be that which is in the Government's best financial interest.

§ 1955.69 Insurance.

Insurance in force at the time property is acquired will not be cancelled; however, no additional premiums will be paid, except as follows:

(a) If organization-type property is operated by the Government after acquisition, workman's compensation coverage will be obtained. If the property is located in a flood-hazard area *and* operation of the property continues, flood insurance will be continued in force. Premiums will be paid by preparation of SF–1034 and submission of Form FmHA 2024–1 and charged to the inventory account as a nonrecoverable cost.

(b) If there is an outstanding claim at the time of acquisition, it will be handled in accordance with Subpart A or B of Part 1806 of this chapter (FmHA Instruction 426.1 or 426.2). If property was acquired subject to a prior lien, the servicing official shall advise the prior lienholder that the Government does not intend to carry insurance, except as provided in paragraph (a) of this section. If, however, the prior lienholder's mortgage requires the borrower to carry insurance, FmHA may provide the required insurance if necessary to prevent foreclosure by the prior lienholder.

§ 1955.70 Inspection of property.

The servicing official shall inspect property as necessary to protect the Government's interest. Farm property will be inspected at least annually to determine if adequate measures are in effect to conserve the soil, maintain its fertility, and control erosion. Inspection will be made in connection with travel for other purposes, wherever possible, and documented in the inventory file.

§ 1955.71 Vandalism or theft.

(a) *Reporting.* Willful damage to or theft of inventory or custodial property will be reported to local law enforcement officials by the servicing official. A written report will be sent to the State Director with a copy to the Regional Office of the USDA Office of Inspector General (OIG).

(b) *Other actions.* The servicing official will cooperate with local law enforcement officials to attempt to resolve the incident. This includes signing complaints and testifying at hearings or trials under the jurisdiction of the local law enforcement system. Civil actions and prosecution under Federal criminal statutes will be processed through OGC in coordination with OIG. The State Director after consulting OGC as necessary, will provide advice and assistance to the servicing official.

(c) *Repair of damage due to vandalism or theft.* Repairs necessary because of vandalism or theft will be accomplished on inventory property in accordance with § 1955.64 of this subpart. Repairs of damage to custodial property will be limited as outlined in § 1955.55(c) of this subpart and obtained as outlined in § 1955.55(d) of this subpart.

§ 1955.72 Utilization of inventory housing property by Federal Emergency Management Agency (FEMA).

By a Memorandum of Understanding between FmHA and FEMA, inventory housing property not under lease or sales agreement may be made available to shelter victims in an area designated as a major disaster area by the President. See Exhibit A of this subpart (available in any FmHA office). Authority is hereby delegated to the State Director to implement this Memorandum of Understanding; and the State Director may redelegate this authority to County Supervisors or District Directors.

§§ 1955.73–1955.79 [Reserved]

§ 1955.80 Management of inventory chattel property.

Inventory chattel property will be disposed of as soon after acquisition as possible. Holding of chattel property for more than 60 days must be approved in writing by the State Director. Normally, chattel property will not be leased, except as provided in paragraph (c) of this section.

(a) *Care of inventory chattel property.* When the servicing official determines that inventory chattel property should be cared for by contract, the necessary services will be obtained in accordance with the provisions of this section and FmHA Instruction 1955–D (available in any FmHA office).

(b) *Contracting for services.* Services such as transportation, care, storage, and harvest of crops will be obtained by use of Form FmHA 120–10 in accordance with FmHA Instruction 1955–D (available in any FmHA office).

(c) *Lease of chattel property.* Chattels which are essential to the operation of a farm, such as bulk milk tanks, pumps, and center-point sprinkler may be leased with the real property when a farm is to be leased. The lessee will be responsible for maintenance and repairs during the lease term. Costs of repairs will be limited to those essential to place the equipment in operational condition to effect lease of the farm. When a lessee cannot or will not make needed repairs, the servicing official will contact the State Director for guidance on economic feasibility.

(d) *Documenting and reporting inventory transactions.* The servicing official is responsible for documenting and reporting inventory chattel transactions.

(1) *Losses and increases.* Losses of inventory chattel property will be

recorded on Form FmHA 462-1, "Record of the Disposition of Security Property," and maintained in the case file. Increases in inventory resulting from the birth of livestock will be noted on the original list of acquired chattel property in the inventory file, as well as any losses. These entries will be dated.

(2) *Sales.* All sales of chattel property will be reported on Form FmHA 1955-50, "Advice of Inventory Property Sold," in accordance with the FMI and Subpart C of this part. Sales will also be recorded on Forms FmHA 462-1 in the inventory file.

§ 1955.81 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1955.82 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State Supplements applicable to MFH must have prior approval of the National Office; others may receive post approval. Requests for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

§§ 1955.83-1955.99 [Reserved]

§ 1955.100 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575-0110.

Subpart C—Disposal of Inventory Property

Introduction

§ 1955.101 Purpose.

This subpart delegates program authority and prescribes policies and procedures for the sale of inventory property including real estate, related real estate rights and chattels. It also covers the granting of easements and rights-of-way on inventory property.

§ 1955.102 Policy.

Sales efforts will be initiated as soon as property is acquired in order to effect sale at the earliest practicable time. When the property is of a nature that it is suitable to enable an eligible applicant for one of Farmers Home Administration's (FmHA) loan programs to meet the objectives of that program, preference will be given to eligible applicants. Sales are authorized for program purposes which differ from the purposes of the loan the property formerly secured, and property which secured more than one type of loan may be sold under the program most appropriate for the specific property and community needs as long as the price is not diminished. Examples are: a dwelling which secured an Emergency loan may be sold as a Single Family Housing (SFH) unit if suitable for that program; detached Labor Housing or Rural Rental Housing units may be sold as SFH units; a farm which secured both Farm Ownership, Emergency and/or Labor Housing loans may be sold under the Farm Ownership program; or SFH units may be sold as a Rental Rural Housing project. All such properties and applicants must meet the requirements for the loan program under which the sale is proposed.

§ 1955.103 Definitions.

As used in this subpart, the following apply:

(a) *Auction sale.* A public sale in which property is sold to the highest bidder in open verbal competition.

(b) *Approval official.* The FmHA official having loan and grant approval authority auhorized under Subpart A of Part 1901 of this Chapter.

(c) *Closing agent.* An attorney or title insurance company designated to close loans according to Part 1807 of this chapter (FmHA Instruction 427.1, available in any FmHA office.)

(d) *CONACT or CONACT PROPERTY.* Property acquired or sold pursuant to the Consolidated Farm and Rural Development Act (CONACT). Within this subpart, it shall also be construed to cover property which secured loans made pursuant to the Agriculture Credit Act of 1978; the Emergency Agricultural Credit Adjustment Act of 1978; the Emergency Agricultural Credit Act of 1984; and other statutes giving agricultural lending authority to FmHA.

(e) *Credit sale.* A sale in which financing is provided to an applicant for the purchase of inventory property.

(f) *Decent, safe, and sanitary housing (DSS).* Standards required for the sale of Government acquired SFH, MFH, and LH structures acquired pursuant to the Housing Act of 1949. "DSS" housing unit(s) are structures which meet the requirements of FmHA as described in Subpart A of Part 1924 of this chapter for existing construction or if not meeting the requirements.

(1) Are structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe and operable heating, plumbing, electrical, and sewage disposal systems, and

(4) Meet the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of this Chapter.

(g) *Eligible terms.* Terms prescribed in FmHA program regulations for its various loan programs; available only to persons/entities meeting the eligibility requirements set forth for the respective programs.

(h) *Ineligible terms.* Credit terms offered the convenience of the Government to facilitate sales; more stringent than terms offered under FmHA's loan programs. Applicable when the purchaser does not meet program eligibility requirements or when the property is determined unsuitable (housing) or surplus (other than housing) for program purposes. Loans made on ineligible terms are classified as "Other Real Estate (ORE)" and are serviced accordingly.

(i) *Inventory property.* Property for which title is vested in the Government and which secured an FmHA loan or which was acquired from another Agency for program purposes.

(j) *Market value.* The most probable price which property should bring, as of a specific date, in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(k) *Negotiated sale.* A sale in which there is a bargaining of price and/or terms.

(l) *Organization property.* Property for which the following loans were made is considered organization

property. Community Facility (CF); Water and Waste Disposal (WWD); Association Recreation; Watershed (WS); Resource Conservation and Development (RC&D); loans to associations for Shift-in-Land Use (Grazing Association); loans to associations for Irrigation and Drainage and other soil and water conservation measures; loans to Indian Tribes and Tribal corporations; Rural Rental Housing (RRH) to both groups and individuals; Rural Cooperative Housing (RCH); Rural Housing Site (RHS); Labor Housing (LH) to both groups and individuals; Business and Industry (B&I) to both individuals and groups or corporations; and Economic Opportunity Cooperative (EOC). Housing-type (RHS, RCH, RRH and LH) organization property is referred to collectively in this subpart as Multiple Family Housing (MFH) property.

(m) *Participating broker.* A duly licensed real estate broker who has executed a listing agreement with FmHA.

(n) *Regular FmHA sale.* Sale made by other than sealed bid auction or negotiation by FmHA employees or real estate brokers. Regular FmHA sales are made at market value unless the price is administratively reduced.

(o) *Safe.* No hazard exists on property which would likely endanger the health or safety of occupants or users.

(p) *Sealed bid sale.* A public sale in which property is offered to the highest bidder by prior written bid submitted in a sealed envelope.

(q) *Suitable property.* Property that can be used to carry out the objectives of an FmHA loan program with financing provided through that program. Inventory housing property located in an area whose designation has been changed from rural to nonrural and which is otherwise suitable property will be considered as if it were still in a rural area.

(r) *Surplus property.* Real or chattel property acquired pursuant to the CONACT and other Acts authorizing agricultural lending as defined in paragraph (d) of this section that is not suitable for sale to eligible applicants. It also includes suitable CONACT property which is not sold within 3 years after acquisition.

(s) *Unsuitable property.* Property acquired to the Housing Act of 1949 that is unfit for a borrower to carry out the objectives of an FmHA loan program; for example, a dwelling that cannot be feasibly repaired to meet FmHA property standards for existing construction as adopted by FmHA in Subpart A of Part 1924 of this chapter. It may be an otherwise suitable SFH property which is so poorly located it will not serve as an adequate residential unit or an older home which is excessively expensive to heat and maintain.

§ 1955.104 Authorities and responsibilities.

(a) *Redelegation of authority.* FmHA officials will redelegate authorities to the maximum extent possible, consistent with program requirements and available resources.

(1) The State Director may redelegate, in writing, any authority delegated to him/her in this subpart, unless it is specifically excluded. These redelegation are authorized to a Program Chief, Program Specialist or Property Management Specialist on the State Office staff, and to District Directors and County Supervisors.

(2) The District Director may redelegate in writing any authority delegated to him/her in this subpart to an Assistant District Director or District Loan Specialist.

(3) The County Supervisor may redelegate in writing any authority delegated to him/her in this subpart to an Assistant County Supervisor, GS-7 or above, determined by the County Supervisor to be qualified.

(b) *Responsibility.* (1) National Office Program Directors are responsible for reviewing and providing guidance to State, District, and County Offices in disposing of inventory property.

(2) The State Director is responsible for establishing an effective program and for insuring compliance with FmHA regulations. For organization property, the State Office is responsible for approval of inventory property sales.

(3) District Directors are responsible for disposal actions for programs under their supervision and for monitoring County Office compliance with FmHA regulations and State supplements.

(4) County Supervisors are responsible for timely disposal of inventory property for programs under their supervision.

(c) *Bid or offer acceptance.* The approval official has the authority to accept or reject bids or offers for inventory property, with the final sale price to coincide with loan approval limitations.

Consolidated Farm and Rural Development Act (CONACT) Real Property

§ 1955.105 Real property affected (CONACT).

Sections 1955.106–1955.108 of this subpart prescribe procedures for the sale of inventory real property which secured any of the following type of loans (referred to as CONACT property in this subpart): Farm Ownership FO; Recreation (RL); Soil and Water (SW); Operating (OL); Emergency (EM); Economic Opportunity (EO); Economic Emergency (EE); CF; WWD; RC&D; WS; Association Recreation; EOC; Rural Renewal; Water Facility; B&I; Irrigation and Drainage; Shift-in-land Use (Grazing Association); and loans to Indian Tribes and Tribal Corporations.

§ 1955.106 Sale of suitable property (CONACT).

CONACT real property which has been declared suitable for sale to eligible applicants will be offered for regular sale to eligible applicants in accordance with FmHA regulations that apply to the appropriate loan program.

(a) *Sale by FmHA.* When possible, the sale of suitable CONACT property should be handled by County Supervisors and District Directors. The date Form FmHA 1955–40, "Notice of Real Property for Sale," as posted is the date the property is offered for sale. If an eligible applicant is not available locally, the official with responsibility for the property will advise other FmHA District and County Offices in the market area of the availability of the property. When requested by the County Supervisor, State Office Farmer Programs staff will assist in publicizing property for sale by informing other FmHA County, District, and/or State Offices. Maximum publicity should be given to the sale under guidance provided by § 1955.146 of this subpart and care should be taken to spell out eligibility criteria.

(b) *Real estate brokers.* The State Director may authorize use of real estate brokers to sell property to eligible applicants after determining that the use of brokers will be in the best interest of the Government. Selection and use of brokers will be in accordance with § 1955.130 of this subpart.

(c) *Price.* Property will be offered or listed for its market value, based on the condition of the property at the time it is made available for sale.

(d) *Credit sale procedure.* A credit sale to eligible applicants will be processed as follows:

(1) Form FmHA 1955–45, "Standard Sales Contract-Sale of Real Property By the United States," will be used to document the offer and acceptance for regular FmHA sales. When more than one acceptable offer is received during business hours on the same day, the order in which they will be considered will be decided by lot. If otherwise acceptable, the contract should be signed and accepted subject to approval

of credit. "Back-up" offers will be retained in case the first offer processed cannot be closed.

(2) The interest rate will be the interest rate for the type loan being made which is in effect on the date of approval shown on Form FmHA 1940–1, "Request for Obligation of Funds."

(3) The loan limits for the requested type of assistance are applicable to a credit sale to an eligible applicant.

(4) Title clearance and loan closing for a credit sale and any subsequent loan to be closed simultaneously *must be* the same as for an initial loan except that:

(i) Form FmHA 1955–49, "Quitclaim Deed," or other form of nonwarranty deed approved by the Office of the General Counsel (OCG) will be used.

(ii) The buyer will pay attorney's fees and title insurance costs, recording fees, and other customary fees unless they are included in a subsequent loan. A subsequent loan may not be made for the primary purpose of paying closing costs and fees.

(5) When the transaction is closed, the responsible FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," according to the FMI.

§ 1955.107 Sale of surplus property (CONACT).

Surplus property will be offered for public sale by sealed bid or auction in accordance with § 1955.147 or § 1955.148 of this subpart as soon as possible after it has been declared surplus and made available for sale. Suitable property which has been in inventory for 3 years must be offered for sale as surplus; however, if the buyer is eligible for FmHA assistance, any surplus property which is actually suitable will be reclassified to suitable by the authorized official and sold on eligible terms. The basis for this redetermination must be documented in the running record.

(a) *Rates and terms.* Surplus property will be offered for cash or on ineligible terms of not less than a ten percent (10%) down payment with the remaining balance amortized over a period not to exceed 25 years. The interest rate for business and industrial property will be the established insured B&I rate for profit corporations plus ½ percent; for community programs property the interest rate will be the current market rate for Community Programs. The interest rate for all other surplus property will be the current Farmer Program ineligible interest rate set forth in Exhibit B of FmHA Instruction 440.1 (available in any FmHA office). The State Director will determine the loan terms for surplus property within these limitations. After extensive sales efforts where no acceptable offer has been received, the State Director may request the Administrator to permit offering surplus property for sale on more favorable rates and terms; however, a down payment of not less than ten percent (10%) must be required and the terms may not be more favorable than those legally permissible for eligible borrowers. Surplus property will be offered for sale for cash or terms that will provide the best net return to the Government. The term of any financing extended may not be longer than the period for which the property will serve as adequate security. All credit sales on ineligible terms will be identified as ORE loans.

(b) *Sale by sealed bid or auction.* Surplus real property must first be offered for public sale by sealed bid or auction. The State Director will determine the method of sale, the minimum acceptable sale price and whether or not credit will be offered prior to the offering. The minimum acceptable sale price established may not be more than the market value. For sealed bid sales, preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for the current percentage.]

Equally acceptable sealed bid offers will be decided by lot.

(c) *Negotiated sale.* If no acceptable bid is received either from a sealed bid sale or at a public auction, the State Director may sell the property at the best price obtainable without further public notice by negotiating with interested parties including all previous bidders. The rates and terms offered through negotiation will be within the limitations of paragraph (a) of this section. A sale made through negotiation will be documented and accepted by the approval official on Form FmHA 1955–46, "Invitation, Bid and Acceptance-Sale of Real Property by the United States," and will be accompanied with a bid deposit of not less than ten percent (10%) of the negotiated price in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to FmHA plus any other conditions relating to acceptance. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for the current percentage.]

Equally acceptable offers will be decided by lot.

(1) In negotiating a sale, offers may be solicited orally, by letter, or advertised in local newspapers. The persons interested in purchasing the property may be assembled for preliminary open negotiation. Solicitation and advertisement will include a time and date by which negotiation must have been completed.

(2) If an offer represents the best price obtainable, the approval official may accept it immediately; however, if a credit sale is involved, this acceptance will be subject to confirmation of the purchaser's repayment ability. If an acceptable offer is not negotiated by the date set, a new date may be set for further negotiations. The amount offered by one interested party will not be disclosed to any other party except when negotiation is by preliminary open negotiation. An offer stipulating that the offeror will purchase the property for a specified sum above the best offer made will not be considered.

(3) Advertising will be ordered by means of Standard Form 1143, "Advertising Order," in accordance with FmHA Instruction 2024–F (available in any FmHA office). Standard Form 1034 "Public Voucher for Purchases And Services Other Than Personal" will be used to obtain other purchases and services. In either case, Form FmHA 2024–1, "Miscellaneous Payment System," will be submitted for payment in accordance with FmHA Instruction 2024–P (available in any FmHA office).

(d) *Sale through real estate brokers.* The State Director may authorize the use of real estate brokers to sell surplus CONACT real property at the market value in accordance with § 1955.130 of this Subpart only after the conditions outlined in this paragraph have been met. The conditions are:

(1) The State Director has determined that the property cannot be sold by FmHA employees;

(2) The property has been advertised for sale by sealed bid or auction and negotiation, and no acceptable bids or offers have been received; and

(3) Any negotiations have been terminated.

§ 1955.108 Processing and closing (CONACT).

(a) *Determining repayment ability and creditworthiness.* If a credit sale is involved, the applicant must furnish necessary financial information to assist in determining repayment ability and creditworthiness. Forms FmHA 431–2, "Farm and Home Plan," or FmHA 1930–1, "Balance Sheet" FmHA 1930–2, "Cash Flow Statement", and FmHA 1930–3, known as the "Coordinated Financial

Statement" (CFS)," should be used for all eligible applicants unless the applicant has furnished all required information in another acceptable format. Information regarding eligibility, planned development and total operations will be provided the same as for the respective type of Farmer Program loan. Purchasers requesting credit on ineligible terms will be required to provide sufficient information to establish financial stability, creditworthiness and farm budgets to establish repayment ability. For organization property, information will be provided which is similar to an application including financial information required for the respective loan program.

(b) *Form of payment.* Payments at closing will be made in the form of cash, cashier's check, certified check, postal or bank money order, or bank draft made payable to FmHA.

(c) *Farm real property.* Upon acceptance by the approval official, the County Supervisor or District Director will provide the closing agent with the necessary information to close the sale.

(d) *Organization real property.* Upon acceptance of the bid or offer, the State Director will forward the original Forms FmHA 1955–45 or FmHA 1955–48, the names and legal description to be placed on the deed, the amount and terms of the note and mortgage, loan agreement or resolution and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction.

(e) *Earnest money.* Earnest money, if any, will be used to pay purchaser's closing costs with any balance of the costs being paid by the purchaser. Any excess earnest money will be credited to the purchase price or recognized as a part of the purchaser's down payment.

(f) *Closing and reporting sales.* Title clearance, loan closing, and property insurance requirements for a credit sale will be the same as for a program loan, except the property will be conveyed by Form FmHA 1955–49, in accordance with § 1955.141(a) of this subpart. When the transaction is closed, the County Supervisor or District Director will prepare and submit Form FmHA 1955–50 in accordance with the FMI.

(g) *Classification.* Credit sales on ineligible terms will be classified as ORE loans and serviced accordingly.

(h) *State Supplements.* A State Supplement specifying modifications to be made in note and mortgage instruments as pertinent to a credit sale to an ineligible purchaser will be issued with the advice and approval of OGC.

§ 1955.109 [Reserved]

Rural Housing (RH) Real Property

§ 1955.110 Sales of real estate that secured RH loans (housing).

Sections 1955.111—1955.119 of this subpart pertain to real property that secured loans made under the Housing Act of 1949, as amended, (RH property). Property which secured RH loans made under Section 502 or 504 of the Housing Act of 1949, as amended, is referred to as SFH property. All other RH property is referred to as MFH property.

§ 1955.111 Property repair (housing).

(a) *Suitable property.* Suitable property will be secured, maintained, and repaired in accordance with § 1955.64 of Subpart B of Part 1955 of this chapter.

(b) *Unsuitable property.* Sufficient maintenance to retain or enhance the visual appeal of the property will be performed provided it is economically justified. When economically feasible, repairs will be made prior to offering the property for sale unless a prospective purchaser has indicated an interest in buying the property "as is" or the County Supervisor or District Director documents that the property would likely be vandalized prior to sale. If the property is not repaired to meet DSS standards, the advertising requirements and deed restriction provisions outlined in § 1955.116 of this subpart apply; and it will immediately be offered for sale "as is." If the property is not sold within 120 days, or if the State Director determines a regular sale is not feasible, the structure may be offered for sale by sealed bid or auction or as chattel, to be removed from the site, in accordance with § 1955.122 of this subpart. If no offer is received, the structure(s) may be removed by contract in accordance with FmHA Instruction 1955–D (available in any FmHA office) and the site offered for sale.

§ 1955.112 Method of sale (housing).

(a) *Sales by FmHA.* Sales customarily will be made by FmHA personnel in accordance with § 1955.114 and § 1955.115 of this Subpart (as appropriate) when staffing and workload permit and inventory levels do not exceed those outlined in paragraph (b) of this section. Adequate and timely advertising in accordance with § 1955.146 of this subpart is of utmost importance when this method of sale is used. For MFH, this method will *always* be used unless another method is authorized by the Assistant Administrator for Housing.

(b) *Real estate brokers.* The services of real estate brokers for regular sales will be used as provided for in § 1955.130 of this subpart in any County Office with 5 or more SFH properties in inventory at any one time during the calendar year. The use of real estate brokers by County Offices having less than 5 SFH properties in inventory at any one time during the calendar year is optional by the State Director if staffing and workload permit sales directly by FmHA. When broker services for SFH are used, the FmHA office will not conduct direct sales for the listed property but will refer inquiries to the broker or list of participating brokers unless an acceptable written offer has been received on a property prior to the time it has been determined available for sale and listed with brokers. Brokers may only be used for MFH with authorization of the Assistant Administrator for Housing.

(c) *Sealed bid or auction.* If the State Director determines that *unsuitable* SFH properties have been given adequate market exposure and that diligent sales efforts, including use of real estate brokers, have not produced buyers, he/she may authorize sale by sealed bid or public auction. *Suitable* SFH property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorizes the use of the sealed bid or auction method. These authorities may not be redelegated. Indiscriminate use of these methods of sale could adversely affect other properties located in a subdivision. Therefore, the decision to use sealed bid or auction sale methods to dispose of SFH units located in a subdivision must address the number of dwellings to be sold by these methods, the suitability of the entire subdivision for further FmHA financing, and the effect of such sales on the surrounding borrowers. Detailed guidance for conducting sealed bid sales is provided in § 1955.147 of this subpart and for conducting auction sales in §§ 1955.131 and 1955.148 of this subpart.

§ 1955.113 Price (housing).

Real property will be offered or listed for its market value, as adjusted by any administrative price reductions provided for in this section. That market value will be based on the condition of the property at time it is made available for sale. However, when a Section 515 RRH credit sale is being made to a nonprofit organization or public body to utilize former single family dwellings as a rental or cooperative project for very-low-income residents, the price will be the lesser of the Government's investment or the market value, less administrative price reductions, if any.

(a) *SFH price reduction.* If SFH property has not sold after being actively marketed for at least 120 days, the County Supervisor or District Director may administratively reduce the price by an amount not to exceed five percent (5%) if deemed to be in the best interest of the Government or reappraise the property if additional market data indicates this action is warranted. Subsequent price reductions not to exceed 5% per reduction may be made in periods of not less than 120 days each. Administrative price reductions may be made without changing the SFH appraised value. Reduction(s) will be documented in the running record. Active written offers, otherwise acceptable except for price, will be retained and accepted in order of highest price if equal to or greater than the reduced price.

(b) *MFH price reduction.* For multiple-family property, the sale price will only be reduced to the extent that the market value has decreased as shown in a current market appraisal. The District Director will not reduce the price without the prior written approval of the State Director. The State Director must request National Office authorization on reductions of price for multiple-family property if the inventory value at the time of acquisition exceeded the State Director's loan approval authority.

§ 1955.114 Sales steps for suitable property (housing).

After repairs, if any, are completed, suitable property will be offered for sale as outlined in this section. The appraisal should be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40, for SFH property, or other appropriate notice for MFH property, will be prepared. Suitable property will be sold by regular sale *only*, unless the Assistant Administrator for Housing authorizes another method. If the State Director determines that suitable properties have been given adequate market exposure and that diligent sales efforts including the use of real estate brokers have not produced purchasers, he/she may request the Assistant Administrator for Housing to authorize sale by sealed bid of public auction.

(a) *Single family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. The County Supervisor will either offer the property for regular sale or list it with real estate brokers for sale under the provisions of § 1955.112 of this subpart. Properties will be offered or listed by use of Form FmHA 1955–40, unless FmHA has on hand a signed offer to purchase a specific property. The date the form is posted or listed with participating brokers is the effective date that the offer for sale has begun and the date it is mailed to participating brokers is the effective date of listing. Offers and listings will provide for sales on both eligible or ineligible terms. However, all suitable SFH property will be available for purchase by eligible SFH applicants *only* for the first 30 days from the date of the initial offering or listing, and for the first 30 days from the date of any reduction in price. During this 30-day period, offers will be accepted from others and held until the beginning of the business day following the 30-day period when they will be considered along with all other offers received that business day. If not sold during the 30-day period, the property may then be purchased by either eligible or ineligible buyers on a first-come first-served basis. However, for written offers received during business hours on the same day, eligibles will be given first priority, then cash offers will take precedence over offers requiring credit. Among cash offers or offers requiring credit on ineligible terms, an offer higher than the listed price will be given preference. Preference will be given to a cash offer which is at least ——*

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

(For offers requiring credit on eligible terms, no preferences will be given for an offer higher than the listed price. An offer from an eligible applicant which is higher than the listed price will be treated as equally acceptable with other offers from eligibles and sold for the listed price.) Selection of equally acceptable offers in any category (eligible or ineligible) received the same business day will be made by lot. Credit sales to eligible applicants will be in accordance with the provisions of Subpart A of Part 1944 of this chapter. Sales to ineligibles will be for cash or as credit sales on ineligible terms as outlined in § 1955.118 of this subpart. Offers for less than the listed price may be held until the price has been reduced administratively to the offer price or the property is reappraised, whichever occurs first. The lesser offers will be considered as received on the date of the price reduction.

(b) *Multiple-family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include the sale price and require all offerors to submit an application package comparable to that required by the respective loan program which will be reviewed by the State Director. The sale date will be set to allow adequate time for advertising and review of applications. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official. An offeror may withdraw an offer prior to the sale date, but on the sale date, all offers from applicants determined eligible for the type of loan being offered will be considered. Offers will be place in a receptacle and one offer drawn. Award will be made to the offeror drawn. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, the selection of the successful offeror was by lot and therefore is not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator for Housing, Form FmHA 1955–40, or other appropriate form designated for MFH property, will be used and the property sold to the first eligible applicant meeting the respective program requirements. Any other method of sale must receive the prior written authorization of the Assistant Administrator for Housing.

(c) *Single family inventory converted to MFH.* Written offers by non-profit organizations or public bodies will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH.

(1) The price provisions of § 1955.113 and the processing provisions for MFH in § 1955.117 of this subpart apply to such a conversion.

(2) The provisions of § 1955.130 of this subpart pertaining to real estate brokers apply, as applicable, and a commission will be due in the normal manner on units which were listed with the broker(s).

(3) Prior approval of the National Office is required before issuance of Form AD–622, "Notice of Preapplication Review Action." A preapplication with the information outlined in Exhibit A–6 of Subpart E of Part 1944 of this chapter, along with the State Director's recommendation, will be forwarded to the National Office, Attention: Assistant

Administrator for Housing, for a determination and further guidance.

(4) A credit sale for this purpose will be made according to the provisions of Subpart E of Part 1944 of this chapter, as modified by § 1955.117 of this subpart, except the units need not be contiguous, but they must be located in close enough proximity so that management costs are not increased nor management capabilities diminished because of distance.

(5) An additional loan may be made simultaneously with the credit sale, or later, only when the property involved meets the definition of "project" set forth in § 1944.205(j) of Subpart E of Part 1944 of this chapter.

(d) *CONACT residential property suitable for the SFH program.* When a single family house acquired under the CONACT is determined to be suitable for the SFH program, it may be offered for sale as a SFH unit as though it had been acquired under the SFH program. It may, however, be sold in this manner to an eligible RH borrower on *eligible terms only*—not for cash or on ineligible terms. When a house is offered for sale under this paragraph, the listing notices and any advertising (whether being sold by FmHA or through real estate brokers) must state this restriction.

§ 1955.115 Sales steps for unsuitable property (housing).

The appropriate FmHA office will take the following steps after repairs, if economically feasible, are completed. The appraisal will be updated to reflect repairs and improvements, if any, and Form FmHA 1955–40 for SFH property, or other appropriate notice for MFH property, will be prepared.

(a) *Single family housing.* Sales steps will be the same as for suitable SFH property, as provided in § 1955.114(a) of this subpart, except that sales must be for cash or credit on ineligible terms as provided in § 1955.118 of this subpart. If an unsuitable SFH property has not sold after 120 days from being offered for sale or listed with brokers, consideration should be given to using a sealed bid or auction sale method. Use of the sealed bid or auction method without attempting a regular sale may be considered in special circumstances; e.g., where structures have been substantially destroyed by fire with the remaining value being only in the land. Special circumstances may also indicate that the structures should be sold as chattel (salvage) when authorized by the State Director. Sealed bid sales of unsuitable SFH property should be completed and closed within 90-days of the State Director's authorization to use this method. Auction sales should be completed and closed within 120 days of the State Director's authorization to use this method. The advertising requirements and deed restrictions of § 1955.116 of this subpart apply to unsuitable properties which do not meet FmHA DSS standards.

(b) *Multiple-family housing.* Sales steps will be the same as for suitable MFH property as provided in § 1955.114(b) of this subpart except that sale must be for cash or credit on ineligible terms as set forth § 1955.118 of this subpart. Additionally, if cash offers are received, they will be given first preference by drawing from the cash offers only. If the State Director determines an auction sale should be used to sell unsuitable MFH property, authority to use that method of sale must be requested from the Assistant Administrant for Housing. Inventory files including information on the acquisition, marketing efforts made, management of the property, other pertinent information, a memorandum covering the facts of the case, and recommendations of the State Director must be submitted for review.

§ 1955.116 Requirements for sale of property not meeting decent, safe and sanitary (DSS) standards (housing).

(a) *Notices and advertising.* If the inventory housing property has a single-family dwelling or a MFH unit which does not meet DSS standards as defined in § 1955.103(f) of this subpart, any "Notice of Real Property For Sale," "Notice of Sale," or any other advertisement used in conjunction with advertising the sale must contain the following notice:

The structure presently on this property does not meet the "Decent, Safe, and Sanitary Housing" standards as defined by the Farmers Home Administration. Prior to being used for residential purposes, the structure must be restored or repaired to:

(1) Be structurally sound and habitable,

(2) Have a potable water supply,

(3) Have functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems, and

(4) Meet the Thermal Performance Standards for existing construction as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations.

(b) *Sales agreements.* If a housing structure in inventory does not meet DSS standards, the Forms FmHA 1955–45 or Form FmHA 1955–46 used in conjunction with the sale must indicate the type of deficiencies that exist and must contain the following clause:

This property contains a dwelling unit or units which FmHA has deemed to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed to the purchaser will contain a covenant binding the purchasers and the property which will restrict the residential unit(s) on the property from being used for residential occupancy until the dwelling unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe and operable heating, plumbing, electrical and sewage disposal systems, and meets the Thermal Performance Standards as outlined in Exhibit D, of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. § 1480(e).

(c) *Quitclaim deed.* The following or similar restrictive clause adapted for use in an individual State pursuant to a State Supplement approved by OGC must be added to the quitclaim deed for properties with dwellings which do not meet the definition of decent, safe, and sanitary:

Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. § 1480(e), the purchaser ("Grantee" herein) of the above-described real property (the "subject property" herein) covenants and agrees with the United States acting by and through Farmers Home Administration (the "Grantor" herein) that the dwelling unit(s) located on the subject property as of the date of this Quitclaim Deed will not be occupied or used for residential purposes until the unit(s) is structurally sound and habitable, has a potable water supply, has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems and meets the Thermal Performance Standards as outlined in Exhibit D of Subpart A of Part 1924 of Title 7 of the Code of Federal Regulations. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as an equitable servitude. This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit(s) on the subject property complies with the aforementioned standards of the Farmers Home Administration or the unit(s) has been completely razed, upon application to Farmers Home Administration in accordance with its regulations, the subject property may be released from the effect of this covenant and this covenant will thereafter be of no further force or effect.

(d) *Release of restrictive clause.* A State Supplement outlining the procedure for releasing the DSS covenant will be issued with the advice and approval of OGC.

§ 1955.117 Processing credit sales on eligible terms (housing).

The following provisions apply to all credit sales on eligible terms:

(a) *Offers.* Form FmHA 1955–45 will be used to document the offer and acceptance for regular FmHA sales.

Contract acceptance is normally made prior to processing form FmHA 410–4, "Application for Rural Housing Assistance (Non Farm Tract)," for SFH property with the provisions that acceptance is subject to program approval. MFH property sales require an application package comparable to that submitted for the respective loan program application.

(b) *Processing.* The FmHA regulations pertaining to the type of credit being extended will be followed in making credit sales on eligible terms except as modified by the provisions of this section. All MFH credit sales may be made for up to 100 percent of the current market value of the security less any prior lien. However, if a profit or limited profit applicant desires to earn a return, the applicant will be required to contribute at least 5 percent of the purchase price as a cash down payment unless otherwise waived by the Administrator under § 1955.149 of this subpart. All credit sales of RRH, RCH, and LH properties will be subject to prepayment and use restriction specified by the respective program requirements.

(c) *Approval.* Form FmHA 1940–1 will be used to approve a credit sale even though no obligation of funds is involved.

(d) *Down payment.* When a down payment is made, it will be collected at closing, identified by advice number, purchaser's name and case number, and remitted in accordance with FmHA Instruction 1951–B (available in any FmHA office).

(e) *Interest rate.* The interest rate will be the interest rate for the type credit being extended that is in effect on the date the asssistance is approved on Form FmHA 1940–1.

(f) *Closing costs.* MFH purchasers will pay closing costs from their own funds. Where necessary, SFH purchasers who qualify may be made a subsequent loan to pay closing costs in an amount not to exceed 1 percent of the sale price of the dwelling.

(g) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale, and any loan closed simultaneously with the credit sale, are the same as for a program loan of the same type except:

(1) The property will be conveyed by in accordance with § 1955.141(a) of this subpart.

(2) Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid from the purchaser's personal funds except as provided in paragraph (f) of this section. For SFH credit sales and MFH credit sales to nonprofit organizations or public bodies, any excess deposit will be refunded to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(h) *Reporting.* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

§ 1955.118 Processing cash sales or credit sales on ineligible terms (housing).

Cash sales will be closed by the servicing official collecting the purchase price (less any earnest money or bid deposit) and delivering the deed to the purchaser. Proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). The following provisions apply to credit sales on ineligible terms:

(a) *General.* The provisions of § 1955.117(a) and (c) of this subpart also apply to sales on ineligible terms. However, the following modification on instruments, if applicable, will be made and initiated by both the applicant and the approval official:

(1) On the promissory note, any covenants relating to graduation to other credit, personal occupancy, and restrictions on leasing will be deleted by lining through and will be initiated by the obligor(s).

(2) On the security instrument (mortgage or deed of trust) the covenants relating to graduation to other credit, personal occupancy, and restrictions on lease will be deleted by lining through and will be initialed by the mortgagor(s).

(b) *Down payment.* Down payment of not less than 10 percent of the purchase price is required at closing and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office).

(c) *Interest rate.* The ineligible SFH interest rate will be charged on all credit sales of SFH property on ineligible terms. The Section 515 RRH interest rate plus ½ percent will be charged on all other types of housing credit sales. Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA Office) for interest rates.

(d) *Term of note.* The balance of the purchase price will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(i) *SFH.* (A) When a purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(B) For purchasers who do not meet the criteria in paragraph (d)(i)(A) of this section, the note amount will be amortized for not more than 10 years. However, if the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(ii) *MFH.* No more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale in which case the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Closing sale.* Title clearance, loan closing and property insurance requirements for a credit sale are the same as for a program loan except:

(1) The property will be conveyed in accordance with § 1955.141(a) of this subpart.

(2) The purchaser will pay closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser.

(3) The County Supervisor or District Director will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions in exceptional or complex cases and for all MFH sales.

(f) *Reporting:* After the sale is closed, it will be reported according to § 1955.142 of this subpart.

(g) *Classification.* Credit sales on ineligible terms will be classified as ORE loans and serviced accordingly.

§ 1955.119 Payment of discount points (housing).

To effect regular sale of inventory SFH property to a purchaser who is financing the purchase of the property with a nonFmHA loan, the State Director may authorize the payment by FmHA of not more than three discount points. The payment must be a customary requirement of the lender for the seller within the community where the property is located. Terms of payment will be incorporated in Form FmHA 1955–45 and will be fixed as of the date the form is signed by the appropriate FmHA official. Points will not be paid to reduce the interest rate to

be paid by the purchaser. The payment will be deducted from the funds to be received by FmHA at closing.

§ 1955.120 [Reserved]

Chattel Property

§ 1955.121 Sale of acquired chattels (chattel).

Sections 1955.122–1955.124 of this subpart prescribe procedures for the sale of all acquired chattel property except real property rights. The State Director is authorized to sell acquired chattels by auction, sealed bid, regular sale or, for perishable items and crops, by negotiated sale. The State Director may redelegate authority to any qualified FmHA employee.

§ 1955.122 Method of sale (chattel).

Acquired chattels will be sold as expeditiously as possible using the method(s) considered most appropriate. If the chattel is not sold within 180 days after acquisition, assistance will be requested as outlined in § 1955.143 of this subpart.

(a) *Regular sale.* Chattels may be sold by FmHA employees at market value to eligible applicants. Form FmHA 440–21, "Appraisal of Chattel Property," will be used when appraising chattels for regular sale.

(b) *Auctions.* Section 1955.148 of this subpart provides detailed guidance on auctions applicable to the sale of chattels, as supplemented by this section.

(1) *Established public auction.* An established public auction is an auction conducted at a facility that is widely advertised and that is held on a regularly scheduled basis. This method of sale is particularly suited for the sale of commodities, farm machinery and livestock. No additional public notice of sale is required other than that commonly used by the facility. This is the preferred method of disposal.

(2) *Other auctions.* Other auctions, whether conducted by FmHA employees or fee auctioneers, are suitable for on-premises sales, for sale of dissimilar chattels, and for the sale of chattels in conjunction with the auction of real property. A minimum of 5 days public notice will be given prior to the date of auction.

(c) *Sealed bid sales.* Section 1955.147 of this subpart provides detailed guidance on sealed bid sales applicable to the sale of chattels. When it is believed that financing will have to be provided through a credit sale, this method has advantages over auction sales. It requires, however, additional steps in the event any established minimum price is not obtained. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[* Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

(d) *Negotiated sale.* Perishable acquired items and crops (except timber) and chattels for which no acceptable bid was received from auction or sealed bid methods may be sold by direct negotiation for the best price obtainable. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[* Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

No public notice is required to negotiate with interested parties including prior bidders. Justification for the use of this method of sale will be documented. A copy of the sale instrument (Form FmHA 1955–47, "Bill of Sale 'A'—Sale of Government Property") will be kept in the County or District Office inventory file. Sale proceeds will be remitted according to FmHA Instruction 1951–B (available in any FmHA office). A State Supplement, when needed, will be prepared with the assistance of OGC to provide additional guidance on neotiated sales and to insure compliance with State laws.

§ 1955.123 Sale procedures (chattel).

(a) *Credit sales.* Although cash sales are preferred in the sale of chattels, credit sales may be used advantageously in the sale of chattels to eligible purchasers and to facilitate sales of high-priced chattels. Credit sales to eligible purchasers will be in accordance with the provisions of this Chapter for the appropriate program for which a loan would otherwise be made including eligibility determinations. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[* Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

Credit sales to ineligible purchasers may be offered on terms of not less than ten percent (10%) down payment with the remaining balance amortized over a period not to exceed five years. The interest rate for ineligible purchasers will be the current ineligible interest rate for Farmer Program property set forth in Exhibit B of FmHA Instruction 440–1 (available in any FmHA office). Forms FmHA 431–2 or CFS, Form FmHA 440–32, "Request for Statement of Debts and Collateral," or any other financial statement considered appropriate may be used to show financial capability.

(b) *Receipt of payment.* Payment will be by cashier's check, certified check, postal or bank money order, or personal check (not in excess of $500) made payable to FmHA. Cash may be accepted if it is not possible for one of these forms of payment to be used. Third party checks are not acceptable. If full payment is not received at the time of sale, the offer will be documented by Form FmHA 1955–46, or by Form FmHA 1955–45 where the chattel is sold jointly with real estate by regular sale.

(c) *Transfer of title.* Title will be transferred to a purchaser in accordance with § 1955.141(b) of this subpart.

(d) *Reporting sale.* Sales will be reported in accordance with § 1955.142 of this subpart.

(e) *Reporting and disposal of inventory property not sold.* Refer to §§ 1955.143 and 1955.144 of this subpart for additional guidance in disposing of problem property.

§ 1955.124 Sale with inventory real estate (chattel).

Inventory chattel property may be sold with inventory real estate if a higher aggregate price can be obtained. Proceeds from a joint sale will be applied to the respective inventory accounts based on the value of the property sold. Form FmHA 440–21 will be used to determine the value of the chattel property. The offer for the sale of the chattels will be documented by incorporating the terms and conditions of the sale of Form FmHA 1955–45 or Form FmHA 1955–46, and may be accepted by the appropriate approval official based upon the combined final sale price.

§§ 1955.125–1955–.126 [Reserved]

Use of Contractors To Dispose of Inventory Property

§ 1955.127 Selection and use of contractors to dispose of inventory property.

Sections 1955.128—1955.131 prescribe procedures for contracting for services to facilitate disposal of inventory property. FmHA Instructions 1955–D and 2024–A (available in any FmHA office) are applicable for procurement of the nonpersonal services.

§ 1955.128 Appraisers.

The State Director may authorize the County Supervisor or District Director to procure fee appraisals of inventory property, except MFH properties, to expedite the sale of inventory real or chattel property. (Fee appraisals of MFH properties will only be authorized by the

Assistant Administrator for Housing when unusual circumstances preclude the use of a qualified FmHA MFH appraiser.) The decision will be based on availability of comparables, capability and availability of personnel and the number and type properties (such as large farms and business property) requiring valuation. Contract appraisers should be "designated" (i.e., an appraiser designated by major appraisal organizations, such as Society of Real Estate Appraisers, American Institute of Real Estate Appraisers, American Society of Appraisers, American Right of Way Association, Appraisal Institute of Canada and Independent Appraisers). Appraisers may not purchase property they have appraised.

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed by Exhibit C of FmHA Instruction 2024–A (available in any FmHA office). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they are doing business.

(a) *Type of listings.* The State Director may elect to authorize use of open listings, exclusive listings, or combinations thereof during any calendar year as follows:

(1) *Exclusive listing contract.* An exclusive listing contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA office awarding the contract within a defined area and for a specified property or type property. Since the commission rate is pre-established, additional criteria will be specified in the solicitation together with the numerical weighting system to be used (usually 1–100). Responses will be calculated on the basis of criteria such as personal qualifications, membership in Multiple Listing Services, previous dealings with FmHA, advertising plans, innovative promotion methods proposed, and financial capability. The responsibilities of the broker under the exclusive listing contract exceed those of the open listing agreement.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed consistent with the terms and conditions of Form FmHA 1955–42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published in the counties served by the FmHA office, informing brokers that sales services are being requested. The advertising will be substantially in accordance with the example given in Exhibit B of this subpart (available in any FmHA office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property.

(b) *Listing notices.* Form FmHA 1955–40 will be used to provide brokers with notice of initial listing, withdrawals, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* Offers will be given priority in the order received; however, all offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA. Priority rules for specific categories of property are:

(1) *Suitable SFH.* See § 1955.114(a) of this subpart.

(2) *Suitable MFH.* Offers will be considered from eligible applicants only.

(3) *Unsuitable SFH.* See § 1955.115(a) of this subpart.

(4) *Unsuitable MFH.* See § 1955.115(b) of this subpart.

(5) *Suitable CONACT.* See § 1955.106 of this subpart.

(6) *Surplus CONACT.* See § 1955.107 of this subpart.

(d) *Price.* No offer for less than the listed price will be accepted during the period of regular sale. However, other offers will be held by FmHA pending any administrative price reduction, prior sale, withdrawal, or expiration of offer.

(e) *Earnest money.* Earnest money in the amount specified in paragraph (e)(1) of this section will be collected when a sales contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA. When a contract is cancelled because FmHA rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchase price and recognized as a part of the purchaser's initial investment.

(1) *Amount.* The amount of earnest money collected will be:

(i) For single-family residence or multiple-family residence of 2 to 4 units, $50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA 1955–40) or ½ of 1 percent of the purchase price.

(2) *Offeror default.* When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by FmHA as full liquidated damages and will be remitted by the servicing official according to FmHA Instruction 1951–B (available in any FmHA office) for application to the General Fund.

(f) *Commission.* The broker's commission is contingent on the closing of the sale and will not be paid until the sale is closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, the broker's salesperson(s), to persons living in his/her or salesperson's immediate household or to legal entities in which the broker or salesperson(s) have an interest. Commission will be paid at closing only if sufficient cash to cover the commission is paid by the purchaser. Otherwise the commission will be paid by the appropriate FmHA official completing a Standard Form 1034 and submitting Form FmHA 2024–1, for payment to be charged as a nonrecoverable cost to the inventory account. A uniform fee or commission schedule, by property type, will be established by the State Director within a given sales area and will not exceed commissions paid for similar types of services provided by the broker to other sellers of similar real property. (The percentage normally decreases as the value of the property increases over $100,000.) The State Director, without authority to redelegate, may authorize fixed amount bonuses for special-effort property, such as property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period where it is believed an added bonus will create additional efforts by the broker to sell the property.

Commissions for sealed bids procured through brokers may be authorized by the appropriate Program Assistant Administrator upon written request by the State Director.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA shall certify to nondiscrimination practices as provided in Forms FmHA 1955–42 and FmHA 1955–43 (available in any FmHA office). In addition, all brokers participating in the sale of the property shall sign the nondiscrimination certification on Form FmHA 1955–45.

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to FmHA Instruction 2024–A (available in any FmHA office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* The commission to be paid is normally the customary auctioneer's fee for the area for the type of property being sold. Payment will be made in the same manner as provided for brokers in § 1955.130(f) of this subpart.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

§ 1955.132 [Reserved]

General

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA extends credit and the property then becomes subject to Title VI, the buyer will sign Form FmHA 400–4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to FmHA an acceptable Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All FmHA and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the FmHA and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by FmHA, FmHA will reappraise the property. The reappraised value of the property will serve as the amount FmHA will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by FmHA is less than $500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* FmHA does not provide any warranty on property sold from inventory. Subsequent loans may be made to eligible purchasers to correct defects.

§ 1955.135 Taxes on inventory real property.

Where FmHA owned property is subject to taxation, taxes will be prorated between FmHA and the purchaser as of the date the title is conveyed in accordance with the conditions of Form FmHA 1955–45 or Form FmHA 1955–46. The purchaser will be responsible for paying all taxes due and payable after the title is conveyed. The County Supervisor or District Director will advise the taxing authority of the sale, the purchaser's name, and the description of the property sold. Only assessments for property improvements (water, sewer, curb and gutter, etc.) due and payable as of the date property is sold will be paid by FmHA for all types of inventory property. At the closing, taxes and assessments due to be paid by FmHA will be paid by voucher, if the local taxing authority will accept payment at that time, or will be deducted from the selling price. However, for eligible borrowers other than MFH who lack payment ability, FmHA may pay the prorated taxes and assessments by use of Standard Form 1034 and Form 2024–1, when later due and payable, in lieu of deduction from the selling price at closing.

§ 1955.136 Environmental Assessment (EA) and Environmental Impact Statement (EIS).

(a) Prior to a final decision on some disposal actions, an environmental assessment must be made and when necessary, an enviornmental impact statement. Detailed guidance on when and how to prepare an EA or an EIS is found in Subpart G of Part 1940 of this Chapter. Assessments must be made for those proposed conveyances that meet one of the following criteria:

(1) The conveyance is controversial for environmental reasons and/or is qualified within those categories described in § 1955.137 of this subpart.

(2) The FmHA approval official has reason to believe that conveyance would result in a change in use of the real property. For example, farmland would be converted to a nonfarm use; or an industrial facility would be changed to a different industrial use that would produce increased gaseous, liquid or solid wastes over the former use or changes in the type or contents of such wastes. Assessments are not required for conveyance where the real property would be retained in its former use within the reasonably foreseeable future.

(b) When an EA or EIS is prepared it shall address the requirements of Departmental Regulation 9500–3, "Land Use Policy," in connection with the conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, prime forest and prime rangelands, the alteration of wetlands or flood plains, or the creation of nonfarm uses beyond the boundaries of existing settlements.

§ 1955.137 Real property located in special areas or having special characteristics.

(a) *Real property located in flood, mudslide hazard, wetland, or Coastal Barrier Resources System (CBRS).*—(1)

Use restrictions. Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands," require the conveyance instrument for inventory property in floodplains or wetlands which is proposed for lease or sale to specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions. The restrictions shall be to the uses of the property by the lessee or purchaser and any successors, except where prohibited by law, as determined by the FmHA official responsible for the conveyance. Applicable restrictions will be incorporated into quitclaim deeds in format similar to that contained in § 1955.116(c) of this subpart with the advice and approval of OGC. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA servicing official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released by the State Director. A listing of these restrictions will be included in the notices required in paragraph (a)(2) of this section.

(2) *Notice of hazards.* Acquired real property located in an identified special flood or mudslide hazard area as defined in Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2) will not be sold for residential purposes unless determined by the County Supervisor or District Director to be safe (that is, any hazard that exists would not likely endanger the safety of dwelling occupants). Prior written notice of the specific hazard must be given to prospective purchasers. The notice will be prepared in accordance with the following:

(i) *Property offered for sale by FmHA.* The County Supervisor or District Director will inform prospective purchasers at the time of the first inquiry and in any notice of public sale that the property is located in a special flood, mudslide hazard or wetland area and specify any use restrictions resulting from this location. The County Supervisor or District Director will also prepare and deliver a written notice to the prospective purchaser at the time the bid or offer to purchase is signed by the purchaser. The prospective purchaser will acknowledge the receipt of the notice. Exhibit A of this subpart (available in any FmHA office) may be used as a guide for preparing the notice and the acknowledgment. The acknowledgment will be placed in the County or District Office inventory file.

(ii) *Property offered for sale through real estate brokers or auctioneers.* If real estate brokers or auctioneers are engaged to sell inventory property, they must notify prospective purchasers in writing that the property is located in a special flood, mudslide hazard, or wetland area and specify any use restrictions resulting from this location.

(A) When sending Form FmHA 1955–40 or other notice to the brokers or auctioneers listing property for sale, the County Supervisor or District Director will attach a written notice and acknowledgment as a guide in meeting this requirement. Exhibit A of this subpart (available in any FmHA office) may be used for this purpose.

(B) After the prospective purchaser signs the acknowledgment, the broker or auctioneer will forward it to the County Supervisor or District Director, as appropriate, with Form FmHA 1955–45 of Form FmHA 1955–46.

(3) *Limitations placed on financial assistance.* (i) Financial assistance is limited to property located in areas where flood insurance is available. Flood insurance must be provided at closing of loans on eligible and ineligible terms. Appraisals of property in flood or mudslide hazard areas will reflect this condition and any restrictions on use. Financial assistance for substantial improvement or repair of property located in a flood or mudslide hazard area is subject to the limitations outlined in Exhibit C, Paragraph 3b (1) and (2) of Subpart G of Part 1940 of this chapter.

(ii) Pursuant to the requirements of the Coastal Barrier Resources Act (CBRA) and except as specified in paragraph (a)(3)(v) of this section, *no* credit sales will be provided for property located within a CBRS where:

(A) It is known that the purchaser plans to further develop the property;

(B) A subsequent loan of any other type of federal financial assistance as defined by the CBRA has been requested for additional development of the property;

(C) The sale is inconsistent with the purposes of the CBRA; or

(D) The property to be sold was the subject of a previous financial transaction that violated the CBRA.

(iii) For purposes of this section, additional development means the expansion, but not maintenance, replacement-in-kind, reconstruction, or repair of any roads, structures or facilities. Water and waste disposal facilities as well as community facilities may be repaired to the extent required to meet health and safety requirements, but may not be improved or expanded to serve new users, patients or residents.

(iv) A sale which is not in conflict with the limitations in paragraph (a)(3)(ii) of this section shall not be completed until the approval official has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service and the Regional Director concurs that the proposed sale does not violate the provisions of the CBRA.

(v) Any proposed sale that does not conform to the requirements of paragraph (a)(3)(ii) of this section must be forwarded to the Administrator for review and approval. Approval will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed sale does not violate the provisions of the CBRA.

(b) *Historic preservation.* (1) Pursuant to the requirements of the National Historic Preservation Act and Executive Order 11593, "Protection and Enhancement of the Cultural Environment," the FmHA official responsible for the conveyance must determine if the property is listed on or eligible for listing on the National Register of Historic Places. (See Subpart F of Part 1901 of this chapter for additional guidance.) To determine the former, the current listing of the Register is reviewed. To determine the latter, the State Historic Preservation Officer (SHPO) must be consulted whenever one of the following criteria are met:

(i) The property includes a structure that is more than 50 years old.

(ii) Regardless of age, the property is known to be of historic/archeological importance or has apparent significant architectural features or is similar to other FmHA properties that have been determined to be eligible.

(iii) An environmental assessment is required prior to a decision on the conveyance.

(2) When consultation is not required based upon the above criteria, the responsible FmHA official shall note in the inventory file the basic reason why no consultation was necessary. For example, the running record may indicate the property to be conveyed may be a standard, 10-year old, single family house, a check may have been made with a local historical society on a less obvious property or the property may have been previously cleared.

(3) If the result of the consultations with the SHPO is that a property may be eligible or that it is questionable, an official determination must be obtained from the Secretary of the Interior. The State Office should be contacted for assistance in obtaining this

determination. The National Office Program Support Staff is also available to assist the State Office.

(4) If a property is listed on the National Register or is determined-eligible for listing by the Secretary of Interior, the FmHA official responsible for the conveyance must consult with the SHPO in order to develop any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives and which does not result in an unreasonable economic burden to public or private interests. The Advisory Council on Historic Preservation must be consulted by the State Director after the discussions with the SHPO are concluded regardless of whether or not an agreement is reached.

(5) Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidders or purchasers through a notice procedure similar to that in § 1955.137(a)(2) of this subpart.

§ 1955.138 Property subject to redemption rights.

Routine care and maintenance will be provided according to §1955.64 of Subpart B of this part to preserve and protect the property; however, repairs are limited to those essential to prevent further deterioration of the property and protect the Government's interest. Repairs and rehabilitation needed to return the property to program standards, either under contract by FmHA of financed with an FmHA loan, must be deferred until expiration of the redemption period. If, under State law, FmHA's interest may be sold subject to redemption rights, the property may be sold provided there is no apparent likelihood of its being redeemed.

(a) Since property sold subject to redemption rights will be sold "as is," credit sale to eligible applicants is precluded unless the property fully meets FmHA standards for the applicable loan program "as is."

(b) Each purchaser will sign a statement acknowledging that:

(1) The property is subject to redemption rights according to State law, and

(2) If the property is redeemed, ownership and possession of the property would revert to the previous owner and likely result in loss of any additional investment in the property not recoverable under the State's provisions of redemption.

(c) The signed original statement will be filed in the purchaser's County or District Office case file.

(d) If real estate brokers or auctioneers are engaged to sell the property, the County Supervisor or District Director will inform them of the redemption rights of the borrower and the conditions under which the property may be sold.

(e) The State Director, with prior approval of OGC, will issue a State supplement incorporating the requirements of this section and providing additional guidance appropriate for the State.

§ 1955.139 Disposition of real property rights.

(a) *Easements or rights-of-way.* The State Director is authorized to convey easements or rights-of-way for roads, utilities and other appurtenances as follows:

(1) Easements or rights-of-way may be conveyed to public bodies or utilities if the conveyance is in the public interest and will not adversely affect the value of the real estate. The consideration must be adequate for the inventory property being released or for a purpose which will enhance the value of the real estate. If there is to be an assessment as a result of the conveyance, relative values must be considered, including any appropriate adjustment to the property's market value, and adequate consideration must be received for any reduction in value.

(2) Easements or rights-of-way may be sold by negotiation for market value to any purchaser for cash without giving public notice if the conveyance would not make otherwise suitable property unsuitable or surplus, nor decrease the value by more than the price received. Sale proceeds will be handled in accordance with Subpart B of Part 1951 of this chapter.

(3) A copy of the conveyance instrument will be retained in the County or District Office inventory file. The grantee is responsible for recording the instrument.

(b) *Mineral and water rights, mineral lease interests, air rights, and agricultural or other leases.* (1) Mineral and water rights, mineral lease interests, mineral royalty interests, air rights, development rights, and agricultural and other lease interests will be sold with the surface land and will not be sold separately, except as provided in § 1955.66(a)(2)(iii) of Subpart B of Part 1955 of this chapter. If the land is to be sold in separate parcels, any rights or interests that apply to each parcel will be included with the sale.

(2) Lease or royalty interests not passing by deed will be assigned to the purchaser when property is sold. The County Supervisor or District Director, as applicable, will notify the lessee or payor of the assignment. A copy of this notice will be furnished to the purchaser.

(3) The value of such rights, interests or leases will be considered when the property is appraised.

§ 1955.140 Sale in parcels.

(a) *Individual property subdivided.* An individual property may be offered for sale as a whole or subdivided into parcels as determined by the State Director. For MFH property guidance will be requested from the National Office for all properties other than RHS projects. Division of the land or separate sales of portions of the property, such as timber, growing crops, inventory for small business enterprises, buildings, facilities, and similar items may be permitted if a better total price for the property can be obtained in this manner. The division of the property must not change its character from suitable to unsuitable or surplus unless authorized by the appropriate Assistant Administrator. Environmental effects should also be considered pursuant to Subpart G of Part 1940 of this chapter. Any applicable State laws will be set forth in a State Supplement and will be complied with in connection with the division of land. If property is to be subdivided, a plan will be provided by the State Director protecting the FmHA security interest when the subdivided portions are sold. The plan will provide for partial releases based upon 110% of the portion of the outstanding loan prorated to the property released.

(b) *Grouping of individual properties.* The State Director may authorize the combining of two or more individual properties into a single parcel for sale as one block of it is determined this will facilitate the sale.

§ 1955.141 Transferring title.

(a) *Real property.* Real property will be conveyed by Form FmHA 1955–49, or other form of nonwarranty deed approved by OGC, executed by the State Director. This authority may not be redelegated. FmHA or an approved closing agent may prepare the granting instrument for real property. Any FmHA expenses involved will be paid by use of Standard Form 1034 and Form FmHA 2024–1 and charged to the inventory account or may be paid from any down payment where the funds are being disbursed by the closing agent the closing.

(b) *Chattel.* Chattel property will be conveyed by Form FmHA 1955–47, executed by the County Supervisor, District Director, or State Director.

(c) *Additional real property documentation.* For MFH property, documentation will be in accordance with appropriate program procedure. For SFH suitable real property sold to eligible applicants or whenever required, the County Supervisor or District Director will also provide the purchaser the following documents or statements:

(1) A termite certificate from a reliable firm.

(2) Local authority certification, if customary in the State, that the individual water and sewage systems are functional and adequate for property not being served by public water and sewer systems.

(d) *Rent increases for MFH property.* After approval of a credit sale for an occupied MFH project, but prior to closing, the purchaser will prepare a realistic budget for project operation (and a utility allowance, if applicable) to determine if a rent increase may be needed to continue or place project operations on a sound basis. Exhibit C of Subpart C of Part 1930 of this chapter will be followed in processing the request for a rent increase. In processing the rent increase the purchaser will have the same status as a borrower. An approved rent increase will be effective on or after the date of closing.

(e) *Interest credit and rental assistance for MFH property.* Interest credit and rental assistance may be granted to eligible applicants purchasing MFH properties in accordance with the provisions of Exhibit B of Subpart E of Part 1944 and Exhibit E of Subpart C of Part 1930 of this chapter, respectively.

§ 1955.142 Reporting sale.

When the transaction is closed and the conveying instrument has been delivered, the appropriate FmHA official will prepare and distribute Form FmHA 1955–50, "Advice of Inventory Property Sold," or for MFH, Form FmHA 1965–20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in accordance with the respective FMI. Real or chattel property which has been disposed of by means other than sale, including total loss or destruction, will be reported in the same manner.

§ 1955.143 Report on inventory property not sold.

For any unsuitable or surplus real or chattel property not sold within 18 months (6 months for chattel) after acquisition the County Supervisor or District Director will send the inventory file, advertisments, and a summary of the facts covering the efforts to sell the property to the State Director for further guidance. If the property is not sold within an additional 6 months (3 months for chattel), the State Director will send the package to the appropriate Assistant Administrator for advice.

§ 1955.144 Disposal of surplus property to, through, or acquired from other Agencies.

(a) *Property which cannot be sold.* If unsuitable or surplus real or chattel property cannot be sold (or only token bids are received for it), the appropriate Assistant Administrator shall give consideration to disposing of the property to other Federal Agencies or State or local governmental entities through the General Services Administration (GSA). Chattel property will be reported to GSA using Standard Form 120, "Report of Excess Personal Property," with transfer documented by Standard Form 122, "Transfer Order Excess Personal Property." Real property will be reported to GSA using Standard Form 118, "Report of Excess Real Property," Standard Form 118A, "Buildings, Structures, Utilities and Miscellaneous Facilities (Schedule A)," Standard Form 118B, "Land (Schedule B)" and Standard Form 118C, "Related Personal Property (Schedule B), " with final disposition documented by a "Receiving Report," executed by the recipient with original forwarded to the Finance Office and a copy retained in the inventory file. Forms and preparation instructions will be obtained from the appropriate GSA Regional Office by the State Office.

(b) Urban Homesteading Program (UH). Section 810 of the Housing and Community Development Act of 1979, as amended, authorizes the Secretary of Housing and Urban Development (HUD) to pay for acquired FmHA single family residential properties sold through the HUD–UH Program. Local governmental units may make application through HUD to participate in the UH Program. State Directors will be notified by the Assistant Administrator for Housing, when local governmental units in their States have obtained funding for the UH Program. The notification will provide specific guidance in accordance with the "Memorandum of Agreement between the Farmers Home Administration and the Secretary of Housing and Urban Development" dated October 2, 1981. (See Exhibit C of this subpart.)

§ 1955.145 Land acquisition to effect sale.

The State Director is authorized to acquire land which is necessary to effect sale of inventory real property. This action must be considered only on a case-by-case basis and may not be undertaken primarily to increase the financial return to the Government through speculation or to make suitable property more suitable. The State Director's authority under this section may *not* be redelegated. For MFH and other organization-type loans, prior approval must be obtained from the appropriate Assistant Administrator prior to land acquisition.

(a) *Alternate site.* Where real property has been determined to be unsuitable for program purposes due to location and where it is economically feasible to relocate the structure thereby making it suitable, the State Director may authorize the acquisition of a suitable parcel of land to relocate the structure if economically feasible. The remaining unsuitable parcel of land will be sold for its market value.

(b) *Additional land.* Where real property has been determined unsuitable for reasons that may be cured by the acquisition of adjacent land or an alternate site, in order to cure title defects or encroachments or where structures have been built on the wrong land *and* where it is economically feasible, the State Director may authorize the acquisition of additional land at a price not in excess of its market value.

(c) *Easements or rights-of-way.* The State Director may authorize the acquisition of easements, rights-of-way or other interests in land to cure title defects, encroachments or in order to make otherwise unsuitable property suitable, if economically feasible.

§ 1955.146 Advertising.

(a) *General.* The success of any sales effort is highly dependent on vigorous advertising which covers the potential market. The primary means of advertisement available to the County Supervisor, District Director, or State Director are newspaper advertisements in accordance with FmHA Instruction 2024–F (available in any FmHA office), public notices using Form FmHA 1955–41, "Notice of Sale," "synopsis" advertising in accordance with § 1955.157 of FmHA Instruction 1955–D (available in any FmHA office), and notification of known interested parties. Other innovative means are encouraged, such use of a display board in the FmHA office with photographs and Form FmHA 1955–40 posted together to solicit applicant and broker interest; posting of Form FmHA 1955–41 at employment center; door-to-door distribution of the notice to apartment dwellers and advertisements in magazines or other periodical publications. An example of newspaper advertising is provided in Exhibit B of this subpart (available in any FmHA office). Advertisement costs

will be paid by using Standard Form 1143 and Form FmHA 2024–1. Appropriate FmHA officials will make sure that, where contractually required, brokers and auctioneers provide adequate, timely advertising. When property is being sold by FmHA or by use of open listings with brokers, it is the servicing official's responsibility to insure the adequate advertising of each property. A statement must be included in any advertising stating the amount of FmHA's preference for cash offers in conformity with the applicable sections of this subpart, depending on the type property being advertised.

(b) *Large-value and complex properties.* Advertising for MFH, B&I and other large-value or complex properties should also be placed in appropriate newspapers and publications designed to reach the type of particular purchasers most likely to be interested in the inventory property. The State Director will assist the District Director in determining the scope of advertising necessary to adequately market these properties. Advertising for MFH and other complex properties must also include appropriate language stressing the need to obtain and submit complete application materials for the type program involved.

(c) *Racial and socio-economic considerations.* In accordance with the policies set forth in § 1901.203(c) of Subpart E of Part 1901 of this chapter, the approval official will make a special effort to insure that those prospective purchasers in the marketing area who traditionally would not be expected to apply for housing assistance because of existing racial or socio-economic patterns are reached.

(d) *Rejected application for SFH loan.* If an application for a SFH loan is being rejected because income is too high, a statement should be included in the rejection letter that inventory properties may be available for which they may apply.

§ 1955.147 Sealed bid sales.

Before the sealed bid sale, the appropriate FmHA official will determine and document the minimum sale price, if any, and whether or not credit will be offered. Credit may be offered to facilitate the sale; however, the term will *never* be longer than the period for which the property will serve as adequate security. Sealed bids will be made on Form FmHA 1955–46 with an accompanying deposit of not less than ten percent (10%) of the bid in the form of cashier's check, certified check, postal or bank money order or bank draft payable to FmHA. The bid will be considered delivered when actually received at the FmHA office in a sealed envelope marked as follows:

"SEALED BID OFFER

Date of Bid opening _____
FmHA Advice No. _____
Property Address or Location _____

(a) *Opening bids.* Sealed bids will be held in a secured file before bid opening which will be at the place and time specified in the notice. The bid opening will be public and usually held at the FmHA office. The County Supervisor, District Director, or State Director or his/her designee will open the bids with at least one other FmHA employee present. Each bid received will be tabulated showing the name and address of the bidder, the amount of the bid, the amount and form of the deposit, and any conditions of the bid. The tabulation will be signed by the County Supervisor, District Director or State Director or his/her designee and retained in the inventory file.

(b) *Successful bids.* The highest complying bid meeting the minimum established price will be accepted by the approval official; however, it will be subject to loan approval by the appropriate official when a credit sale is involved. Preference will be given to a cash offer which is at least ——* percent of the highest offer requiring credit.

[*Refer to Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the current percentage.]

Otherwise equal bids will be selected by public lot drawing. The successful bid will be accepted by signing Form FmHA 1955–46. The approval official will give a copy of the form to the successful bidder or his/her representative. If the bidder or his/her representative is not present at the bid opening, the form will be sent by certified mail, return receipt requested, to the bidder. The bid deposit of the successful bidder will be used at closing to be applied first to the purchaser's closing costs with any balance then applied to the down payment or in the case of a cash sale to be deducted from the funds required from the successful bidder at closing.

(c) *Unsuccessful bids.* Deposits of unsuccessful bidders will be returned by certified mail with letter of explanation, return receipt requested. If there were no acceptable bids, the letter will advise each bidder of any anticipated negotiations for the sale of the property and deposits will be returned.

(d) *Disqualified bids.* Any bid that does not comply with the terms of the offer will be disqualified. Minor deviations and defects in bid submission may be waived by the FmHA official approving the sale.

(e) *Failure to close.* If a successful bidder fails to perform under the terms of the offer, the bid deposit will be retained as full liquidated damages and will be remitted according to Form FmHA 1951–B (available in any FmHA office) for application to the General Fund. However, if a credit sale complying with the FmHA notice is an element of the offer and FmHA disapproves the credit application, then the bid deposit will be returned to the otherwise successful bidder. Upon determination that the successful bidder will not close, the State Director may authorize either another sealed bid or auction sale of direct negotiations with the next highest bidder, all available unsuccessful bidders, or other interested parties.

(f) *No acceptable bid.* Where no acceptable bid is received although adequate competition is evident, the State Director may authorize a negotiated sale in accordance with § 1955.107(c) of this subpart except that the established minimum sale price shall remain unchanged.

§ 1955.148 Auction sales.

Before an auction, the State Director, with advice of the National Office for organizational property, will determine and document the minimum acceptable price, if any, whether or not a credit sale will be offered and the minimum down payment; and whether an FmHA employee or contract auctioneer will conduct the auction sale. The State Director may authorize the use of a professional auctioneer if the value of the property or the complexity of the sale make it advisable, if no qualified FmHA employee will be available or if otherwise considered in the best interest of the Government. This will be handled by contract in accordance with FmHA Instructions 1955–D and 2024–A (available in any FmHA office). Chattel property may be sold at a public auction that is widely advertised and held on a regularly scheduled basis without solicitation. At the auction, successful bidders will be required to make a deposit of not less than ten percent of their bid in the form of cashier's check, certified check, postal money order or bank draft payable to FmHA or to the contracting auctioneer, if applicable. Cash and personal checks may be accepted when deemed necessary for a successful auction by the person conducting the auction. The high bid will be reduced to writing on Form FmHA 1955–46. Where credit sales are to be allowed, all notices and publicity should provide for a method of prior approval of credit and the credit limit for

potential bidders. This may include submission of letters of credit of financial statements prior to the auction. When the highest bid is lower than the minimum amount acceptable to FmHA, negotiations should be conducted with the highest bidder or, in turn, next highest bidder or other persons to obtain an executed bid at the predetermined minimum. Upon purchaser's default the approval official will remit the bid deposit as a Miscellaneous Collection according to FmHA Instruction 1951–B. The bid deposit will be remitted *only* when the bidder defaults; otherwise, pursuant to agreement between the approval official and the purchaser, it will be applied to the closing costs or down payment, or will be deducted from the selling price in a cash sale. The closing will be conducted in accordance with the procedures prescribed in this subpart for cash sales or credit sales on ineligible terms according to the type property and program involved.

§ 1955.149 Exception authority.

(a) The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of tenants or the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate program Assistant Administrator or upon request initiated by the appropriate program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) The Administrator may authorize withholding sale of surplus farm inventory property temporarily upon making a determination that sales would likely depress real estate market and preclude obtaining at that time the best price for such land.

§ 1955.150 State supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this Instruction to provide guidance to FmHA officials. State Supplements applicable to MFH, B&I, and CP must have prior approval of the National Office. Request for approval for those affecting MFH must include complete justification, citations of State law, and an opinion from OGC.

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

20. Section 1962.40 is amended by removing paragraph (a)(4), by redesignating paragraphs (a)(5) through (a)(8) as paragraphs (a)(4) through (a)(7) respectively, by removing paragraphs (c)(1)(i) and (c)(1)(ii), and by revising paragraph (c)(1) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(c) * * *

(1) When liquidation has been approved, the County Supervisor will accelerate all unmatured installments by using Form FmHA 455–21, except in cases referred to OGC for civil action. A notice of acceleration is not necessary if the notice has previously been given. However, when security is to be liquidated under the "Power of Sale" in the lien instrument without referral to OGC, the County Supervisor will use Form FmHA 455–21.

* * * * *

21. Section 1962.42 is amended by removing paragraphs (c)(7)(i) and (c)(7)(ii) and by revising paragraphs (a)(2), (b)(1), (b)(2), (b)(3), and (c)(7) to read as follows:

§ 1962.42 Repossession, care and sale of chattel security or EO property by the County Supervisor.

(a) * * *

(2) *Recording.* A list, dated and signed by the County Supervisor, of all security or EO property repossessed, except items on Form FmHA 455–4, will be maintained in the borrower's case file. Whenever the County Supervisor is transferred to another position or leaves FmHA or there is a change in jurisdiction, the District Director will give the succeeding County Supervisor, in writing, the names of such borrowers and a list of the property repossessed in the custody of the County supervisor and caretakers, its location, and the names and addresses of the caretakers.

(b) * * *

(1) *Livestock.* Care and feeding of livestock will be obtained by contract pursuant to FmHA Instruction 1955–D (available in any FmHA office). The value of animal products (such as milk) may constitute all or part of the contractor's quotation, and if this is desired, such a statement should be included in the solicitation. Possession of the livestock will be turned over to the contractor only after the contract is awarded using Form FmHA 120–10, "Solicitation, Quotation, Purchase Order, Inspection and Invoice." If a contractor's services are needed for a longer period than is authorized in subparagraph (c)(4)(i) of this section, the State Director may authorize the County Supervisor to continue obtaining the necessary services for the time needed.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.* Property will be stored and cared for pending sale. Storage and necessary services may be obtained by contract using Form FmHA 120–10. Use of property by the contractor is not authorized.

(3) *Crops.* Form FmHA 120–10 will be used for obtaining services for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. Where a landlord is involved, written consent of the landlord should be obtained. If landlord consent cannot be obtained, where applicable, the circumstances should be reported to the State Director for advice.

(c) * * *

(7) *Payment of costs and prior lienholders.* If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this Subpart or to pay prior lienholders, such costs or prior liens will be paid by use of Form FmHA 120–10, Standard Form 1034, or Standard Form 1143, "Advertising Order," and Standard Form 1143a, "Memorandum Copy," for newspaper or publisher's invoice for newspaper advertising and Form FmHA 2024–1, "Miscellaneous Payment System," in accordance with FmHA Instructions 2024–F and 2024–P (available in any FmHA office). The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are not legally chargeable to the borrower, they may be paid as provided in this subpart, and charged to an account set up for the officials or other persons found responsible for them.

* * * * *

22. Section 1962.45 is revised to read as follows:

§ 1962.45 **Reporting sales.**

Form FmHA 1955–3, "Advice of Property Acquired," will be prepared and distributed according to the FMI when property is acquired by FmHA.

Authorities: (7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942, 5 U.S.C. 301, Sec. 10, Pub. L. 93–357, 88 Stat. 392, 7 CFR 2.23; 7 CFR 2.70, 29 FR 14764, 33 FR 9850)

Dated: April 30, 1985.

Frank W. Naylor, Jr.,

Under Secretary for Small Community and Rural Development.

[FR Doc. 85–13576 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85–052]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, Sublette County and a portion of Lincoln County in Wyoming were designated as Class A, and the remainder of Wyoming was designated as Class Free. This document amends the regulations to designate the entire State of Wyoming as Class Free. This rule is necessary because it has been determined that the entire State of Wyoming meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the area in Wyoming redesignated as Class Free.

DATES: Effective Date: June 3, 1985. Written comments must be received on or before August 6, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movement from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Wyoming was divided into a Class Free Area and a Class A Area. Sublette County and a portion of Lincoln County were designated as Class A, and the remainder of Wyoming was designated as Class Free. The State of Wyoming has requested that the entire State be designated as Class Free.

To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the preceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). Sublette County and a portion of Lincoln County were designated as Class A rather than as Class Free because of the herd infection rate. A review of brucellosis program records establishes that the entire State of Wyoming meets the criteria for classification as Class Free. Therefore, it is necessary to designate all of Wyoming as Class Free.

Executive Order and Regulatory Flexibility Act

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

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Wyoming reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

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

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from an area in Wyoming.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 is revised to read as set forth below and the authority citations following all the sections in Part 78 are removed:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. In paragraph (a) § 78.20 "[Counties of Albany, Big Horn, Campbell, Carbon, Converse, Crook, Goshen, Johnson, Laramie, Natrona, Niobrara, Park, Platte, Sheridan, Sweetwater, Teton, Uinta, Weston, Fremont, Hot Springs, and Washakie, and that portion of Lincoln County south of a line beginning at the northwest quadrant of Sec. 1, T. 28 N., R. 121 W. extending east to the northeast quadrant of Sec. 1, T. 28 N., R. 116 W.]" is removed.

3. In paragraph (b) of § 78.20 "and Wyoming (Sublette County and that portion of Lincoln County not included as Class Free)" is removed and "and" is inserted before "West Virginia."

Done at Washington, D.C., this 3rd day of June 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–13764 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 78

[Docket No. 85–053]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of brucellosis. Prior to the effective date of this document, Flathead County in Montana was designated as Class A, and the remainder of Montana was designated as Class Free. This document amends the regulations to designate the entire State of Montana as Class Free. This rule is necessary because it has been determined that the entire State of Montana meets the standards for Class Free status. The effect of this action is to relieve certain restrictions on the interstate movement of cattle from the area in Montana redesignated as Class Free.

DATES: Effective Date: June 3, 1985. Written comments must be received on or before August 6, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the period of 12 months preceding classification as Class Free. The Class C classification is for States or Areas with the highest rate of brucellosis, with Classes A and B in between. Restrictions on the movement of cattle are more stringent for movements from Class A States or Areas compared to movements from Free States of Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The restrictions include testing for movement of certain cattle from other than Class Free States or Areas.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received under approved action plans; and (4) minimum procedural standards for administering the program.

Prior to the effective date of this document, the State of Montana was divided into a Class Free Area and a Class A Area. Flathead County was designated as Class A, and the remainder of Montana was designated as Class Free. The State of Montana has requested that the entire State be designated as Class Free.

To attain and maintain Class Free status, a State or Area must, among other things, remain free from brucellosis in cattle for the proceding 12 month period and the adjusted MCI reactor prevalence rate for such 12 month period must not exceed one reactor per 2,000 cattle tested (0.050 percent). Flathead County, Montana, was designated as Class A rather than as Class Free because of the herd infection rate. A review of brucellosis program records establishes that the entire State of Montana meets the criteria for classification as Class Free.

Therefore, it is necessary to designate all of Montana as Class Free.

Executive Order and Regulatory Flexibility Act

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

For this action the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Montana reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this document will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

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

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is warranted in order to delete unnecessary restrictions on the interstate movement of certain cattle from an area in Montana.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest, and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document. A document discussing comments received and any amendments required will be published in the **Federal Register.**

List of Subjects in 9 CFR Part 78

Animal diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accodingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.20 [Amended]

2. In paragraph (a) of § 78.20 "(All counties except Flathead County)" is removed.

3. In paragraph (b) of § 78.20 "Montana, (Flathead County)," is removed.

Done at Washington, D.C., this 3rd day of June 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–13765 Filed 6–6–85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–NM–105–AD; Amdt. 39–5078]

Airworthiness Directives: British Aerospace (BAe) Viscount Model 700 Series and 800 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection, replacement, and modification, as necessary, of certain components on British Aerospace, Aircraft Group, Viscount airplanes, to detect and prevent certain unsafe conditions. These conditions relate to components of the main undercarriage, and wing trailing edge member spar and liner assemblies. This action is taken to preclude failure of these components.

EFFECTIVE DATE: July 15, 1985.

ADDRESSES: The applicable service information specified in this AD may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. H.N. Wantiez, Standardization Branch, ARM–113; telephone (206) 431–2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of inspections, replacements, and modifications which they have imposed on Viscount Model 700 and 800 series airplanes operated under registry of the United Kingdom to correct certain unsafe conditions which may exist.

The requirements presented in this AD are based on the notifications from the CAA in accordance with the bilateral agreement and are related to the following unsafe conditions:

A. Loss of braking or locking of the associated wheel during takeoff, landing, or taxiing. (Reference Preliminary Technical Leaflet (PTL) No. 90, BAe Pre-Mod Standard F.1323, BAe Modification F.1794 for all Model 800 Series).

B. Cracking of inner plane (wing) trailing edge member top boom (spar) assemblies on all Model 700 and Model 800 series airplanes. (Reference PTL 309 for all Model 700 Series and PTL 178 for all Model 800 Series Airplanes).

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive which requires the actions mentioned above was published in the **Federal Register** on January 17, 1985 (50 FR 3918). The comment period closed March 18, 1985, and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

Currently, no U.S. registered airplanes will be affected by Paragraph A. of this AD; however, it is deemed necessary to ensure that this modification is incorporated on any applicable airplanes that may be imported.

It is estimated that 34 U.S. registered airplanes will be affected by Paragraph

B. of this AD, that it will take approximately 250 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $340,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Viscount Model 700 and 800 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 40 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace Viscount: Applies to Model 700 and 800 series airplanes, certificated in all categories, as indicated in each paragraph below. To prevent failure of certain components in the main undercarriage, and wing trailing edge member spar and liner assemblies, accomplish the following within the compliance time specified in each paragraph below, unless previously accomplished:

A. For all Model 800 series, pre-Modification F.1323 Standard, which are equipped with Dunlop AH.50961/2 Main Wheel Brake Units: Inspect, modify, and replace in accordance with Preliminary Technical Leaflet (PTL) No. 90 and Modification F.1794, both dated May 18, 1960, prior to the accumulation of 3,000 total landings. On those assemblies which have already achieved 2,750 landings, the requirements of PTL 90 and Modification F.1794 must be accomplished within 250 landings or 2 months, whichever occurs later, after the effective date of this AD.

B. For all Model 700 and 800 series, inspect the top boom/liner assemblies for cracks between station 132.85 and station 138 on all Model 700 series in accordance with PTL 309, Issue 2 dated December 10, 1979, and all Model 800 series in accordance with PTL 178, Issue 2 dated December 10, 1979, prior to the accumulation of 27,500 total landings. On those assemblies which have already achieved 27,250 or more total landings, initial inspections must be accomplished within 250 landings or 2 months, whichever occurs later, after the effective date of this AD. Repeat inspections at intervals not exceeding 2,000 landings or 12 months, whichever is sooner.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

This amendment becomes effective July 15, 1985.

Issued in Seattle, Washington, on May 31, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-13703 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ACE-02]

Alteration of Transition Area, O'Neill, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at O'Neill, Nebraska, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the O'Neill Municipal Airport, O'Neill, Nebraska, utilizing the O'Neill VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the O'Neill Municipal Airport, O'Neill, Nebraska, is being established utilizing the O'Neill VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at O'Neill, Nebraska, at and above 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 12313 of the **Federal Register** dated March 28, 1985, the Federal Aviation Administration published a notice of proposed rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at O'Neill, Nebraska. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the notice of proposed rulemaking.

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

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

O'Neill, Nebraska

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of the O'Neill Municipal Airport (latitude 42°28'15"N, longitude 98°41'15"W); within 3.5 miles each side of the O'Neill VORTAC 315° radial, extending from the 5.5 mile radius to 12 miles northwest of the VORTAC and within 3.25 miles each side of the O'Neill VORTAC 129° radial, extending from the 5.5 mile radius to 8.5 miles southeast of the VORTAC.

This amendment becomes effective at 0901 G.m.t. August 1, 1985.

Issued in Kansas City, Missouri, on May 29, 1985.

William H. Pollard,

Acting Director, Central Region.

[FR Doc. 85-13707 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANE-05]

Amend the Chester, CT, 700 Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the description of the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for aircraft executing a new RNAV Standard Instrument Approach Procedure (SIAP) to Runway 17 at the Chester Airport, Chester, Connecticut.

EFFECTIVE DATE: 0901 G.m.t., August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273-7139

SUPPLEMENTARY INFORMATION:

History

On February 26, 1985, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for Instrument Flight Rules aircraft executing a new RNAV Runway 17 Standard Instrument Approach Procedures (SIAP) to the Chester Airport, Chester, Connecticut (50 FR 7795).

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 this Notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations changes the description of the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for Instrument Flight Rules aircraft executing a new RNAV Standard Instrument Approach Procedure (SIAP) to Runway 17 at the Chester Airport, Chester, Connecticut.

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

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510 Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69, 49 CFR 1.47.

2. By amending § 71.181 as follows:

Chester, Connecticut Transition Area—[Amended]

After "VOR" line five insert:

"; and within that airspace bounded by a line to the northwest beginning at Lat. 43°25'30"N, Long. 72°35'10"W; to Lat. 43°27'20"N, Long. 72°38'30"W; and a line to the northeast beginning at Lat. 43°26'25"N, Long. 72°26'35"W; to Lat. 43°32'50"N, Long. 72°28'45"W."

Issued in Burlington, Massachusetts, on May 28, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-13706 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510]

Special Federal Aviation Regulation No. 38-2; Certification and Operating Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments: (1) Specify and clarify the type of certificate and operations specifications an operator may be issued consistent with the scope and type of its operations; (2) specify and clarify the certification requirements the operator must meet with respect to each type of operation in order to be eligible to have a specified type of operation authorized in its operations specifications; (3) clarify the regulations with which an operator must comply in the conduct of the operations specified; (4) include provisions regarding Part 125 and other regulations which have been promulgated since the adoption of Special Federal Aviation Regulations (SFAR) No. 38 and eliminate provisions that relate to Part 123 and other regulations that are no longer applicable; (5) authorize certain operators of transport category airplanes having a maximum passenger seating configuration, excluding any required crewmember seat, of 30 seats or less and a maximum payload capacity of 7,500 pounds or less to operate under the provisions of Part 121 rather than Part 135 when a specific authorization is obtained from the Administrator (the related "pass-through" provision of SFAR 39 is deleted); (6) require rotorcraft operations that may currently be subject to Parts 121 and 127 to be conducted under Part 135; and (7) include the substance of present Part 129

applicability in order to provide a comprehensive listing of certification and operations specifications requirements.

EFFECTIVE DATE: June 4, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Bedore, Project Development Branch, Air Transportation Divisions, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 472-4621.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1985, the FAA issued Notice of Proposed Rulemaking (NPRM) No. 85-3 (50 FR 4472). This notice proposed to revise SFAR 38 primarily to specify and clarify FAA requirements for operating certificates and for operations specifications for persons who operate under Federal Aviation Regulations Parts 121 and 135. The notice was issued to bring SFAR 38 up to date in view of changes in the regulations and in the aviation industry that had occurred since it was issued in 1978 and also as part of the FAA's continuing response to the sunset of the Civil Aeronautics Board.

This amendment updates SFAR 38 in light of changes since 1978 and clarifies those provisions in SFAR 38 that states which FAA regulations apply to a particular air carrier for the type of operation the air carrier is conducting in the areas summarized below. A fuller discussion of each area is contained in the preamble to NPRM 85-3.

One of the purposes of this amendment is to clearly define, for each type of operation (e.g., scheduled common carriage within the United States, all-cargo operations, scheduled common carriage outside the United States, etc.): (1) The type of certificate, (2) the certification requirements, (3) the operations specifications, and (4) the regulations within the applicable Parts of the FAR with which an operator must comply when conducting each type of operation.

As amended, SFAR 38-2 makes it clear that wherever the term "commuter air carrier" appears in Part 135 of the FAR, it shall be deemed to mean a holder of an "Air Carrier Operating Certificate" that is conducting scheduled passenger carrying operations with a frequency of operations of at least five round trips per week on at least one route between two or more points according to published flight schedules. This frequency of operations is a standard currently accepted by the industry and the FAA for air carrier certification and operation rules. However, this definition would not apply to Part 93 of the FAR. Further, a regulation that applies to a commuter air carrier will be deemed to mean a regulation that applies to scheduled passenger-carrying operations conducted under Part 135.

SFAR 38-2 allows the Administrator to authorize an air carrier who would otherwise be subject to Part 135 to elect to conduct its operations with transport category airplanes under Part 121. However, an air carrier is not allowed to operate airplanes subject to Part 121 under Part 135.

SFAR 38-2 does not reference § 135.2, and any air carrier conducting its operations under the "pass-through" provision is required to conduct its operations under Part 135, unless it receives authorization from the Administrator to conduct its operations under Part 121.

SFAR 38 is updated by adding provisions which reference Part 125 which became effective February 3, 1981, and deletes the provisions relating to Part 123 which was revoked effective January 1, 1983.

SFAR 38-2 requires rotorcraft operations that are now conducted under Part 121 or Part 127 to be conducted under Part 135. The amendment, in effect, suspends Part 127 and §§ 121.13 and 121.157(e), and requires all rotorcraft operations to be conducted under Part 135.

As amended, SFAR 38-2 includes the substance of the applicability of present Part 129 in order to provide for a comprehensive listing of certification and operations specifications requirements.

SFAR 38 as revised by this amendment will be effective until May 1, 1986, unless sooner superseded or revoked.

Comments on Proposed SFAR 38-2

During the comment period, the FAA received 15 comments. The limited number of comments received and the tone of the comments indicate overall substantial agreement with proposed SFAR 38-2. A few commenters recommended minor changes or raised questions about certain provisions of SFAR 38-2.

One commenter questioned whether the opening sentence of SFAR 38-2 which reads "Contrary provisions of Parts 121, 125, 127, 129, and 135 of the Federal Aviation Regulations notwithstanding," may create confusion. The "notwithstanding" clause is a carryover from original SFAR 38 and it does not appear to have caused the kind of confusion the commenter suggests.

Four commenters request that the phrase "passenger seating capacity" in proposed paragraphs 4(a) and 4(b) be changed to "passenger seating configuration" as it is in current SFAR 38 paragraphs 2 (a) and (b) and 3 (a) and (b). The reason is that the proposed wording would mean that if an aircraft has been certificated for a certain maximum seating capacity, that figure would be the compliance factor, rather than the number of installed passenger seats in the aircraft. The FAA did not intend to change the criteria for compliance and has, therefore, changed the language back to passenger seating configuration" as it appears in the provisions of present SFAR 38 cited above.

For consistency of langauge within SFAR 38-2 and also for consistency of application of the FAR, the term "passenger seating capacity" in paragraph 5(a), which relates to Part 125 has also been changed to passenger seating configuration" even though Part 125 (section 125.1(a)) presently uses "seating capacity." The FAA does not consider this a substantive change since Part 125 has been applied on the basis of seating "configuration" rather than seating "capacity."

One commenter objected to the phrase "certain procedures" used in Section 3 as being unclear. The commenter suggested changing "certain procedures" to "appropriate regulations." The FAA does not agree. The term "certain procedures" refers to procedures that may be included in operations specifications to reflect requirements imposed on a specific operator in addition to the Federal Aviation Regulations. Examples would include specific procedures that might be tied in with a deviation or an exemption approved for that carrier. The commenter also objected to the phrase "size of aircraft" in Section 3 as not being sufficiently specific. The commenter suggested changing "size of aircraft" to "seating and payload capacity." The commenter's point is valid and has been adopted by inclusion of a definition of "size of aircraft" in Section 6(c). Also, in Section 1(a) and in Section 3, the word "type" in reference to type of aircraft, has been changed to "class" to make it clear that the distinction intended is not between types of aircraft (e.g. B-727, DC-8, etc.) but rather between classes of aircraft (e.g. airplanes, rotorcraft, etc.).

One commenter suggests that the preamble statements regarding CAB sunset be updated to show that a finding of fitness is a continuing requirement under the sunset legislation and that the

Department of Transportation now has this function formerly handled by the CAB. The FAA agrees. The NPRM preamble was written before the 1984 amendments to the Airline Deregulation Act of 1978, (Pub. L. 98-443, October 4, 1984) which stipulated that DOT will continue the CAB function of determining fitness.

One commenter objects to the explanation in the preamble concerning confusion as to applicable regulations resulting from the sunset of the CAB. This commenter states that a FAA policy change, rather than confusion, was responsible for the FAA's requiring 21 carriers to shift from the supplemental rules of Part 121 to the domestic or flag rules of Part 121, as appropriate. This point was addressed in the preamble to the proposed revision of SFAR 38 as follows:

"It is the FAA's position that an air carrier certificated under current SFAR 38 in accordance with the rules of Part 121 must, if it is engaged in scheduled passenger operations, operate in accordance with the rules applicable to domestic or flag air carriers as required by § 121.3(a) or § 121.3(c) and be issued domestic and flag operations specifications. Furthermore, it is the FAA's position that an air carrier engaged in nonscheduled passenger-carrying operations must operate in accordance with the rules applicable to supplemental air carriers in accordance with § 121.3(e) and be issued supplemental operations specifications. The FAA has issued interpretive material to explain the correct application of these rules, but believes that the regulations should be clarified."

These 21 operators now have the appropriate operations specifications and have been brought in compliance with the applicable regulations in Part 121 so that this revision of SFAR 38 imposes no burden.

This commenter also thought that elimination of the "pass-through" provision in paragraph 2(d) of SFAR 38 would impose a similar burden. However, the inclusion of paragraph 4(b) as proposed allows persons operating transport category airplanes to obtain approval from the Administrator to conduct those operations under the apropriate provisions of Part 121. This provision is less limited than the original pass-through provision (which applied only to operations existing on December 1, 1978) and applies only when requested by the operator and approved by the Administrator.

Two commenters object to the definition of "commuter air carrier." One of the commenters seems to object to applying the term "commuter" to air carriers who are operating under Part 121 domestic rules, but who are operating propeller driven aircraft of less than 60 seats. Such operators consider themselves to be "regional" air carriers who compete equally with other types of air carriers. However, the definition of commuter air carriers does not apply to operations under Part 121 because it applies only to operations under Part 135 with aircraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

A second commenter objects to provisions in the definition of "commuter air carriers" that state that frequency of operations is "at least five round trips per week on at least one route between two or more points * * *" The commenter objects on the basis that the definition constitutes a public convenience and necessity requirement and that the authority domestically to issue a Certificate of Public Convenience and Necessity for domestic operations was terminated by Congress on January 1, 1982. In response, the FAA does not intend by this definition to create a public convenience and necessity requirement in the "commuter air carrier" definition. The definition has been used historically in Part 135 to refer to scheduled operations as opposed to non-scheduled. To preclude a change in the operations requirements prescribed in SFAR 38, the commuter air carrier route and frequency stipulation is needed in the SFAR 38-2 definition in order to continue to exclude those operators who may fly fewer than five round trips per week from certain commuter air carrier requirements prescribed in Part 135.

A commenter objected to the definition of "scheduled operations." According to the commenter, the definition would require charter operators to be issued domestic air carrier operations specifications if they were to contract for a series of public charters. The FAA does not agree that this definition includes legitimate charter operations. Scheduled operations by definition depart at a stated time and place and are readily available to the general public. While, on occasion, "charter" flights are "announced" in advance, the charter operator normally does not commit to having the flight operate unless a minimum load of passengers is booked in advance. Thus, the general public cannot depend upon a chartered flight maintaining a schedule (for example, there may be a last minute flight cancellation because not enough passengers signed up for the flight) as they can on a scheduled flight. An operator who attempts to hold itself out as a charter operator but who, in fact, announces regularly scheduled flights to the public would be considered a scheduled operator and would have to comply with the regulations for scheduled operations under Part 121 or Part 135, as appropriate.

Two commenters expressed concern that the definition of "air carriers" in section 6(c)(1) would require all indirect "air carriers" to have operating certificates and operations specifications under section 1(c) which states that "no person may operate without, or in violation of, a certificate and operations specifications issued under this SFAR."

While it is true, as these commenters point out, that the Federal Aviation Act of 1958 defines "air carrier" to include one who acts "indirectly" the FAA has never extended its air carrier regulations to persons who are legitimately engaged in indirect operations such as a bona fide freight forwarder. SFAR 38-2 does not treat indirect operators any differently than current SFAR 38 and so there is no substantive change. However, this does not mean that an indirect air carrier can avoid air carrier certification requirements if, in fact, that carrier is engaged in the operation of aircraft or exercises its authority over initiating, conducting, or terminating a flight or flights.

One commenter states that the application of Part 135 is somewhat open-ended with respect to rotorcraft having a passenger seating configuration of more than 30 seats or a maximum payload capacity of more than 7,500 pounds. The commenter states that in their responses to other rulemaking proposals concerning rotorcraft, such as Notice No. 85-8 (50 FR 10144, March 13, 1985), industry groups must now consider future operations of larger helicopters under Part 135. In response, the FAA notes that the proposal to require all sizes of rotorcraft to be operated under Part 135 is based on the recognition that there are significant deficiencies in Parts 121 and 127 that must be addressed before authorizing any rotorcraft operations under those rules. The issuance of special operations specifications is identified in the preamble of the proposal as an option to permit the operation of larger rotorcraft under Part 135. In the meantime, Exemptions Nos. 4109 and 4297 have been issued to two operators to permit the operation of BV-234 helicopters under Part 135. The FAA recognizes that additional rulemaking is needed to

adequately cover the operation of rotorcraft having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds. In the interim, since Part 135 does not presently address that size rotorcraft, operators of these rotorcraft will be issued special operation specifications which will provide for the appropriate level of safety required for that size aircraft. New paragraphs 4(d) and 5(d) are added to this SFAR to clarify this point, and to spell out what was intended in the NPRM.

Three commenters suggest changes which are beyond the scope of this notice of proposed rulemaking. As stated earlier in this notice and in the NPRM, this rulemaking updates and clarifies SFAR-38; it does not substantively revise the basic applicability of the affected parts. Therefore, these recommendations for substantive change beyond the scope of Notice 85-3 have not been considered in this rulemaking.

Good Cause Justification for Immediate Adoption

The termination date for SFAR 38 as extended by SFAR 38-1 is June 1, 1985. There are numerous operating certificates issued under the provisions of SFAR 38, as amended. In order to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements, it is necessary that this amendment be effective as soon as possible. Therefore, I find that good cause exists for making this amendment effective in less than 30 days.

Economic Impact

The FAA evaluated the economic impact of this amendment. This amendment is not expected to cause an adverse economic impact on the regulated parties because it is essentially clarifying in nature. The findings of FAA's evaluation are summarized below and a copy of the regulatory evaluation is contained in the docket.

The rule: (1) Specifies and clarifies certification requirements and regulations operators must comply with in conducting specific operations, (2) includes regulations that have been promulgated and deletes references to regulations that have been withdrawn since the adoption of SFAR 38, and (3) suspends regulations that are no longer applicable.

As previously pointed out, it is the FAA's position that the current regulations require scheduled operations in airplanes with more than 30 passenger seats to be conducted under the domestic or flag air carrier rules. Therefore, as the result of this rule, there should be minimal economic impact on the approximately 21 carriers previously discussed. Accordingly, a full economic evaluation is not required. Notwithstanding the above position, an economic evaluation was performed. This evaluation reveals that a small net benefit will accrue to the affected carriers because costs that may result from having to comply with the domestic and flag rules would be more than offset by cost savings associated with relaxation of reserve fuel requirements.

SFAR 38-2 suspends Part 127 and requires all rotorcraft carriers currently operating under Parts 121 and 127 to conduct their operations under Part 135. Such a change is expected to enhance safety because Part 135 contains safety related requirements for rotorcraft not specified in either Part 121 or 127. This rule will not generate any additional costs to regulated parties. At present, only two carriers, under exemption authority, operate rotorcraft with a capacity in excess of 30 seats or a 7,500-pound payload under Part 135. These rotorcraft would normally be subject to the provisions of Part 121 or 127. Moreover, commuter operations with large rotorcraft currently do not appear feasible at locations where the geographical distribution of service points make rotorcraft operations viable.

Trade Impact Statement

The FAA finds that the amendment will have no impact on international trade.

Regulatory Flexibility Determination

The FAA finds that the amendment will have no consequential economic impact on small entities. Accordingly, the FAA finds that an initial regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Conclusion

For the reasons stated under the heading "Economic Impact," the FAA has determined that this document involves a rule which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; Feb. 26, 1979). Also, for the reasons stated under the heading "Trade Impact Statement and Regulatory Flexibility Determination," I certify that the rule will not have a substantial economic impact on a substantial number of small entities. The total projected impact of the amendment may be found in a copy of the regulatory evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Parts 121, 125, 127, 129, and 135

Air carriers, Aircraft, Airmen, Aviation safety, Air taxis, Air transportation, Certification requirements, Common carriers, Operations specifications.

The Amendment

In consideration of the above, SFAR 38 (14 CFR Parts 121, 125, 127, 129, and 135) is revised to read as follows:

1. The authority citation for SFAR 38-2 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

2. By revising SFAR 38 to read as follows:

Special Federal Aviation Regulation Number 38-2—Certification and Operating Requirements

Index

Section

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(a)(2) Certification requirements.
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(c) Rotorcraft, 30 seats or less/7,500 pounds or less payload.
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(8) Maximum zero fuel weight.
(9) Justifiable aircraft equipment.

Special Federal Aviation Regulation Number 38-2

Contrary provisions of Parts 121, 125, 127, 129, and 135 of the Federal Aviation Regulations notwithstanding—

1. *Applicability.*

(a) This Special Federal Aviation Regulation applies to persons conducting commercial passenger operations, cargo operations, or both, and prescribes—

(1) The types of operating certificates issued by the Federal Aviation Administration;

(2) The certification requirements an operator must meet in order to obtain and hold operations specifications for each type of operation conducted and each class and size of aircraft operated; and

(3) The operating requirements an operator must meet in conducting each type of operation and in operating each class and size of aircraft authorized in its operations specifications. A person shall be issued only one certificate and all operations shall be conducted under that certificate, regardless of the type of operation or the class or size of aircraft operated. A person holding an air carrier operating certificate may not conduct any operations under the rules of Part 125.

(b) Persons conducting operations under more than one paragraph of this SFAR shall meet the certification requirements specified in each paragraph and shall conduct operations in compliance with the requirements of the Federal Aviation Regulations specified in each paragraph for the operation conducted under that paragraph.

(c) Except as provided under this SFAR, no person may operate as an air carrier or as a commercial operator without, or in violation of, a certificate and operations specifications issued under this SFAR.

2. *Certificates and foreign air carrier operations specifications.*

(a) Persons authorized to conduct operations as an air carrier will be issued an Air Carrier Operating Certificate.

(b) Persons who are not authorized to conduct air carrier operations, but who are authorized to conduct passenger, cargo, or both, operations as a commercial operator will be issued an Operating Certificate.

(c) FAA certificates are not issued to foreign air carriers. Persons authorized to conduct operations in the United States as a foreign air carrier who hold a permit issued under Section 402 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1372), or other appropriate economic or exemption authority issued by the appropriate agency of the United States of America will be issued operations specifications in accordance with the requirements of Part 129 and shall conduct their operations within the United States in accordance with those requirements.

3. *Operations specifications.*

The operations specifications associated with a certificate issued under paragraph 2 (a) or (b) and the operations specifications issued under paragraph 2 (c) of this SFAR will prescribe the authorizations, limitations and certain procedures under which each type of operation shall be conducted and each class and size of aircraft shall be operated.

4. *Air carriers, and those commercial operators engaged in scheduled intrastate common carriage.*

Each person who conducts operations as an air carrier or as a commercial operator engaged in scheduled intrastate common carriage of persons or property for compensation or hire in air commerce with—

(a) Airplanes having a passenger seating configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds, shall comply with the certification requirements in Part 121, and conduct its—

(1) Scheduled operations within the 48 contiguous states of the United States and the District of Columbia, including routes that extend outside the United States that are specifically authorized by the Administrator, with those airplanes in accordance with the requirements of Part 121 applicable to domestic air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(2) Scheduled operations to points outside the 48 contiguous states of the United States and the District of Columbia with those airplanes in accordance with the requirements of Part 121 applicable to flag air carriers, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) All-cargo operations and operations that are not scheduled with those airplanes in accordance with the requirements of Part 121 applicable to supplemental air carriers, and shall be issued operations specifications for those operations in accordance with those requirements; except the Administrator may authorize those operations to be conducted under paragraph (4)(a) (1) or (2) of this paragraph.

(b) Airplanes having a maximum passenger seating configuration of 30 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less, shall comply with the certification requirements in Part 135, and conduct its operations with those airplanes in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements; except that the Administrator may authorize a person conducting operations in transport category airplanes to conduct those operations in accordance with the requirements of paragraph 4(a) of this paragraph.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

5. *Operations conducted by a person who is not engaged in air carrier operations, but is engaged in passenger*

operations, cargo operations, or both as a commercial operator.

Each person, other than a person conducting operations under paragraph 2(c) or 4 of this SFAR, who conducts operations with—

(a) Airplanes having a passenger seating configuration of 20 or more, excluding any required crewmember seat, or a maximum payload capacity of 6,000 pounds or more, shall comply with the certification requirements in Part 125, and conduct its operations with those airplanes in accordance with the requirements of Part 125, and shall be issued operations specifications in accordance with those requirements, or shall comply with an appropriate deviation authority.

(b) Airplanes having a maximum passenger seating configuration of less than 20 seats, excluding any required crewmember seat, and a maximum payload capacity of less than 6,000 pounds shall comply with the certification requirements in Part 135, and conduct its operations in those airplanes in accordance with the requirements of Part 135, and shall be issued operations specifications in accordance with those requirements.

(c) Rotorcraft having a maximum passenger seating configuration of 30 seats or less and a maximum payload capacity of 7,500 pounds or less shall comply with the certification requirements in Part 135, and conduct its operations in those aircraft in accordance with the requirements of Part 135, and shall be issued operations specifications for those operations in accordance with those requirements.

(d) Rotorcraft having a passenger seating configuration of more than 30 seats or a payload capacity of more than 7,500 pounds shall comply with the certification requirements in Part 135, and conduct its operations with those aircraft in accordance with the requirements of Part 135, and shall be issued special operations specifications for those operations in accordance with those requirements and this SFAR.

6. *Definitions.*

(a) Wherever in the Federal Aviation Regulations the terms—

(1) "Domestic air carrier operating certificate," "flag air carrier operating certificate," "supplemental air carrier operating certificate," or "commuter air carrier" (in the context of Air Carrier Operating Certificate) appears, it shall be deemed to mean an "Air Carrier Operating Certificate" issued and maintained under this SFAR.

(2) "ATCO operating certificate" appears, it shall be deemed to mean either an "Air Carrier Operating Certificate" or "Operating Certificate," as is appropriate to the context of the regulation. All other references to an operating certificate shall be deemed to mean an "Operating Certificate" issued under this SFAR unless the context indicates the reference is to an Air Carrier Operating Certificate.

(b) Wherever in the Federal Aviation Regulations a regulation applies to—

(1) "Domestic air carriers," it will be deemed to mean a regulation that applies to scheduled operations solely within the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(1) of this SFAR.

(2) "Flag air carriers," it will be deemed to mean a regulation that applies to scheduled operations to any point outside the 48 contiguous states of the United States and the District of Columbia conducted by persons described in paragraph 4(a)(2) of this SFAR.

(3) "Supplemental air carriers," it will be deemed to mean a regulation that applies to charter and all-cargo operations conducted by persons described in paragraph 4(a)(3) of this SFAR.

(4) "Commuter air carriers," it will be deemed to mean a regulation that applies to scheduled passenger carrying operations, with a frequency of operations of at least five round trips per week on at least one route between two or more points according to the published flight schedules, conducted by persons described in paragraph 4 (b) or (c) of this SFAR. This definition does not apply to Part 93 of this chapter.

(c) For the purpose of this SFAR, the term—

(1) "Air carrier" means a person who meets the definition of an air carrier as defined in the Federal Aviation Act of 1958, as amended.

(2) "Commercial operator" means a person, other than an air carrier, who conducts operations in air commerce carrying persons or property for compensation or hire.

(3) "Foreign air carrier" means any person other than a citizen of the United States, who undertakes, whether directly or indirectly or by lease or any other arrangement, to engage in foreign air transportation.

(4) "Schedule operations" means operations that are conducted in accordance with a published schedule for passenger operations which includes dates or times (or both) that is openly advertised or otherwise made readily available to the general public.

(5) "Size of aircraft" means an aircraft's size as determined by its seating configuration or payload capacity, or both.

(6) "Maximum payload capacity" means:

(i) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flight crew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(ii) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(A) Crew—200 pounds for each crewmember required by the Federal Aviation Regulations.

(B) Oil—350 pounds.

(C) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

(7) "Empty weight" means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

(8) "Maximum zero fuel weight" means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, or the approved Aircraft Flight Manual, or both.

(9) "Justifiable aircraft equipment" means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

This Special Federal Aviation Regulation No. 38-2 terminates May 1, 1986, unless sooner superseded or revoked.

Issued in Washington, D.C., on May 28, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-13735 Filed 6-4-85; 2:12 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Parts 20 and 100

[Docket No. 50580-5080]

Bureau Seal; Redesignation of CFR Part

AGENCY: Bureau of the Census, DOC.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is hereby redesignating Title 15, Code of Federal Regulations, Part 20, Seal of the Bureau of the Census, as Title 15, Code of Federal Regulations, Part 100. This change is being made to provide the Office of the Secretary of Commerce additional parts in Subtitle A of Title 15, Code of Federal Regulations, Parts 20–29.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Michael S. McKay, Chief, Organization and Management Systems Division, Bureau of the Census, (301) 763-7452.

SUPPLEMENTARY INFORMATION: Since this rule is related to agency management, it is not a rule within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that order. Accordingly, no preliminary or final Regulatory Impact Analysis has or will be prepared.

The Regulatory Flexibility Act does not apply to this rule because the rule is not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

Because this rule relates to agency management, it is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)). Therefore, it is being issued in final and is being made immediately effective upon publication.

The legal authority is Title 13, Section 3, United States Code.

List of Subjects in 15 CFR Part 100

Seals and Insignia.

15 CFR Part 20, in Subtitle B relating to the Seal of the Bureau of the Census is redesignated as Part 100.

Dated: May 23, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-13621 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 4

[Docket No. RM83-56-000]

Application for License Permit and Exemption From Licensing for Water Power Projects; Correction

June 4, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Correction.

SUMMARY: This document corrects a final rule that amends 18 CFR Part 4 that appeared at page 11,658 in the Federal Register of Monday, March 25, 1985 (50 FR 11,658). This action is necessary to correct typographical errors in designating paragraphs and cross references.

DATES: The final rule will become effective June 10, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph H. Long, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-5555.

The following corrections are made in FR Doc. 85-6842, appearing on page 11,658 in the issue of March 25, 1985:

1. On page 11,681, in column three, "(d) *Notices of intent.*" is corrected to read" (c) *Notices of intent.*" and "(e) *Requirements for completing applications.*" is corrected to read "(d) *Requirements for completing applications.*"

2. On page 11,682, in column one, the reference to "paragraph (c)(2)(i)", which appears in the second and third full paragraphs is corrected to read "paragraph (d)(2)(i)".

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13788 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public that the current rate of interest to be charged or paid by Customs on applicable overpayments or underpayments of Customs duties is 13 percent. This rate is set by the Internal Revenue Service and is subject to change twice a year. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Accounting Division, Office of the Comptroller, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2596).

SUPPLEMENTARY INFORMATION:

Background

By T.D. 85-93, published in the Federal Register on May 29, 1985 (50 FR 21832), Customs advised the public, that, in order to implement two provisions of Pub. L. 98-573, the Trade and Tariff Act of 1984, interest on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established in 26 U.S.C. 6621 and 6622. This determination covers antidumping and countervailing duty payments, and increased or additional Customs duties determined to be due on a liquidation or reliquidation of an entry. In addition, T.D. 85-93 also stated that it has been determined that a uniform interest payment system should be established and that refunds pursuant to a court determination and payable under 28 U.S.C. 2644, and interest on overpayments and underpayments of estimated excise taxes determined at liquidation, shall be assessed at the rate prescribed under 26 U.S.C. 6621 and 6622.

Although T.D. 85-93 stated that the current semiannual interest rate may be obtained from the IRS or any Regional Customs Financial Management Office at any time, Customs received a suggestion that it regulary publish the current interest rate in the *Customs Bulletin* and Federal Register for the convenience of the importing public and

Customs personnel. Customs agrees that this would be beneficial. Accordingly, we are publishing this notice and will continue to publish future notices on a semiannual basis.

Action

The rate of interest for the period of January 1, 1985–June 30, 1985, is 13 percent. This rate will remain in effect until July 1, 1985, when it is subject to change.

Dated: May 31, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85-13753 Filed 6-6-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0113]

Chlorophyllin-Copper, Oil Soluble; Listing as a Color Additive for Use in Polymethylmethacrylate Bone Cement; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 23, 1984, for a regulation that provides for the safe use of chlorophyllin-copper complex, oil soluble, as a color additive for use in polymethylmethacrylate bone cement. This action responds to a petition filed by E.M. Industries, Inc.

DATE: Effective date confirmed: January 23, 1984.

FOR FURTHER INFORMATION CONTACT: Carl A. Larson, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7156.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of December 21, 1983 (48 FR 56368), FDA amended the color additive regulations to provide for the safe use of chlorophyllin-copper complex, oil soluble, as a color additive for coloring polymethylmethacrylate bone cement (21 CFR 73.3110).

In the final rule, FDA gave interested persons until January 20, 1984, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of December 21, 1983, for chlorophyllin-copper complex, oil soluble, should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of December 21, 1983. Accordingly, the final rule adding § 73.3110 *Chlorophyllin-copper complex, oil soluble,* became effective January 23, 1984.

Dated: May 30, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-13715 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 81F-0182]

Indirect Food Additives; Adjuvants, Production Aids and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of elemental iodine, potassium iodide, and isopropanol as components of a sanitizing solution for use on food-contact surfaces. This action responds to a petition filed by the Diversey Wyandotte Corp.

DATES: Effective June 7, 1985; objections by July 8, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 10, 1981 (46 FR 35790), FDA announced that a petition (FAP OH3484) had been filed by Diversey Wyandotte Division, Diversey Corp., 1532 Biddle Ave., Wyandotte, MI 48192 (now the Diversey Wyandotte Corp.), proposing that the food additive regulations be amended to provide for the safe use of elemental iodine, potassium iodide, and isopropanol as components of a sanitizing solution for use on food-contact surfaces.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP OH3484 (July 10, 1981; 46 FR 35790). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1010 by adding new paragraph (b)(25) and revising paragraph (c)(19) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(25) An aqueous solution containing elemental iodine (CAS Reg. No. 7553-56-2), potassium iodide (CAS Reg. No. 7681-11-0), and isopropanol (CAS Reg. No. 67-63-0). In addition to use on food processing equipment and utensils, this solution may be used on beverage containers, including milk containers and equipment and on food-contact surfaces in public eating places.

* * * * *

(c) * * *

(19) Solutions identified in paragraphs (b)(24) and (b)(25) of this section shall provide at least 12.5 parts per million and not more than 25 parts per million of titratable iodine. The adjuvants used with the iodine shall not be in excess of the minimum amounts required to accomplish the intended technical effect.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 8, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective June 7, 1985.

Dated: May 28, 1985.

John Taylor,

Acting Director, Office of Compliance, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-13717 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

Correction

In FR Doc. 85-11799 appearing on page 20408 in the issue of Thursday, May 16, 1985, make the following corrections:

1. On page 20408, second column, *NADA and Sponsoring Firm*, number 2., second line, "Hazeline" should read "Hazeltine".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[T.D. ATF-198; correction]

Implementing the Distilled Spirits Tax Revision Act and Portion of Crude Oil Windfall Profit Tax Act

Correction

In FR Doc. 85-13216 appearing on page 23410 in the issue of Tuesday, June 4, 1985, make the following correction: In the middle column, in Paragraph 13, second line, "§ 19.525(b)(3)" should read "§ 19.524(b)(3)".

BILLING CODE 1505-01-M

27 CFR Parts 19, 170, 194, 197, 250, 251, and 252

[T.D. ATF-206]

Repeal of Stamp Requirement for Containers of Distilled Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Treasury decision (final rule).

SUMMARY: This final rule amends ATF regulations to implement section 454 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which was signed on July 18, 1984. This section repeals the stamp requirement for containers of distilled spirits, effective July 1, 1985. Containers having a capacity of one wine gallon or less will be required to bear tamper-evident closures or other devices which are designed to require breaking in order to gain access to the contents of the containers. This document also eliminates the requirement that closures on bottles of distilled spirits to be exported be marked with the word "Export".

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Susan McCarron or Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202)-566-7531).

SUPPLEMENTARY INFORMATION:

Background

Historically, stamps on containers of distilled spirits have served as evidence that the packager, bottler, or importer of the spirits had fully complied with the provisions of Chapter 51 of the Internal Revenue Code of 1954 (as amended) and, when applicable, had paid all excise taxes due on the spirits. With the enactment of the Distilled Spirits Tax Revision Act of 1979, Pub. L. 96-39, effective January 1, 1980, prescribing an all-in-bond system for domestic distilled spirits plants, the regulations and supervision of plant operations have been liberalized. This has caused the stamps to have only negligible value in evidencing compliance with the law and payment of excise taxes.

Under current law, the Secretary of the Treasury is provided the authority to prescribe regulations governing the procuring and use of the stamps, and is required to furnish the stamps used on containers of distilled spirits. This has cost the U.S. government approximately $1.7 million annually in printing costs.

Changes Due to Pub. L. 98-369

On July 18, 1984, President Reagan signed the Deficit Reduction Act of 1984 (Pub. L. 98-369). Section 454 of this Act repeals the stamp requirement for containers of distilled spirits, and amends the penalty provisions accordingly. An amendment is made to 26 U.S.C. 5301 to require that containers having the capacity of one wine gallon or less must bear anti-tampering closures or other devices which are designed to require breaking to gain access to the contents of the containers.

Conforming amendments to the law resulting from section 454 include alowing the return of bottled distilled spirits to the bonded premises of a plant for reclosing, and the marking of cases rather than the individual bottles with the word "Export" when spirits are removed for export.

The intent of the anti-tampering closure requirement for bottles of spirits was to ensure product integrity for the consumer. That is, the unbroken closure or other device is evidence that the

bottle contains taxpaid spirits that are in the same condition as such spirits were when removed from the distilled spirits plant, or as entered into the U.S. Therefore, ATF has adopted the standards for alternative closures as the new closure requirement. The anti-tampering closure or other device must be securely affixed and leave a portion of the closure or device on the container after opening. The closure or other device must also be broken when the container is opened.

Regulatory Changes

The repeal of the stamp requirement for containers of distilled spirits necessitates many regulatory changes. Proprietors of distilled spirits plants and importers will no longer be required to maintain records of strip stamps/alternative devices. The reporting requirements for strip stamps/alternative devices are also deleted from the regulations.

Proprietors will still be required to account for any spirits returned to their bonded premises for reclosing. They must also continue to mark containers in excess of one gallon and cases of spirits withdrawn for export with the word "Export".

In general, the repeal of the stamp requirement lessens the recordkeeping and physical burdens to the distilled spirits industry by eliminating the requirement to affix and account for these stamps.

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because no notice of proposed rulemaking is required.

Paperwork Reduction Act

The requirements to collect information imposed by this final rule have been approved by the Office of Management and Budget under Sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35.

Drafting Information

The principal authors of this document are Susan McCarron and Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

The effective date of section 454 of Pub. L. 98-369 is mandated by section 456 as July 1, 1985. Consequently, it is found that it would be impracticable and unnecessary to issue this final regulation with prior notice and public procedure under 5 U.S.C. 553(b). Accordingly, these final regulations shall become effective on July 1, 1985.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Drugs, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs, Excise taxes, Foods, Liquors, Reporting and recordkeeping requirements, Spices and Flavorings, Surety bonds.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic funds transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Island, Warehouses, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

PART 19—[AMENDED]

27 CFR Part 19 *Distilled Spirits Plants* is amended as follows:

Paragraph 1. The authority citation for Part 19 reads as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

Par. 1a. The table of contents is amended as follows:

Sec.

* * * * *

Subpart M—Processing Operations Other Than Denaturation and Manufacture of Articles

* * * * *

19.393 Reclosing and Relabeling.

* * * * *

Subpart R—Containers and Marks

* * * * *

19.610 Obliteration of marks.
19.611 Relabeling and reclosing off bonded premises.

* * * * *

Subpart T—Closures.

19.661 General.
19.662 Affixing closures.
19.663 Reclosing.
19.664 [Removed]
19.665 [Removed]
19.666 [Removed]
19.667 [Removed]
19.668 [Removed]
19.669 [Removed]
19.670 [Removed]
19.671 [Removed]
19.672 [Removed]
19.673 [Removed]

* * * * *

Subpart W—Records and Reports

19.772 [Removed]

* * * * *

Par. 2. Section 19.11 is amended by revising the definition of spirits or distilled spirits to remove reference to strip stamps, to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced), but not denatured spirts unless specifically stated. For the puprose of the requirements of this part relating to liquor bottles and labels, the term "spirits" or "distilled spirits" shall not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. However, distilled spirits products containing wine bottled at 48 degrees of proof or less, if such mixture contains more than 50 percent wine on a proof gallon basis, shall be subject to the formula requirements of this part and 27 CFR Part 5 and the labeling, advertising, and standards of fill requirements in 27 CFR Part 4.

* * * * *

Par. 3. Section 19.211 is revised to remove reference to strip stamps to read as follows:

§ 19.211 Notice of permanent discontinuance.

When the proprietor permanently discontinues any or all of the operations listed in the notice of registration, he shall file a Form 5110.41 to show the discontinuance. Form 5110.41 shall be accompanied (a) by all permits issued to the proprietor under this subpart covering the discontinued operations, and by the proprietor's request that such permits be canceled; (b) by the proprietor's written statement disclosing, as applicable, whether (1) all spirits, denatured spirits, articles, wines, liquor bottles, and other pertinent items have been lawfully disposed of, (2) any spirits, denatured spirits, wines, or liquor bottles are in transit to the premises, (3) all approved applications for transfer of spirits and denatured spirits to the premises have been secured and returned to the regional director (compliance) for cancellation; and (c) by pertinent reports covering the discontinued operations (each report shall be marked "Final Report").

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended, 1370, as amended (26 U.S.C. 5172, 5271))

Par. 4. Subpart M is amended to remove references to strip stamps alternative devices, and distilled spirits stamps by revising §§ 19.388 (a)(1) and (b)(2), 19.389, 19.391, 19.393, 19.394, 19.397, and 19.398(b) to read as follows:

Subpart M—Processing Operations Other Than Denaturation and Manufacture of Articles

* * * * *

§ 19.388 Cases.

(a) *General.* (1) On completion of bottling, the filled bottles with labels and properly affixed closures or other devices shall be placed in cases, and the cases shall be sealed.

* * * * *

(b) * * *

(2) Unsealed cases containing bottles without labels shall be marked in accordance with Subpart R of this part, and segregated from other cases on bonded premises pending affixing of the labels, State stamps, or seals.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

§ 19.389 Remnants.

Where incident to bottling there remain bottles less than the number necessary to fill a case, the bottles, after being affixed with closures or other devices and labeled, may be marked as a remnant case as provided in Subpart R of this part or kept uncased on the bonded premises until spirits of the same kind are again bottled. Appropriate notation shall be made on the bottling and packaging record to cover the bottling and disposition of the remnant. If the remnant is subsequently used to complete the filling of a case, an accounting shall be made on the subsequent bottling and packaging record showing the use of the remnant by adding the remnant gallonage to the quantity to be accounted for together with appropriate notation explaining the transactions.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1360, as amended (26 U.S.C. 5201, 5206))

* * * * *

§ 19.391 Removals by bulk conveyances or pipelines.

When the spirits in the processing accounts are to be removed in bulk conveyances or by pipeline, the proprietor shall record the filling of the conveyance or the transfer by pipeline on the bottling and packaging record. The spirits shall be removed from bonded premises in accordance with Subpart P of this part. The cosignor shall forward to the consignee a statement of composition or a copy of any formula under which such spirits were processed for determining the proper use of the spirits, or for the labeling of the finished product. Bulk conveyances shall be marked as provided in Subpart R of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

* * * * *

§ 19.393 Reclosing and relabeling.

The proprietor may reclose or relabel distilled spirits, either before removal from bonded premises or after return thereto. The reclosing or relabeling of spirits returned to bonded premises shall be done immediately, and the spirits promptly removed. When spirits were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling. When spirits are relabeled, the proprietor shall have a certificate of label approval or certificate of exemption from label approval issued under 27 CFR Part 5 for labels used on relabeled spirits. The proprietor shall prepare a separate record according to § 19.747 to cover the relabeling or reclosing. For spirits returned to bond under 26 U.S.C. 5215(c), the proprietor shall annotate such information on the record.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended, 1358, as amended (26 U.S.C. 5201, 5205); Sec. 807, Pub. L. 96-39, 93 Stat. 280 (26 U.S.C. 5215))

§ 19.394 Bottled-in-bond spirits.

Spirits which are labeled as bottled-in-bond for domestic consumption shall meet the requirements in 27 CFR Part 5 and shall bear a closure or other device as required by Subpart T of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201))

(Approved by the Office of Management and Budget under control number 1512-0189)

* * * * *

§ 19.397 Spirits not originally intended for export.

Spirits manufactured, produced, bottled in bottles, packed in containers, or which are packaged in casks or other bulk containers in the United States, originally intended for domestic use may be exported with benefit of drawback or without payment of tax if the cases or bulk containers are marked as required by 27 CFR Part 252. The proprietor may relabel the spirits to show any of the

information provided for in § 19.395. When the proprietor desires to file a claim for drawback on spirits prepared for export under this section, the provisions of 27 CFR 252.195b shall be followed. When the proprietor desires to withdraw spirits without payment of tax, he shall file a notice in accordance with 27 CFR 252.92.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1336, as amended, 1358, as amended, 1362, as amended (26 U.S.C. 5062, 5205, 5214))

(Approved by the Office of Management and Budget under control number 1512–0189)

§ 19.398 Alcohol.

* * * * *

(b) *Closures.* Closures or other devices shall be affixed to containers of alcohol as provided in Subpart T of this part.

* * * * *

Par. 5. Subpart R of Part 19 is amended to remove all references to strip stamps and distilled spirits stamps, by revising §§ 19.583(b), 19.588(a)(5), 19.592, 19.610 and 19.611 to read as follows:

Subpart R—Containers and Marks

* * * * *

§ 19.583 Spirits for industrial use.

* * * * *

(b) *Encased containers.* Unlabeled containers holding from 1 to 10 gallons of denatured spirits and spirits of 190 degree proof or more for industrial use may be encased in wood, fiberboard, or similar material if:

(1) The cases are constructed so that the surface, including the opening, of the container is not exposed;

(2) Required marks are applied to an exterior surface of the case;

(3) The case is constructed so that the portion containing marks will remain attached to the inner container until all the contents have been removed; and

(4) A statement reading "Do not remove inner container until emptied" or of similar meaning is placed on the portion of the case bearing the marks.

* * * * *

§ 19.588 Construction of bulk conveyances.

(a) * * *

(5) A route board, or other suitable device, for carrying required marks or brands shall be provided on each bulk conveyance.

* * * * *

§ 19.592 General.

Proprietors shall mark, identify, and label all containers of spirits or denatured spirits as provided by this part. Containers of wine shall be marked in accordance with 27 CFR Part 240. Containers of articles shall be marked in accordance with 27 CFR Part 211.

(Sec. 201 Pub. L. 85–859, 72 Stat. 1358, as amended, 1360, as amended (26 U.S.C. 5204, 5206))

* * * * *

§ 19.610 Obliteration of marks.

Except as provided in § 19.597(b), the marks required by this part to be placed on any container or case shall not be destroyed or altered before the container or case is emptied.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5206))

§ 19.611 Relabeling and reclosing off bonded premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, or reclose bottled taxpaid spirits on wholesale liquor dealer premises or at a taxpaid storeroom on, contiguous to, adjacent to, or in the immediate vicinity of the plant, if such wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant. If products which are relabeled under this section were originally bottled by another proprietor, the relabeling proprietor shall have on file a statement from the original bottler consenting to the relabeling.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1356, as amended, (26 U.S.C. 5201))

* * * * *

Par. 6. Section 19.635 is revised to read as follows:

§ 19.635 Bottles to be used for display purposes.

Liquor bottles may be furnished to liquor dealers for display purposes, provided that each bottle is marked to show that it is to be used for such purpose. The disposition of such bottles, showing names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles, shall be included in the records required under § 19.747.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1374, as amended (26 U.S.C. 5301))

(Approved by the Office of Management and Budget under control number 1512–0198)

Par. 7. The Subpart T heading and §§ 19.661, 19.662, and 19.663 are revised to read as follows:

Subpart T—Closures

§ 19.661 General.

Each bottle or other container of spirits having a capacity of one gallon (3.785 liters) or less shall bear a closure or other device affixed in accordance with § 19.662. The closure or other device shall be affixed to the container prior to withdrawal from bond or customs custody.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

(Approved by the Office of Management and Budget under control number 1512–0461)

§ 19.662 Affixing closures.

Closures or other devices on containers having a capacity of one gallon (3.785 liters) or less shall be securely affixed to the containers so as to leave a portion remaining on the container when the container is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5301))

§ 19.663 Reclosing.

Bottles of distilled spirits filled on bonded premises may be reclosed under the provisions of Subpart M of this part. Bottles of distilled spirits to which closures or other devices have been affixed may also be reclosed under the provisions of § 19.611.

(Sec. 454, Pub. L. 98–369, 98 Stat. 494 (26 U.S.C. 5215))

§§ 19.664 through 19.673 [Removed]

Par. 8. Sections 19.664 through 19.673 are removed.

§ 19.681 [Amended]

Par. 9. Section 19.681 is amended by removing the word "restamping" in paragraphs (a) and (d), and inserting in its place the word "reclosing".

Par. 10. Section 19.686 is amended by revising paragraph (d) to read as follows:

§ 19.686 Return of spirits withdrawn without payment of tax.

* * * * *

(d) *Procedure.* When spirits are received, they shall be gauged by the proprietor. When spirits which were removed for exportation are returned to bonded premises pending subsequent removal for a purpose other than exportation, all export marks on the containers in which the spirits are returned shall be obliterated.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1362, as amended, 1365, as amended, 1382, as amended (26 U.S.C. 5214, 5223, 5373); Sec. 3, Pub. L. 91–659, 84 Stat. 1965, as amended (26 U.S.C. 5066))

§ 19.704 [Amended]

Par. 11. Section 19.704 is amended to remove paragraph (c).

Par. 12. Section 19.747 is amended by revising paragraph (f) to read as follows:

§ 19.747 Records of manufacturing.

* * * * *

(f) The rebottling, relabeling, and reclosing of bottled products as required by §§ 19.392 and 19.393.

* * * * *

Par. 13. Paragraph (e)(10) of § 19.769 is removed and paragraph (e)(11) is redesignated as (e)(10). As amended, § 19.769(e)(10) reads as follows:

§ 19.769 Package gauge record.

* * * * *

(e) * * *

(10) Receiving weights, when a material difference appears on receipt after transfer in bond of weighed packages.

(Sec. 807, Pub. L. 93-39, 93 Stat. 284 (26 U.S.C. 5207))

(Approved by the Office of Management and Budget under control number 1512-0250)

§ 19.772 [Removed]

Par. 14. Section 19.772 is removed.

Par. 15. Section 19.773 is amended to change the restamping requirements to reclosing requirements, by revising the introductory text, (c)(3) and (4) to read as follows:

§ 19.773 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with his plant, conducts wholesale liquor dealer operations, or operates a taxpaid storeroom, on, contiguous to, adjacent to, or in the immediate vicinity of general plant premises, or operates taxpaid storage premises at another location from which distilled spirits are not sold at wholesale, he shall maintain daily records of the receipt and disposition of all distilled spirits and wines at such premises, and of all reclosing and relabeling operations. The provisions of this section shall also apply to products returned to a wholesale liquor dealer or taxpaid storeroom from the market. A separate record shall be kept for each such premises. The records in respect of the receipt and disposition of distilled spirits and wines shall contain all data necessary (consisting of or supported by records including bills of lading and invoices) to enable ATF officers to identify and trace such receipt and dispositions and to ascertain whether there has been compliance with all laws and regulations relating thereto. In addition to any other information shown therein, such records shall include:

* * * * *

(c) *For reclosing or relabeling operations* * * *

(3) The total number of bottles; and

(4) The name of the bottler.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1395, as amended (26 U.S.C. 5555))

(Approved by the Office of Management and Budget under control number 1512-0198)

Par. 16. Section 19.792 is amended by removing paragraph (b)(4) and revising paragraph (c) to read as follows:

§ 19.792 Reports.

* * * * *

(c) All reports required by this part shall be prepared and submitted to the regional director (compliance) not later than the 15th day of the month following the close of the reporting period.

(Sec. 807, Pub. L. 96-39, 98 Stat. 284 (26 U.S.C. 5207))

(Approved by the Office of Management and Budget under control number 1512-0198)

PART 170—[AMENDED]

27 CFR Part 170—*Miscellaneous Regulations Relating to Liquor*, is amended to read as folllows:

Paragraph 1. The authority citation for Part 170 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 170 is amended by removing Subpart A, consisting of §§ 170.1 through 170.7, as follows:

Subpart A—[Removed]

Subpart B—Returns of Substances, Articles, or Containers

* * * * *

Subpart A—[Removed]

Par. 2. Subpart A of Part 170 consisting of §§ 170.1 through 170.7 is removed.

§ 170.616 [Amended]

Par. 3. Section 170.616 is amended by removing the word "stamped,".

PART 194—[AMENDED]

27 CFR Part 194, *Liquor Dealers*, is amended as follows:

Paragraph 1. The authority citation for Part 194 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 194 is amended to remove Subpart P consisting of §§ 194.251 through 194.256 as follows:

* * * * *

Subpart P—[Removed]

* * * * *

Subpart P—[Removed]

Par. 2. Subpart P consisting of §§ 194.251 through 194.256 of Part 194 is removed.

§ 194.261 [Amended]

Par. 3. Section 194.261 is amended by removing the word "stamping" wherever it appears, and inserting in its place the word "closing".

Par. 4. Section 194.271 is amended by revising paragraphs (b) and (c) to read as follows:

§ 194.271 Requirements and procedure.

* * * * *

(b) *Operations.* Repackaging operations shall be conducted in accordance with the bottling and packaging requirements of Part 19 of this chapter. Packaging and labeling operations may be carried on without supervision of an ATF officer unless the regional director (compliance) requires supervision.

(c) *Records.* The dealer shall keep records, daily, showing the bulk alcohol received, dumped for packaging, packaged, and disposed of, including the name and address of each consignor and consignee. The dealer shall prepare a monthly report on Form 5110.28 of bulk alcohol received, packaged, and disposed of. Reports on Form 5110.28 shall be submitted to the regional director (compliance) not later than the 15th day of the month succeeding the period for which rendered. Records, documents, or copies of documents supporting the records, and copies of reports submitted to the regional director (compliance) shall be filed and retained as prescribed in §§ 194.236 and 194.237.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1343, as amended, 1358, as amended, 1360, as amended (26 U.S.C. 5116, 5205, 5206))

Par. 5. Section 194.281, is revised to read as follows:

§ 194.281 General.

A state, or political subdivision thereof, or a person holding a wholesale liquor dealer's basic permit issued under Part 1 of this chapter, may export bottled taxpaid distilled spirits with benefit of drawback to the extent provided in § 252.171 of this chapter. The marking of cases, preparation of notice of shipment on Form 5110.30, the removal and exportation of the distilled spirits, and the filing of claims by the processor of the spirits shall be in accordance with the applicable provisions of Parts 19 and 252 of this chapter.

PART 197—[AMENDED]

27 CFR Part 197, *Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products*, is amended to read as follows:

Paragraph 1. The authority citation for Part 197 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. Sections 197.112 and 197.113 are revised to read as follows:

§ 197.112 Distilled spirits received in tank cars or tank trucks.

Each claim covering distilled spirits received in tank cars or tank trucks shall be accompanied by a statement showing in respect of each shipment received: the date of receipt; the name and address of the vendor; the number or other identification mark of the tank car or tank truck; the name of the producer or warehouseman; and the kind, quantity, and proof of the spirits.

(Approved by the Office of Management and Budget under control number 1512-0378).

§ 197.113 Distilled spirits received in barrels, drums, or other portable containers.

Each claim covering distilled spirits received in barrels, drums, or other portable containers shall be accompanied by a statement showing: the date of receipt; the name and address of the vendor; the serial number, if any, of the container; the name of the producer or warehouseman as shown on the commercial invoice provided for in § 197.130b; and the kind, quantity, and proof of the spirits.

PART 250—[AMENDED]

27 CFR Part 250, *Liquors and Articles From Puerto Rico and the Virgin Islands*, is amended as follows:

Paragraph 1. The authority citation for Part 250 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805), unless otherwise noted.

Par. 1a. The table of contents for Part 250 is amended as follows:

* * * * *

Sec.
250.42 [Removed]
* * * * *
250.84 [Removed]
* * * * *
250.88 [Removed]
250.89 [Removed]
250.90 [Removed]
250.91 [Removed]
250.91a [Removed]
* * * * *
250.127 [Removed]
* * * * *

Subpart G—Closures for Distilled Spirits From Puerto Rico

250.135 Containers of distilled spirits to bear closures.
250.136 Affixing closures.
250.137 [Removed]
250.138 [Removed]
250.141 [Removed]
250.142 [Removed]
250.143 [Removed]
250.144 [Removed]
250.146 [Removed]
* * * * *
250.208 [Removed]
* * * * *

Subpart L—Closures for Distilled Spirits From the Virgin Islands

250.230 Containers of distilled spirits to bear closures.
250.231 Affixing Closures.
250.232 [Removed]
250.233 [Removed]
250.234 [Removed]
250.235 [Removed]
250.236 [Removed]
250.237 [Removed]
250.240 [Removed]
250.240a [Removed]
250.243 [Removed]
250.245 [Removed]
250.252 [Removed]
250.252a [Removed]
250.252b [Removed]
250.255 [Removed]
250.256 [Removed]
250.258 [Removed]
250.259 [Removed]
* * * * *

Subpart N—* * *

250.270 [Removed]
250.271 [Removed]
* * * * *

Par. 2. Section 250.11 is amended to remove the definition of "red strip stamps".

§ 250.37 [Amended]

Par. 3. Section 250.37 is amended by removing the words "to issue internal revenue stamps and".

§ 250.42 [Removed]

Par. 4. Section 250.42 is removed.

§ 250.84 [Removed]

Par. 5. Section 250.84 is removed.

§§ 250.88 through 250.91a [Removed]

Par. 6. Sections 250.88 through 250.91a are removed.

Par. 7. Section 250.98 is revised to read as follows:

§ 250.98 Liqueurs, cordials, and similar distilled spirits products containing wine.

The entire alcohol content of liqueurs, cordials, and similar distilled spirits products containing wine is taxable at the distilled spirits rate. The procedures for taxpayment, shipment, and release of such products shall be as prescribed in §§ 250.77 through 250.87.

Par. 8. Section 250.126 is revised to read as follows:

§ 250.126 Taxpayment in Puerto Rico.

Liquors upon which all Federal internal revenue taxes have been paid in Puerto Rico may be brought into the United States for personal consumption without payment of additional taxes. When distilled spirits, wines, or beer are purchased by a tourist for consumption in the United States, the internal revenue tax due may be paid to the United States Internal Revenue Service office, and an internal revenue receipt obtained, or the tax may be paid to the U.S. Customs authorities, who will issue a customs receipt. The tax on articles purchased by tourists may be paid in the same manner. The receipt received from the United States Internal Revenue Service office or from the customs officer shall be presented, as required, as evidence that the tax has been paid.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

§ 250.127 [Removed]

Par. 9. Section 250.127 is removed.

Par. 10. Section 250.128 is revised to read as follows:

§ 250.128 Taxpayment at port of arrival.

If the internal revenue tax on liquors and articles is not paid in Puerto Rico, it shall be paid by the tourist at the port of arrival prior to release of the liquors or articles from customs custody. The tax may be paid to the district director of internal revenue, and an internal revenue receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to the district director of internal revenue, the director of customs will notify the district of the amount of tax due. On payment of the tax to the director of customs, or on submission of the internal revenue receipt for the tax, the director of customs will release the liquors or articles.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended, 1358, as amended (26 U.S.C. 5061, 5205))

Par. 11. Subpart C is revised by changing the title, revising §§ 250.135 and 250.136, and by removing §§ 250.137 through 250.146 as follows:

Subpart G—Closures for Distilled Spirits From Puerto Rico

§ 250.135 Containers of distilled spirits to bear closures.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or deferred in Puerto Rico under provisions of this part, shall have closures or other devices affixed in accordance with the provisions of this part, prior to shipment to the United States.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

§ 250.136 Affixing closures.

Closures or other devices shall be securely affixed to containers having capacity of 1 gallon (3.785 liters) or less so as to leave a portion remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

§ 250.203a [Amended]

Par. 12. Section 250.203a is amended by removing the words "and stamped".

§ 250.208 [Removed]

Par. 13. Section 250.208 is removed.

Par. 14. Subpart L is revised by revising the title, revising §§ 250.230 and 250.231, and by removing §§ 250.232 through 250.259 as follow:

Subpart L—Closures for Distilled Spirits From the Virgin Islands

§ 250.230 Containers of distilled spirits to bear closures.

Containers of 1 gallon (3.785 liters) or less of distilled spirits, upon which all Federal internal revenue taxes have been paid or determined under provisions of this part, shall have closures or other devices affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

§ 250.231 Affixing closures.

Closures or other devices shall be securely affixed to containers having capacity of 1 gallon (3.785 liters) or less so as to leave a portion remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

§§ 250.270 and 250.271 [Removed]

Par. 15. Sections 250.270 and 250.271 in Subpart N are removed.

27 CFR Part 251, *Importation of Distilled Spirits, Wines and Beer*, is amended as follows:

Paragraph 1. The authority citation for Part 251 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805), 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 251 is amended as follows:

Sec.
251.55 * * *

Packaging and Marking of Distilled Spirits

* * * * *

251.60 * * *

Closures for Containers of Distilled Spirits

251.61 Containers of distilled spirits to bear closures.
251.62 Affixing closures.
251.63 [Removed]
251.64 [Removed]
251.64a [Removed]
251.66 [Removed]
251.66a [Removed]
251.67 [Removed]
251.69 [Removed]
251.72 [Removed]
251.73 [Removed]

Exemptions

251.74 Exemption from requirements pertaining to marks, bottles, and labels

* * * * *

Subpart F—[Removed]

Subpart G—[Removed]

* * * * *

251.122 [Removed]

Subpart I—* * *

251.130 [Removed]
251.131 [Removed]

* * * * *

Subpart K—[Removed]

* * * * *

Par. 2. Section 251.1 is revised to read as follows:

§ 251.1 Imported distilled spirits, wines, and beer.

This part, "Importation of Distilled Spirits, Wines, and Beer", contains procedural and substantive requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, closing and labeling of containers and packages, and records and reports.

Note.—Distilled spirits, wines, and beer arriving in the United States from Puerto Rico and the Virgin Islands are governed by the provisions of Part 250 of this chapter.

* * * * *

Par. 3. Section 251.11 is amended to remove the definition of "red strip stamps".

Par. 4. Subpart E is amended by revising § 251.56 and the undesignated center heading immediately preceding §251.56, as well as §§ 251.61, 251.62, 251.74, and the undesignated center heading immediately preceding § 251.61. In addition, § 251.57 is amended to remove the words "and stamped", § 251.75 is amended to remove the words "stamps or alternative devices.", and §§ 251.63 through 251.73 are removed as follows:

Packaging and Marking of Distilled Spirits

§ 251.56 Distilled spirits containers of a capacity of not more than 1 gallon.

Bottled distilled spirits imported into the United States for sale shall be bottled in liquor bottles which conform to the requirements of Subpart N of this part and Part 5 of this chapter. Empty bottles imported for the packaging of distilled spirits shall conform to the requirements of Subpart N of this part. (For Customs requirements as to marking, see 19 CFR Parts 11 and 12.)

* * * * *

Closures for Containers of Distilled Spirits

§ 251.61 Containers of distilled spirits to bear closures.

No person shall transport, buy, possess, or sell, or transfer any imported distilled spirits in containers of 1 gallon (3.785 liters) or less, unless the immediate container thereof has a closure or other device affixed in accordance with the provisions of this part.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

§ 251.62 Affixing closures.

Closures or other devices on containers of imported distilled spirits having a capacity of 1 gallon (3.785 liters) or less shall be affixed so as to leave a portion of the closure or other device remaining on the container when it is opened. In addition, the closures or other devices shall be constructed in such a manner as to require that they be broken to gain access to the contents of the containers.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

Exemptions

§ 251.74 Exemption from requirements pertaining to marks, bottles, and labels.

The provisions of this part relating to the labeling of containers as prescribed by 27 CFR Part 5 are not applicable to imported distilled spirits (a) not for sale or for any other commercial purpose whatever; (b) on which no internal revenue tax is required to be paid or determined on or before withdrawal from customs custody; (c) for use as ship stores; or (d) for personal use. Samples of distilled spirits, other than those provided for in §§ 251.49 and 251.75, imported for any purpose are not exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the requirements pertaining to marks, bottles, and labels. Samples of wine and beer brought into the United States pursuant to § 251.49 are exempt from the labeling requirements of 27 CFR Parts 4 and 7, respectively. Exemptions from the requirements that imported distilled spirits, wines, and beer be marked to indicate the country of origin are set forth in customs regulations (19 CFR Part 11).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1374, as amended (26 U.S.C. 5205, 5301))

Subparts F and G—[Removed]

Par. 5. Subpart F consisting of §§ 251.80 through 251.92 and Subpart G consisting of §§ 251.110 through 251.112 of Part 251 are removed.

§ 251.122 [Removed]

Par. 6. Section 251.122 is removed.

§§ 251.130 and 251.131 [Removed]

Par. 7. Sections 251.130, 251.131, and the undesignated center heading immediately preceding § 251.130 are removed.

Subpart K—[Removed]

Par. 8. Subpart K of Part 251 consisting of § 251.160 is removed.

Par. 9. Section 251.207 is revised to read as follows:

§ 251.207 Bottles to be used for display purposes.

Empty liquor bottles may be imported and furnished to liquor dealers for display purposes, provided each bottle is marked to show that it is to be used for such purpose. The importer shall keep records of the receipt and disposition of such bottles, showing the names and addresses of consignees, dates of shipment, and size, quantity, and description of bottles.

27 CFR Part 252, *Exportation of Liquors*, is amended as follows:

Paragraph 1. The authority citation for Part 252 reads as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805), 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The table of contents for Part 252 is amended as follows:

* * * * *

252.102 Bottles to have closures affixed.

* * * * * *

Par. 2. Section 252.26 is amended by revising paragraph (b) to read as follows:

§ 252.26 Entry of distilled spirits into customs bonded warehouses.

* * * * *

(b) *Bottled distilled spirits eligible for export with benefit of drawback.* Bottled distilled spirits eligible for export with benefit of drawback may, subject to this part, be transferred to customs bonded warehouses in which imported distilled spirits are permitted to be stored, and entered pending withdrawal as provided in § 252.28, as if such spirits were for exportation.

* * * * *

§ 252.94 [Amended]

Par. 3. Section 252.94 is amended by removing the words "stamping or affixing of alternative devices" and inserting in their place the word "closing".

§ 252.101 [Amended]

Par. 4. Section 252.101 is amended by removing the words "stamped with a distilled spirits stamp or".

Para. 5. Section 252.102 is revised to read as follows:

§ 252.102 Bottles to have closures affixed.

Every bottle containing distilled spirits to be withdrawn under the provisions of this subpart shall have a closure or other device affixed in accordance with the provisions of Part 19 of this chapter.

(Sec. 454, Pub. L. 98-369, 98 Stat. 494 (26 U.S.C. 5301))

§ 252.171 [Amended]

Par. 6. Section 252.171 is amended by removing the words "or stamped, including the affixing of alternative devices,".

§ 252.197 [Amended]

Par. 7. Section 252.197 is amended by removing the word "restamping,".

Signed: April 12, 1985.

W.T. Drake,

Acting Director.

Approved: May 14, 1985.

E.T. Stevenson

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-13423 Filed 6-6-85; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW-10-FRL-2843-5]

Idaho Department of Water Resources; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Idaho has submitted an application under section 1422 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for these classes of injection wells meets the requirements of section 1422 of the Act and, therefore, approves it.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on June 21, 1985. This approval shall become effective on July 22, 1985.

FOR FURTHER INFORMATION CONTACT: Harold Scott, M/S 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, PH: (206) 442-1846 or (FTS) 399-1846.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the **Federal Register** each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the

requirements of regulations in effect under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The State of Idaho has listed as needing a UIC program on October 3, 1979 (44 FR 58985). The State submitted an application under section 1422 on November 5, 1984, for a UIC program to regulate Class I, II, III, IV, and V injection wells to be administered by the Idaho Department of Water Resources (IDWR).

On December 10, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the IDWR. A public hearing was offered, and comments were requested on the final application. No hearing requests and only two written comments were received.

After careful review of the application, I have determined that the portion of the Idaho UIC program submitted by the IDWR, applicable on all State lands other than Indian lands, meets the requirements established by the Federal regulations pursuant to section 1422 of the SDWA and, hereby, approve it. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for non-Indian lands in the State of Idaho.

This program replaces the existing EPA-administered program for all classes of wells. EPA promulgated the EPA-administered program, published May 11, 1984 (49 FR 20138), in order to comply with the requirement of the SDWA to promulgate a federally-administered program if a state-administered program cannot be approved within a certain time. Now that EPA has determined that the state-administered program meets all applicable federal requirements the Agency is withdrawing the EPA-administered program and establishing the state-administered program as the applicable UIC program in the State, because of the preference in the SDWA for state administration of UIC programs.

This approval will be codified in 40 CFR 147.650. State statutes and regulations that contain standards, requirements, and procedures applicable to owners and operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to Section 1423 of the SDWA.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water Supply, Incorporation by reference.

OMB Review

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Idaho Department of Water Resources will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: May 20, 1985.

Lee Thomas,

Administrator.

As set forth in the preamble, Part 147 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart N—Idaho

1. The authority citation for Part 147 is revised to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

2. Section 147.650 is revised to read as follows:

§ 147.650 State-administrative program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the **Federal Register** on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Idaho. This incorporation by reference was approved by the Director of the **Federal Register** effective July 22, 1985.

(1) Public Writings, Title 9, Chapter 3, Idaho Code, sections 9–301 through 9–302 (Bobbs-Merrill 1979);

(2) Crimes and Punishments, Title 18, Chapter 1, Idaho Code, sections 18–113 through 18–114 (Bobbs-Merrill 1979 and Supp. 1984);

(3) Department of Health and Welfare, Title 39, Chapter 1, Idaho Code, Chapter 39–108 (Bobbs-Merrill 1977);

(4) Drainage-Water Rights and Reclamation, Title 42, Chapter 2, Idaho Code sections 42–237(e); section 42–238 (Bobbs-Merrill 1977 and Supp. 1984);

(5) Department of Water Resources-Water Resources Board, Title 42, Chapter 17, Idaho Code, sections 42–1701, 42–1703, 42–1735 (Bobbs-Merrill 1977, § 42–1701A (Supp. 1984);

(6) Director of Department of Water Resources, Title 42, Chapter 18, Idaho Code, sections 42–1801 through 42–1805 (Bobbs-Merrill 1977);

(7) Waste Disposal and Injection Wells, Title 42, Chapter 39, Idaho Code, sections 42–3901 through 42–3914 (Bobbs-Merrill 1977), §§ 42–3915 through 42–3919 (Supp. 1984);

(8) Idaho Trade Secrets Act, Title 48, Chapter 8, Idaho Code, sections 48–801 through 48–807 (Bobbs-Merrill 1977 and Supp. 1984);

(9) Administrative Procedure, Title 67, Chapter 52, Idaho Code, sections 67–5201 through 67–5218 (Bobbs-Merrill 1980 and Supp. 1984);

(10) Idaho Radiation Control Regulations (IRCR section 1–9002.70; sections 1–9100 through 1–9110, Department of Health and Welfare (May 1981);

(11) Rules and Regulations: Construction and Use of Injection Wells, Idaho Department of Water Resources, Rules 1 through 14 (August 1984);

(12) Rules and Regulations: Practice and Procedures, Idaho Department of Water Resources, Rules 1 through 14 (October 1983).

(b) The Memorandum of Agreement between EPA and Region X and the Idaho Department of Water Resources signed by the EPA Regional Administrator on February 11, 1985.

(c) *Statement of Legal Authority.* (1) The Idaho Attorney General's Statement for the Underground Injection Control Program, October 31, 1984.

(2) Letter from David J. Barber, Deputy Attorney General, Idaho Department of Water Resources to Harold Scott, EPA, Region 10, revising the Attorney General's Statement, February 14, 1985.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[FR Doc. 85-12969 Filed 6-6-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6607

[NM 56990]

Withdrawal of Public Land for Reclamation Quarry Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 40 acres of public land from surface entry and mining for 10 years to be used as a quarry site for the construction and maintenance of the Brantley Dam. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87501, 505-988-6326.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for use of the Bureau of Reclamation for a quarry site.

New Mexico Principal Meridian

T. 21 S., R. 24 E.,
Sec. 25: N½NE¼SE¼, S½SE¼NE¼.

The area described contains 40 acres in Eddy County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 3, 1985.

Robert N. Broadbent,

Assistant Secretary of the Interior.

[FR Doc. 85-13698 Filed 6-6-85; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303 and 304

Child Support Enforcement Program; Implementation of Child Support Enforcement Amendments of 1984

Correction

In FR Doc. 85-11021 beginning on page 19608 in the issue of Thursday, May 9, 1985, make the following corrections:

§ 301.1 [Corrected]

1. On page 19647, second column, in § 301.1, third paragraph, ninth line, insert the word "an" after the word "due".

§ 302.55 [Corrected]

2. On page 19649, third column, in § 302.55, second line, "§ 305.52" should have read "§ 303.52".

§ 302.56 [Corrected]

3. On page 19649, third column, in § 302.56, first line, "October 1, 1957" should have read "October 1, 1987".

§ 303.52 [Corrected]

4. On page 19651, second column, in § 303.52(c)(5), fourth line, insert the word "of" between "as" and "FY".

5. On the same page, third column, in § 303.52(d)(1), fifth line, "the participate" should have read "that participate".

§ 303.100 [Corrected]

6. On page 19654, first column, in § 303.100(c)(1), second line, "in" should have read "to".

7. On the same page, second column, in § 303.100(d)(1)(i), last line, "1673" should have read "1673".

§ 303.101 [Corrected]

8. On page 19655, second column, in § 303.101(b)(4), fifth line, "to" should have read "the". Also, in the same column, in § 303.101(c)(4), second line, "residing" should have read "presiding".

§ 304.95 [Corrected]

9. On page 19657, first column, in § 304.95(f)(2), second line, "August 1964" should have read "August 1984".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 50, No. 110
Friday, June 7, 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 JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

Adjustment of Status to That of Persons Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: In order to clarify the intent of 8 CFR 245.2(a)(3), the Service is proposing to amend its regulation governing advance parole granted to applicants for adjustment of status.

DATE: Comments must be received on or before August 6, 1985.

ADDRESS: Please submit written comments, in duplicate, to the Director of Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Leon C. Jennings, Immigration Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-2362.

SUPPLEMENTARY INFORMATION: Section 245(a) of the Immigration and Nationality Act, 8 U.S.C. 1255(a) authorizes the adjustment of status of an alien "who was inspected and admitted or paroled in the United States." Under the regulations prescribed by the Attorney General, an applicant for adjustment of status who wishes to leave the country and return may apply for advance permission to be paroled into the United States upon return to prosecute his/her application. This procedural device has been referred to as "advance parole". Recently, there have been some questions as to whether an applicant for adjustment, who has been paroled into the United States pursuant to a grant of advance parole, will be subject to exclusion or deportation proceedings if the application is denied.

Advance parole is not specifically mentioned in the Immigration and Nationality Act. The INS has developed this practice in conformity with 8 U.S.C. 1182(d)(5)(A) to be used in public interest or emergent situations. In *Landon* v. *Plasencia*, 103 S.Ct. 321, 326 (1982), the Supreme Court held that "the language and history of the Act * * * clearly reflect a congressional intent that, whether or not the alien is a permanent resident, admissibility shall be determined in an exclusion hearing." An alien who is paroled into the United States does not effect an "entry" and is subject to exclusion proceedings. *Leng May May*, v. *Barber*, 357 U.S. 185 (1957).

This proposed amendment would clarify the intent of the regulation and conform with the weight of judicial authority that all paroled aliens are subject to exclusion proceedings under section 236 of the Act, 8 U.S.C. 1226. It would specifically state that no alien granted advance parole and inspection upon return shall be entitled to a deportation hearing.

This amendment would eliminate the language concerning unintended or innocent and casual departures during the pendency of an application for adjustment to permanent resident alien status. Accordingly, any departure without prior permission (advance parole) would terminate the application.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This order would not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 245

Aliens, Employment, Health care, Immigration, Immigration and Nationality Act, Passports and visas.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for 8 CFR 245.2 continues to read as follows:

Authority: Sec. 103 and 245 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1255).

2. Section 245.2 would be amended by revising paragraph (a)(3) to read as follows:

§ 245.2 Application.

(a) * * *

(3) *Departure.* The departure of an applicant for permanent resident status under section 245 of the Act or this part shall be deemed an abandonment of the application, constituting grounds for termination thereof, unless the applicant had previously been granted advance parole by the Service for such absence and was thereafter inspected upon return. If the application of such an individual granted advance parole is subsequently denied, the applicant will be subject to the exclusion provisions of section 236 of the Act. No alien granted advance parole and inspected upon return shall be entitled to a deportation hearing. In determining the date of "last arrival" within the meaning of section 1 of the Act of November 2, 1966, in the case of an applicant who was inspected and admitted or paroled into the United States subsequent to January 1, 1959, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall not be included. In determining the date of the alien's "arrival" in the United States within the meaning of section 102 of the Act of October 28, 1977, in the case of an applicant who was physically present in the United States on March 31, 1975, or who was paroled into the United States subsequent to March 31, 1975, but prior to January 1, 1979, and who subsequently departed temporarily with no intention of abandoning his/her residence in the United States and was readmitted or paroled into the United States upon return, the date of the applicant's arrival after such temporary absence or absences shall be disregarded. For the purpose of section

102 of the Act of October 28, 1977, the date of the alien's "arrival" in the United States shall be the date of initial parole subsequent to March 31, 1975, but prior to January 1, 1979, as and Indochinese refugee under section 212(d)(5) of the Immigration and Nationality Act.

* * * * *

Dated: May 7, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-13736 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-10-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 61, 70, and 72

Financial Responsibility Requirements Applicable to NRC Licensees for Cleanup of Accidental and Unexpected Releases of Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Nuclear Regulatory Commission is considering whether to amend its regulations to require certain persons licensed to possess nuclear materials to demonstrate that they possess adequate financial means to pay for cleanup of accidental releases of radioactive materials. If licensees lack adequate financial resources and funds are not available for prompt cleanup, the consequences could be potentially significant for the public, the licensee, and the Federal government. This advance notice of proposed rulemaking is being issued to invite advice and recommendations on several questions pertaining to this proposal concerning scope of coverage, as well as the availability and cost to licensees of obtaining the various forms of financial assurance.

DATE: Comment period expires October 7, 1985. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Send comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H St. NW., Washington, DC between 8:15 a.m. and 5:00 p.m.

Examine copies of comments received at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Jo Seeman, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4647.

SUPPLEMENTARY INFORMATION:

Background

Purpose and Scope

This ANPRM is seeking guidance on requiring certain classes of materials licensees to demonstrate evidence of financial responsibility for cleanup of accidental releases, i.e., an unauthorized release of radioactive materials due to human error, system failure, an act of God, or defective components. Licensees under consideration in this ANPRM include radiopharmaceutical manufacturers, industrial radiographers, users of gauging devices, gas chromatography, well-logging, nuclear medicine diagnosis and radiation therapy. Other NRC licensed operations covered by this ANPRM include fuel cycle activities such as uranium milling, UF_6 production, and fuel processing and fabrication. Regulated waste management activities include commercial low-level waste disposal, independent spent fuel storage facilities, and persons disposing or storing of their own waste under special license conditions.[1] If implemented, such standards would be a matter of compatibility with the Agreement States.

The financial assurance program for cleanup of accidental release being considered by the Commission in this ANPRM is separate and distinct from the compensation program mandated by the Commission regulations pursuant to the Price-Anderson Act, which does not provide funds for cleanup per se. Currently, the Price-Anderson program applies only to nuclear reactors on a mandatory basis and to plutonium processors and fuel fabricators on a discretionary basis.[2] These activities and uses of materials would not be included in the proposed program. The program proposed in this ANPRM is not intended to provide compensation to persons for personal injury or property damage and is, therefore, not a public liability program.

Moreover, it appears that the Comprehensive Environmental Response, Compensation and Liability Act of 1980, "CERCLA" (Pub. L. 96-510) would not provide cleanup funds for releases involving NRC licensees. In a **Federal Register** notice issued on September 8, 1983, (48 FR 40658) EPA made the following policy statement:

> EPA has also chosen not to list releases of source, byproduct, and special nuclear material from any facility with a current license issued by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has full authority to require cleanup of releases from such facilities.

This ANPRM is soliciting public comments on the advisability of having NRC require financial responsibility for prompt cleanup of radioactive materials both on-site and off-site after accidental or unexpected contamination by fuel cycle and other materials licensees. Any necessary environmental restoration would also be included.[3] Accidental or unexpected contamination refers to an unauthorized release of radioactive materials in excess of NRC regulatory limits regardless of the cause of the release. Examples of causes include human error or negligence, an act of God, licensee misconduct, system failure, or defective components.

This ANPRM focuses on whether to require licensees to demonstrate financial responsibility for cleanup of accidental or unexpected releases of radioactive meterials and not for authorized and predictable activities normally associated with decommissioning. The latter is being addressed in a separate ongoing Commission rulemaking on decommissioning.

Need for Action

Although there is little information available on the financial condition of NRC fuel cycle and materials licensees, the NRC staff believes most of these licensees already have some financial

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[1] The proposed financial responsibility program would exempt the following Department of Energy facilities: High-level waste repositories (licensed under 10 CFR Part 60), independent spent fuel storage facilities, and monitored retrievable storage facilities (both licensed under 10 CFR Part 72). In the event of an accident, DOE has access to public funds to pay for cleanup. Additionally, DOE private contractors working at the repository can be indemnified under section 170(d) of the Atomic Energy Act.

[2] The Commission has authority under section 170 of the Atomic Energy Act to apply Price-Anderson indemnification to any category of licensee whenever the Commission deems it advisable in the exercise of its licensing authority. However, the Commission has not chosen to extend Price-Anderson indemnification to materials licensees with the single exception of those engaged in the use of plutonium in a plutonium processing and fuel fabrication plant.

[3] Environmental restoration following an accidental release into or upon the land or water is intended to provide limited coverage for the damage or destruction of natural resources.

resources or insurance coverage for on-site and off-site cleanup as a prudent business practice.

However, if a licensee did not have adequate financial resources, and an accidental or unexpected contamination did occur, there could be both short and long term adverse public health and safety consequences from the radioactive contamination, as well as loss of use of conaminated property. Moreover, from an equity viewpoint, the Commission believes it appropriate that the licensee, and not the public, should assume financial responsibility for prompt cleanup of accidental releases caused by licensee activities.

The issue of licensee financial responsibility for cleanup of accidental releases of radioactive materials has also been an issue with the States; the Conference of Radiation Control Program Directors has recognized the need for Federal standards since at least 1976. In August of 1984, in order to promote intergovernment consultation at an early stage of a proposed agency action, the Commission sent a draft version of this ANPRM to officials in all fifty States, and also asked for their comments. Commission staff also discussed the issue of the ANPRM with State radiation control program officials in October, 1984. The comments generally supported the development of the rulemaking, and specific comments were incorporated into the ANPRM.

Both NRC and Agreement State licensees have had accidental or unexpected releases of radioactive materials that have been costly to cleanup. State and Federal estimates for cleanup costs have been estimated at up to $2,000,000 for a single event. Examples of some of these cleanup costs that the NRC staff is aware of include:

—In 1983, a cesium-137 sealed source was accidentally ruptured. Workers inadvertently spread the contamination into residences and public buildings. The cost for cleanup of this contamination was estimated to be at least $500,000.

—In 1982, an americium-241 sealed source in use in a well-logging operation was inadvertently ruptured, resulting in contamination of both on-site drilling equipment and off-site homes and commercial residences. Cleanup costs were estimated to be up to at least $1,000,000.

—During 1979 and 1980, a tritium manufacturer's operations in Tucson, Arizona resulted in releases both on and offsite. The company was financially unable to pay for cleanup, and State officials estimated that the State spent approximately $2,000,000 in labor and capital costs for removal and cleanup of the tritium.

Relatively little data on cleanup costs for accidental releases of licensees is available in NRC records, mainly because this type of information is not required to be submitted to the agency. However, a recent review of NRC unusual events reports for radioactive releases by materials and fuel cycle licensees indicates that from 1980 to 1983, accidental or unexpected releases from licensees' operations believed to involve significant cleanup costs (more than a few thousand dollars) involved fewer than one percent annually of the total fuel cycle and materials licensees authorized to possess and use byproduct, source and special materials.

Besides lacking a comprehensive data base for licensee cleanup costs for accidental releases, the Commission also has no available records to determine if licensees lack (or previously lacked) adequate funds to provide for prompt cleanup of accidental releases. Accordingly, the Commission is using this ANPRM to solicit public and industry input on the scope and magnitude of the problem. However, even given this lack of a strong data base, the NRC staff does not believe it is prudent for the Commission to wait until an event occurs which requires expensive cleanup to consider the development of a regulation. Other agencies, such as the U.S. Environmental Protection Agency, have gone forward with financial responsibility requirements in the absence of a large documented data base.

In addition, several NRC-funded studies have presented cost estimates for cleanup of NRC-licensed fuel cycle facilities related to emergency planning issues and the Price-Anderson Act.[4] Since these studies were prepared for different purposes and assumptions, it is difficult to compare the results or to use their conclusions as the basis for estimating cleanup costs for the vast majority of fuel cycle and material licensees. Therefore, the NRC staff is proposing to use the limited, but actual, past cleanup cost experience (discussed previously) as the basis for setting the amount of financial responsibility coverage in this ANPRM. The NRC staff will consider, at a later date, the issue of financial responsibilities for the small number of licensees who have the potential to be involved in the significantly more costly cleanups postulated in the NRC-funded studies.

Regulatory Precedents

A variety of State and Federal agencies have enacted financial responsibility requirements to provide assurance that funds are available for cleanup of accidental releases of various substances. Federal agencies have enacted requirements pursuant to the Motor Carrier Act, (Pub. L. 96–296), the Resource Conservation and Recovery Act, (Pub. L. 94–580), the Federal Water Pollution Control Act of 1972, (Pub. L. 92–500), Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), Outer Continental Shelf Lands Act, (Pub. L. 95–372), the Trans-Alaska Pipeline Authorization Act of 1973 (Pub. L. 93–153), and the Deep-Water Port Act of 1974 (Pub. L. 93–627).

The stipulated dollar requirements vary from $10,000 to over $5,000,000 for these different programs. As an example, the 1984 minimum levels of financial responsibility for motor carriers transporting hazardous substances ranges from between $1,000,000 to $5,000,000 (Motor Carrier Act of 1980). The EPA regulations for financial responsibility for owners and operators of hazardous waste facilities (40 CFR Parts 264 and 265, Subpart H) require coverage of $1,000,000 dollars for each sudden occurrence, with an annual aggregate of at least $2,000,000, and $3,000,000 for each nonsudden occurrence, with an annual aggregate of at least $6,000,000 (Subtitle C—Hazardous Waste Management, Resource Conservation and Recovery Act).

Impacts

The Commission is aware that, if promulgated, the potential rule could impact a variety of parties. Before the Commission would implement the financial responsibility requirement, it would assure itself, on the basis of the information gathered from the public comments as well as additional study by the NRC staff, that the health and safety benefits of such a requirement would outweigh the costs imposed on licensees and the public.

If licensee funds are not promptly available for cleanup, public funds might have to be directly expended by State

[4] See J. P. McBride, "Economic Consequences of Accidental Releases from Fuel Fabrication and Radioisotope Processing Plants," prepared by Oak Ridge National Laboratories for the U.S. Nuclear Regulatory Commission, 1979, (NUREG/CR-0222); the results of the study were discussed in a U.S. Nuclear Regulatory Commission Information Report, "Extension of Indemnity Coverage To Materials Licensees Other Than Those Processing And Using Plutonium," (SECY-80-467), October 10, 1980. See also H. K. Elder, Working Paper, "Technology, Safety and Costs of Decommissioning Reference Nuclear Fuel Cycle and Non-Fuel Cycle Facilities Following Postulated Accidents," Pacific Northwest Laboratory, NURGE/CR-3293, August, 1983.

and Federal agencies. Even without a bankrupt licensee, there could be significant public impacts if cleanup is delayed by ensuing litigation over the responsibility and cost.

As previously mentioned, the NRC staff believes that most materials licensees have adequate financial resources for prompt cleanup of accidental releases as a matter of prudent business practice. This proposed rulemaking would have the most significant impact on those licensees who may not be able to provide adequate financial assurances. Accordingly, the staff is especially interested in hearing from those licensees who feel they cannot demonstrate that they have sufficient resources to assure cleanup of accidental releases.

The cost to NRC licensees for meeting the financial requirements for prompt cleanup would vary, depending on the level of funding and on the type of financial assurance mechanism selected. There are a variety of possible legal instruments and arrangements that could be used to demonstrate that a licensee possesses adequate resources to provide funds for prompt cleanup of accidental releases of radioactive materials. They include insurance, trust funds, surety or performance bonds, escrow accounts, certificates of deposits, deposits of securities, letters of credit, a parent company guarantee, and an analysis of the licensee's financial condition.

The most expensive approach would require that a licensee put aside 100% of the estimated cost of cleanup. Examples of this approach include cash deposits, or deposits of securities. Less expensive approaches involve purchasing an insurance policy or financial instrument from a third party, such as an insurance company, bank, or financial institution with a face amount equal to the estimated costs of cleanup. Specific costs of the various financial mechanisms are not easily obtained from licensees or from the financial and insurance institutions. Accordingly, the NRC is specifically interested in obtaining comments on the costs of these types of financial instruments in this ANPRM.

The proposed regulatory requirement would also impact NRC resources. The logistics and resource costs for amending thousands of materials licensees would be significant. The requirement would also entail an agency administrative effort for recordkeeping, auditing, and enforcement. However, the proposed financial assurance requirement could also avert substantial NRC costs resulting from lengthy enforcement proceedings and/or litigation against licensees unable to assure prompt cleanup.

Summary of Features Being Considered for Proposed Rule

The Commission is seeking comments in this ANPRM on a proposal that would require certain fuel cycle and materials licensees to demonstrate adequate financial resources for cleanup of accidental releases of radioactive materials on-site and off-site. Financial responsibility would cover cleanup for both property and environmental restoration (see footnote 3). For purposes of initial discussion, the Commission is considering a $2,000,000 baseline as the required maximum amount of financial responsibility for materials and fuel cycle facilities. This figure was chosen because it is in the range of known cleanup costs for NRC licensees and of other stated dollar amounts of State and Federal financial responsibility requirements for cleanup of accidental releases (See "Regulatory Precedents"). The amount would be adjusted to reflect changes in inflation and technology.

The Commission will consider, at a later date, the issue of financial responsibility for the small number of licensees who have the potential to be involved in the significantly more costly cleanups postulated in the NRC funded studies referenced in footnote 4.

The proposed rule would have the following features:

1. The transporting of radioactive material by common and contract carriers covered by the financial responsibility requirements of the Motor Carrier Act of 1980 (Pub. L. 96-296) would be excluded.

2. Financial responsibility would cover both sudden and nonsudden accidental releases and would exclude authorized and predictable activities normally associated with decommissioning. Additionally, if a licensee were required to demonstrate financial responsibility for both decommissioning and cleanup of accidental releases, he could not use the same financial assurance to guarantee both commitments. The latter is being covered by the Commission's decontamination and decommissioning rulemaking.

3. Financial responsibility would cover on-site and off-site cleanup for private and public property, as well as environmental restoration of natural resources.

4. Licensed State, Federal government, or other self-insured public authorities would be excluded.

5. Types of possible acceptable financial assurances that the Commission staff is considering include:

a. Standard comprehensive general liability insurance.

b. Environmental impairment liability insurance.

c. Conventional property insurance.

d. Non-Price Anderson nuclear liability and property insurance.

e. Cash or negotiable securities held by a third party, such as a trust, or escrow account.

f. A financial test.

g. A surety or performance bond.

h. A corporate guarantee from a parent company.

Specific Considerations

Advice and recommendations on the Commission's proposed action are invited from all interested persons, and specifically, from licensees, State officials, and representatives of the finance and insurance industry. Comment is also invited on which licensees should be considered for exemption from this proposed requirement, as well as the availability, cost, and applicability of the various financial assurance mechanisms to provide adequate financial assurances for cleanup of accidental releases.

1. Describe the extent and nature of financial responsibility problems, if any, for the cleanup of accidental releases by materials licensees.

2. Assuming the need for the resolution of financial responsibility problems for the cleanup of accidental releases, the Commission is seeking comments and supporting reasons on the following questions:

a. What criteria (such as half-life, physical form, type of encapsulation, and amount of radioactive material) should NRC use for determining the amount of coverage to be required for different classes of licensees?

b. What effect would the cost of this coverage have on licensee operations?

c. How large should the financial responsibility requirement be? Should there be a uniform minimum amount, or a "sliding scale" requirement, to match the financial requirements to the actual risks of various types and quantities of materials possessed, or the financial size of the licensee? If so, what criteria are suggested in this regard?

d. One basis for determining the amount of coverage being considered under the Commission's proposed rulemaking would be the characteristics of the licensed material. Should the Commission exempt licensees with certain types or quantities of radioactive materials, such as those with short half-

lives with low activities? If so, what cutoff criteria should be applied?

e. Should the Commission consider increasing the amount of coverage for licensees whose facilities have poor safety and/or inspection histories?

f. What criteria (such as ensuring that the funds will be promptly available when needed) should NRC use in evaluating financial assurance mechanisms?

g. How should the financial protection be provided to ensure that it will be available if needed?

h. With regard to comprehensive general liability and environmental impairment liability policies, the Commission staff is especially interested in hearing from offerers of these policies regarding the availability of their insurance for specified nuclear risks, as well as the terms and conditions of these types of insurance. What is the availability and premium cost of these types of policies (as well as facility form liability coverage from the nuclear insurance pools) to provide cleanup coverage for off-site sudden and nonsudden accidental or unexpected releases of radioactive materials from licensee operations, including damage to natural resources? Are the terms and conditions of these existing types of policies appropriate for covering the risks of accidental nuclear releases? If not, would the insurance industry provide this type of coverage?

i. What is the cost and availability of property insurance from the conventional insurance market and the nuclear insurance pools to provide cleanup coverage for sudden and nonsudden on-site accidental or unexpected releases of radioactive materials from materials licensees? Are the terms and conditions of these existing types of policies appropriate for covering the risks of accidental nuclear releases? If not, would the insurance industry provide this type of coverage?

j. Are there financial assurance mechanisms and insurance policies currently available to provide coverage for environmental restoration of natural resources?

k. How can the Commission ensure that funds for cleanup are promptly available when an accidental release occurs, while still preserving the rights of guarantors to evaluate whether such claims for cleanup are legitimate?

The Commission is particularly interested in hearing from both regulatory agencies with a history of administering financial responsibility programs, as well as financial and insurance institutions on this issue. Furthermore, if it appears that there is going to be a delay before the guarantor will provide funds for cleanup, and prompt cleanup is necessary for health and safety reasons, are there other avenues for cleanup funds available to the Commission or other responsible State or Federal agency?

l. Should the Commission also consider requiring licensees to provide evidence of financial responsibility for the non-radiological component of cleanup of an accidental release?

m. How should the Commission consider setting up such a program so that it is promptly notified when there is a change in the financial status of the licensee?

n. Should the Commission consider differentiating between intentional and accidental releases?

o. What amount of coverage would be appropriate for those fuel fabrication and radioisotope processing plants which have the potential for accidents resulting in cleanup costs significantly higher than $2 million?

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials-transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Security measures, Spent fuel, Reporting and recordkeeping requirements.

The authority citation for this document is:

Authority: Sec. 161, Pub. L. 83-703, 68 Stat. 948 as amended (42 U.S.C. 2201).

Dated at Washington, D.C., this 4th day of June, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-13775 Filed 6-6-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law; Hearing on Proposed Regulations

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Public Hearing on Proposed Amendment to Agency Regulations.

SUMMARY: This Notice sets forth the time and other particulars concerning a public hearing on proposed amendments of Part 332 (Powers Inconsistent with Purposes of Federal Deposit Insurance Law) of the FDIC regulations. The proposed amendments of Part 332 are set out as a Notice of Proposed Rulemaking elsewhere in today's **Federal Register.**

DATE: Friday, July 12, 1985, 9:00 a.m.–5:00 p.m.

ADDRESS: Written requests to participate must be mailed to Hoyle L. Robinson, Executive Secretary, Room 6108, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. or hand delivered to the same address between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday.

Hearing location: The FDIC's Board of Directors room, 6th floor, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

Copies of the Notice of Proposed Rulemaking can be obtained upon request from the FDIC Corporate Communications Office, (202–389–4221), Room 6061, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202–389–4171), Robert E. Feldman, Attorney, Legal Division, (202–389–4171), or Margaret M. Olsen, Deputy Executive Secretary, (202–389–4446), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On November 26, 1984, the Board of Directors of the FDIC adopted for publication a proposed amendment to Part 332 of the FDIC's regulations (12

CFR Part 332). (*See* 49 FR 48552 (Dec. 13, 1964)). The proposal, which was published for a 60-day comment period ending on February 11, 1985, among other things, would have amended Part 332 of FDIC's regulations to prohibit any insured bank (including insured nonmember banks, state banks that are members of the Federal Reserve System, national banks, insured branches of foreign banks, and federally chartered savings banks insured by the FDIC) from directly engaging in the following activities: underwriting of insurance, reinsurance, underwriting or developing real estate, insuring, guaranteeing, or certifying titles to real estate, guaranteeing or becoming surety upon the obligations of others, insuring the fidelity of others, or engaging in a surety business. These activities would have been permitted, however, through a bona fide subsidiary of the insured bank. In addition, certain restrictions on extensions of credit and other transactions between the insured bank and its subsidiary were proposed. Additionally, the proposal would have placed certain restrictions on the affiliation of an insured bank with any company that conducted any of the prohibited activities. Lastly the proposal would have placed restrictions on proposed banks that provide electronic data processing services to persons or companies other than banks, insured banks that act as agent or broker for the sale of insurance, real estate, or securities, and insured banks that provide travel agency services.

On June 3, 1985 the Board of Directors adopted a revised proposed amendment to Part 332 to be published for an additional 45 days public comment. The basic features of the revised proposal are: (1) A prohibition on any insured bank conducting insurance underwriting, real estate development, or acting as a guarantor or surety upon the obligations of others, (2) a requirement that any subsidiary of an insured bank that conducts such activities must meet the criteria for a bona fide subsidiary set out in the regulation, (3) 60 days advance notice to the FDIC of intent to invest in any such subsidiary or to become affiliated with any company that engages in such activities, (4) certain restrictions on the affiliation of an insured bank with any company that engages in any of the prohibited activities, (5) certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in prohibited activities, (6) with certain exceptions, a one year compliance period for banks that, prior to the date of the publication of the revised proposal in the **Federal Register**, established or acquired a subsidiary, or became affiliated with a company, that engages in the prohibited activities, (7) a one year compliance period for any insured bank that, as of the date of publication of the proposal in the **Federal Register**, is directly engaging in prohibited activities except that any ongoing real estate development may be completed, (8) permissible in-house real estate development up to a certain ceiling, (9) if certain conditions are met, life insurance may be underwritten through a department of the bank, (10) an insured bank's direct investment in a subsidiary that engages in prohibited activities will not be counted toward the bank's consolidated capital, and (11) waiver by the Board of Directors of all or any portion of the regulations when it is deemed necessary and in the public interest to do so. In addition, the provision of the regulation which would have addressed data processing by insured banks, insurance, real estate, and securities agency or brokerage activities, and travel agency activities has been dropped.

The Board of Directors at its June 3, 1985 meeting voted to hold a one day public hearing on the revised proposal at which representatives of the Board of Directors to be appointed by the Director of the Division of Bank Supervision and the General Counsel would receive the oral comments of any interested persons on the proposed amendments to Part 332. Participants are invited to address all or any portion of the revised proposed regulation. In addition, the FDIC specifically invites testimony and written submissions, studies, and analyses with regard to the following:

(1) The safety or soundness implications raised by the participation of insured banks in real estate development and/or insurance underwriting;

(2) The effect and propriety of prohibiting insured banks from conducting insurance underwriting or real estate development (in-house or through a subsidiary) unless the bank has adequate capital as defined in § 325.3 of the FDIC's regulations;

(3) What protections, if any, are appropriate if an insured bank conducts real estate development and/or insurance underwriting in-house or through a subsidiary or is affiliated with a company that engages in such activities;

(4) Analyses of the experience of individual banks that are presently directly or indirectly engaging in real estate development and/or insurance underwriting or have in the past directly or indirectly engaged in real estate development and/or insurance underwriting;

(5) Whether the ceilings imposed on in-house real estate development are too high or too low; and

(6) Whether the definition of real estate development should contain additional exclusions.

Persons wishing to participate in the hearing should send a written request to participate to Hoyle L. Robinson, Executive Secretary, room 6108, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429. Requests may be hand delivered between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday. All requests will be time- and date-stamped upon receipt and oral presentations will be scheduled in the order in which requests are received. Participants will be limited to a ten minute oral presentation and will be advised in writing of the time scheduled for their presentation. All requests to participate must be received no later than the close of business Monday, July 8, 1985. This requirement is necessary so that the hearing officers may adjust their schedules accordingly and so that alternative arrangements for the hearing may be made if more persons are expected to attend than the Board of Directors room will accommodate. This requirement will also provide sufficient time to acknowledge receipt of the notices and inform participants of scheduling.

By Order of the Board of Directors this 3rd day of June, 1985.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13656 Filed 6-6-85; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 332

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing to amend Part 332 of its regulations to: (1) Subject to certain exceptions, prohibit any insured bank (including insured nonmember banks, national banks, state banks that are members of the Federal Reserve System, insured branches of foreign banks, and federally chartered savings banks insured by FDIC) from directly engaging in the following:

underwriting insurance, developing real estate, reinsurence, guaranteeing or becoming surety upon the obligations of others, insuring the fidelity of others, or engaging in a surety business, (2) require any subsidiary of an insured bank that conducts any of the prohibited activities to meet the criteria for a bona fide subsidiary set out in the regulation, (3) require notice to the FDIC of intent to invest in any such subsidiary or become affliated with any company that engages in such activities, (4) place certain restrictions on the affiliation of an insured bank with a company that engages in any of the prohibited activities, (5) place certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in any of the prohibited activities, (6) require all insured banks that prior to the publication of this proposal established or acquired a subsidiary or became affliated with a company that engages in the prohibited activities to conform to the regulation (with certain exceptions) within one year from the effective date of the regulation, (7) require any insured bank that as of the publication date of the proposal is directly engaging in any of the prohibited activities to conform to the regulation within one year of the effective date of the regulation with the exception that ongoing real estate developments may be completed, and (8) exclude a bank's direct investment in a subsidiary that engages in prohibited activities from the banks consolidated capital.

DATE: Comments must be received by July 22, 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 and reviewed in Room 6108 between the hours of 8:30 am and 5:00 pm.

FOR FURTHER INFORMATION CONTACT: Pamela E.F. LeCren, Senior Attorney, Legal Division, (202) 389-4171, Robert E. Feldman, Attorney, Legal Division, (202) 389-4171, or Ken A. Quincy, Examination Specialist, Planning and Program Development Branch, Division of Bank Supervision, (202) 389-4141, 550 17th Street, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: On November 26, 1984 the Board of Directors of the FDIC adopted a Notice of Proposed Rulemaking soliciting comment on a proposed regulation governing the direct and indirect involvement of insured banks in real estate brokerage and underwriting, insurance brokerage and underwriting, data processing for third parties, travel agency activities, and other financially related services (49 FR 48552 December 13, 1984). The notice set forth a proposed amendment to Part 332 of the FDIC's regulations ("Powers Inconsistent with the Purposes of Federal Deposit Insurance Law"). In brief, that proposal would have: (1) Prohibited any insured bank (including insured nonmember banks, national banks, state banks that are members of the Federal Reserve System, insured branches of foreign banks, and federally-chartered savings banks insured by the FDIC) from directly engaging in insurance underwriting, underwriting or developing real estate, reinsurance, insuring, guaranteeing, or certifying title to real estate, guaranteeing or becoming surety upon the obligations of others, insuring the fidelity of others, or engaging in a surety business, (2) required any subsidiary of an insured bank that conducts any of these activities to meet the criteria for a bona fide subsidiary set out in the regulation, (3) required notice to the FDIC of intent to invest in any such subsidiary, (4) placed certain restrictions on the affiliation of an insured bank with a company that engages in any of the prohibited activities, (5) placed certain restrictions on extensions of credit and other transactions between insured banks and their subsidiaries or affiliates that engage in any of the prohibited activities, (6) required all insured banks that established or acquired a subsidiary or became affiliated with a company that engages in the prohibited activities prior to the effective date of the regulation to conform thereto within one year, (7) required any insured bank that as of the effective date of the regulation was directly engaging in any of the prohibited activities to conform to the regulation within two years, and (8) placed certain restrictions on insured banks that provided electronic data processing (EDP) services to persons or companies other than banks, or acted as agent or broker for insurance, real estate, securities, or travel services.

In proposing this regulation the FDIC acknowledged that the environment in which insured banks function is rapidly changing and that traditional boundaries separating "banking" from other "financial services" and from "commerce" are beginning to erode. The FDIC specifically noted in the preamble of the prior **Federal Register** notice the ever-increasing number of cross-industry acquisitions; the wide array of commercial enterprises affiliating with banks as a result of the "loophole" in the Bank Holding Company Act which permits the phenomenon of the nonbank bank; the expansion by banks into new product markets; and the changes in state law authorizing banks to engage directly, or indirectly through subsidiaries, in activities heretofore not open to banks. As stated in the prior notice, the FDIC monitors developments in the banking industry and related changes in state law in order to assess the potential impact on bank safety and soundness and on the deposit insurance system.

The proposed regulation was published for a 60-day comment period which closed on February 11, 1985. Five hundred seventeen comments were received over the comment period. An overall summary of comments is set forth below. Upon consideration of the comments, the FDIC has determined to issue a revised proposed regulation for further comment. The FDIC has also determined to hold a one-day public hearing on the proposal the details of which are set forth in a notice of hearing published elsewhere in today's Federal **Register.**

Comments Addressing Insurance Activities (Brokerage and Underwriting)

The FDIC received a total of 81 comments that addressed whether insured banks should be permitted to directly or indirectly engage in insurance activities. The majority of the comments addressing this issue were from insurance agents, insurance trade associations, or insurance companies. The majority of these comments were opposed to any bank entry into any aspect of the insurance industry. The concerns of this group related to: express or implicit tying arrangements; potential conflicts of interest inherent in banks conducting insurance activities; potential slackening of credit standards in reliance on insurance issued by a bank's subsidiary; and banks having an unfair competitive advantage due to their status as grantors of credit.

A significant minority of comments addressing insurance activities (approximately 20%) were from banking organizations. While a few banks expressed concerns similar to the ones noted above, most banks supported bank involvement in insurance activities. These banks indicated that they have engaged in such activities (as permitted by state law) and, in their experience, insurance activities have not created any safety and soundness problems. Supporters of bank insurance activities were nonetheless critical of the proposed regulation for the following reasons: (1) The regulation would

disrupt established activities that have been safely conducted over a number of years; (2) insurance powers have generally not been abused nor have supervisory concerns been raised to warrant a broad, restrictive regulation; and (3) compliance with the regulation would generally increase costs to the consumer.

Comments Addressing Real Estate Activities (Brokerage and Development)

The FDIC received approximately 300 comments addressing bank real estate development activities. These comment letters exhibited a pattern similar to that noted above for insurance activities. That is, realty companies and related trade associations opposed any bank entry into real estate activities. The concerns of this group were: (1) Express or implicit tying arrangements; (2) potential conflicts of interest inherent in banks conducting real estate activities; and (3) banks would have an unfair competitive advantage because they are grantors of credit and have tax advantages not available to independent real estate firms. These comments did, however, support the bona fide subsidiary requirement; placing limitations on the volume of business financed by the parent bank; establishing a prohibition on joint advertising; prohibiting the use of bank customer information for the purpose of soliciting real estate business; and requiring separate accounting and recordkeeping. One national association did generally support the proposed regulation (especially the bona fide subsidiary requirement) as preferable to the patchwork of state laws that currently govern bank real estate investment activities.

The comments received from banks were supportive of bank involvement in real estate activities, but critical of the proposed regulation. Banks that have historically had real estate powers or that recently obtained such powers were particularly critical of the bona fide subsidiary requirement as an expensive form of organization and as actually weakening the bank's control over real estate activities. Many comments felt that the existing limitations in state authorizing statutes were sufficient to control any risk to the institution. These comments cited the historical lack of safety and soundness problems associated with bank real estate activities as an argument against a broad regulation and argued that in any event, the FDIC has adequate enforcement powers to deal with potential problems on a case-by-case basis.

Comments Addressing Travel Agency Activities

The FDIC received 144 comment letters from travel agencies or related organizations opposing any bank involvement in travel agency activities. The concerns of these comments were: (1) Bank travel agencies have a competitive cost advantage due to any funding received from the bank; (2) bank travel agency customers may erroneously assume deposit insurance affords some additional protection in the purchase of tickets; (3) travel agency activities are not incidental to the conduct of a banking business; and (4) travel agency activities may have a potential negative impact on banks.

Comments Addressing Electronic Data Processing Services

The FDIC received one comment letter addressing banks providing electronic data processing services. The comment indicated that although there are no safety and soundness considerations regarding such services, a prohibition on tie-ins would be reasonable. The comment objected to the requirement in proposed § 332.8 concerning the remission of commissions to the bank.

Alternative Approaches

In addition to the comments discussed above, the FDIC received many comments suggesting alternatives to the proposed regulation. Dropping the rule in its entirety was one alternative proposed by those who perceived the rule to encourage banks to enter into unfamiliar areas which would not only jeopardize bank safety but would, in some cases, result in unfair competition. The FDIC cannot emphasize enough that neither the original proposal nor the revised proposal is in any way an authorization for banks to enter into the activities at issue. Nor is the regulation properly characterized as an attempt to encourage banks to do so. The proposal is simply a recognition that the authority granted insured banks by their respective chartering authorities may create a need for the FDIC to establish appropriate safety and soundness limitations to govern the exercise of those powers.

Several comments suggested that the FDIC calculate insurance assessments on a risk-related basis in lieu of adopting the proposal. The FDIC has for some time favored implementation of an insurance assessment system based on risk. However, the current system for assessing all insured banks equally on a straight percentage basis was established by Congress and can only be changed by legislation. (It should be noted that the FDIC has sought legislation which will permit risk-related assessment, *see S. 760 and H.R. 1833.*)

Other comments requested that the FDIC not act on the proposal but let Congress resolve the issues involved. Congress can, of course, adopt the course it deems best for the nations' banks. Until such time as Congress directs otherwise, however, the FDIC is bound to enforce the provisions of the Federal Deposit Insurance Act relating to safety and soundness and those provisions relating to the protection of the deposit insurance fund in the way it deems best through its accumulated expertise.

Still other comments urged the FDIC to rely on its cease-and-desist authority to address problem situations on a case-by-case basis rather than adopting a regulation that would be generally applicable to all banks. The FDIC fully intends to utilize its section 8 authority whenever appropriate on an individual enforcement basis. As discussed more fully below, however, in view of among other things, the nature of the activities involved and the related risks to the functioning of the deposit insurance system, the FDIC has determined that it is appropriate to establish standards by way of regulation designed to prevent problem situations before they occur.

Some comments while agreeing that there is a need for the FDIC to address the risks presented by the activities covered by the regulation, urged the FDIC to adopt guidelines rather than a formal regulation. The FDIC has rejected that suggestion as well; the abuses that the FDIC is seeking to have banks avoid and the related safety and soundness and deposit insurance concerns are of sufficient magnitude that a binding regulation establishing enforceable standards is appropriate. Additional comments suggested that the FDIC follow the approach adopted by the Federal Home Loan Bank Board ("FHLBB") in its recently issued regulation governing the direct investment powers of institutions insured by the Federal Savings and Loan Insurance Corporation ("FSLIC"). If authorized by applicable law, FHLBB-regulated institutions are permitted thereunder to exercise certain investment powers to a threshold amount which may be exceeded with FSLIC's prior approval. Presumably these comments favor such an approach as it seems to be more flexible than the FDIC's original proposal. As described below, the FDIC's revised proposal permits insured banks, where authorized under applicable law, to (1) engage directly in real estate development up to

the limits contained in § 332.3(b)(2)(i), (2) underwrite life insurance and annuities pursuant to the conditions contained in § 332.3(c)(2)(i), and (3) issue guarantees and act as surety pursuant to § 332.3(a)(2)(i). By permitting FDIC-insured banks to conduct these activities in-house, the FDIC is proposing an approach analogous in some respects to that recently adopted by the FHLBB.

Statutory Authority

Many of the comments asserted that the application of the proposed regulation to all insured banks exceeded the FDIC's statutory authority. Generally, the comments fell into two groups: (1) Those contemplating that the application of the proposed rule to state-chartered institutions is an undue infringement on the regulatory power of the states under the dual banking system, and (2) those contemplating the application of certain aspects of the proposal to insured banks other than insured state nonmember banks is an infringement upon the regulation of national banks by the Comptroller of the Currency, state member banks and bank holding companies by the Board of Governors of the Federal Reserve System, and federal savings banks by the Federal Home Loan Bank Board.

The FDIC has reviewed and considered all of these comments and after doing so continues to believe that the proposed rule is within the FDIC's authority. The FDIC has broad general authority to issue regulations "as it may deem necessary to carry out the provisions of the [Federal Deposit Insurance Act] or of any other law which it has the responsibility of administering or enforcing * * *" 12 U.S.C. 1819 Tenth. It is settled that binding legislative-type rules based on general rulemaking authority may be issued so long as the rules are reasonably related to the purposes of the enabling legislation containing the general rulemaking authority. *Mourning* v. *Family Publications Services*, 411 U.S. 336, 369 (1973) (quoting *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 268, 280–281 (1969)).

Despite criticism to the contrary, the proposed regulation does not strain to further a purpose of the Federal Deposit Insurance Act ("FDI Act"). On the contrary, one need look no further than the preamble of the legislation placing federal deposit insurance on a permanent basis to discover the nexus between the proposed rule and the FDI Act. The preamble states that the Banking Act of 1935 was "[t]o provide for the sound, effective, and uninterrupted operation of the banking system* * *" Pub. L. No. 74–305, 49 Stat. 684 (1935). The clear goal of the FDI Act as demonstrated by the express language of the statute and its legislative history is to protect the safety and soundness of insured banks. The ability of a federal bank regulatory agency to make, based on general rulemaking authority, regulations in harmony with safety and soundness concerns was judicially recognized long ago. *Continental Bank and Trust Company* v. *Woodall*, 239 F.2d 707, 710 (10th Cir.), *cert. denied*, 353 U.S. 909 (1957). Inextricably connected therewith is the safety and soundness of the deposit insurance fund, *Federal Deposit Insurance Corporation* v. *Citizens State Bank*, 130 F.2d 102, 104 n.6 (8th Cir. 1942), and the FDIC's authority to protect the fund. Section 11(f) of the FDI Act is a Congressional mandate that FDIC pay insured deposits whenever a bank is closed "on account of inability to meet the demands of its depositors." 12 U.S.C. 1821(f). The FDIC, therefore, must preserve the solvency of the insurance fund in order to fulfill its mandate when called upon.

Even more importantly, the FDIC "protects the medium of payment from disruption caused by bank failure." H.R. Rep. No. 1792, 88th Cong., 2d Sess. 3 (1964). The recent failure of a state deposit guarantee fund to preserve public confidence in itself clearly demonstrates that financial havoc can result from the loss of public confidence. In order to preserve public confidence in the banking system on a national scale, it is clear that the FDIC must protect the insurance fund. The Senate Committee on Banking and Currency has recognized that the FDIC's supervisory responsibilities do in fact relate to actions having "a direct bearing on its role as insurer." S. Rep. No. 1821, 86th Cong., 2d Sess. 3 (1960). The Board of Directors has determined that this proposed regulation relates directly to the FDIC's role as insurer, and that it will help preserve public confidence in the banking system. Furthermore, the FDIC's interpretation of its own statute is entitled to great weight. *Jones* v. *FDIC*, 748 F.2d 1400, 1404 (10th Cir. 1984) (citing *Ford Motor Credit Co.* v. *Milhollin*, 444 U.S. 555, 557 (1980)); *see also FDIC* v. *European American Bank & Trust Co.*, 576 F. Supp. 950 (S.D.N.Y. 1983). This deference is particularly appropriate in defining unsafe and unsound banking practices since the courts have recognized that "[o]ne of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies." *Groos National Bank* v. *Comptroller of the Currency*, 573 F.2d 889, 897 (5th Cir. 1978); *First National Bank of LaMarque* v. *Smith*, 610 F.2d 1258, 1265 (5th Cir. 1980).

In addition to the FDIC's general rulemaking authority, the FDIC in taking this action is relying upon sections 8(a) and 6 of the FDI Act. Section 8(a) of the FDI Act provides that the FDIC may involuntarily terminate the deposit insurance of any insured bank which has engaged or is engaging in unsafe or unsound practices or is in an unsafe or unsound condition. 12 U.S.C. 1818(a).

Section 6 sets forth six safety and soundness concerns [1] which must be satisfied in order for deposit insurance to be granted.[2] (12 U.S.C. 1816). Specifically, section 6 *requires* the FDIC to consider "whether or not [the bank's] corporate powers are consistent with the purposes of this Act." Therefore, while it may be clear that a bank's powers are conferred by its chartering authority, there can be no doubt that the FDIC is required by the FDI Act to consider fully whether or not those powers are consistent with the FDI Act and that it is the role of the FDIC to define those purposes.

The FDIC has the authority to promulgate regulations pursuant to sections 8(a) and 6 that are reasonably connected to furthering bank safety and soundness and preserving the insurance fund. *See Mourning, supra.* The fact that section 8(a) literally deals with a particular type of processing is no bar to relying on that provision of the FDI Act as authority for the proposed regulation.

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[1] Those concerns are as following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnigns prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of the Act.

[2] Several comments noted that deposit insurance is automatic for national banks (when commencing business) and state member banks (when becoming a member of the Federal Reserve System) upon certification by the Comptroller and the FRB, respectively, of satisfaction with the factors enumerated in section 6, 12 U.S.C. 1814(b). These comments argued that, therefore, any concerns FDIC might have about the factors in section 6 are limited to insured state nonmember banks. The certifications made by the Comptroller and the FRB, however, must comport with the standards of analysis adopted for the six factor by the FDIC. The former two agencies cannot establish the standards to be followed in section 6 but, rather, must adhere to those established by the FDIC. That this could not be otherwise is clear because the FDIC bears the insurance risk. Additionally, under section 8(a), the FDIC can terminate the deposit insurance of any insured bank in an unsafe and unsound condition. It would be self-defeating for the Comptroller and the FRB to apply standards to the certification process unacceptable to the FDIC as the FDIC would merely step in and terminate insurance.

Any analysis of authority rests only on the reasonableness with which the regulation furthers the purposes of sections 8(a) and 6. The regulation accomplishes this by decreasing the need for involuntary termination proceedings against banks engaged in the activities prohibited thereunder, *i.e.*, activities that would violate the standards of section 6 and jeopardize the deposit insurance fund. This preventive approach to ensuring safety and soundness and preserving the fund has a reasonable nexus with FDIC's general rulemaking authority and the stated purposes of the FDI Act.

The FDIC cannot be expected to proceed solely on a case by case basis. *Cf. Independent Bankers Association* v. *Heimann*, 613 F.2d 1164, 1169 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980) (Comptroller entitled to accomplish his regulatory responsibilities over unsafe and unsound practices by rules as well by cease-and-desist proceedings). The FDIC must have the ability "to forewarn by specifying and clarifying the nature and scope of [its] concerns" in order to "minimize the necessity for recurrent and costly investigation into the conduct" of insured banks. *Id.* The FDIC has the right to choose between rulemaking and adjudication in eradicating unsafe and unsound banking practices that threaten the viability of the deposit insurance fund. Although several coments asserted that the FDIC could not promulgate regulations based on section 8(a), no comment has mentioned any compelling evidence—nor is there anything compelling in the FDI Act or its legislative history—that would limit the FDIC's power to its enforcement function or prevent the FDIC from making that function more effective through rulemaking. The FDI Act establishes the FDIC as an administrative agency, not solely as an administrative court passing on whether to terminate insurance. Congress gave the FDIC extensive powers of inquiry and investigation (*see* 12 U.S.C. 1820(b), (c) and the power to publish reports of insured bank noncompliance with FDIC recommendations, *id.* 1828(f), as well as the power to terminate insurance). It is therefore plain that Congress did not wish to limit the FDIC to a judicial method of legal administration by precluding preventive measures other than enforcement proceedings.

The FDIC's authority is also supported by considerations of fairness and practicality. *See National Petroleum Refiners Association* v. *Federal Trade Commission*, 482 F.2d 672, 683 (D.C. Cir. 1973), *cert denied*, 415 U.S. 951 (1974). This seminal case held that the Federal Trade Commission could police "unfair and deceptive" practices through rulemaking or through enforcement proceedings. The FTC's authority to implement its mandate over "unfair and deceptive" acts or practices is "closely analogous" to a federal banking agency's role with respect to unsafe and unsound banking practices. *Heimann*, 613 F.2d at 1169. Rulemaking, according to the *National Petroleum Refiners* decision, engenders fairness by putting an entire segment of society on notice of how the agency will act in the future. 482 F.2d at 682. It permits the public to participate in the process of establishing the rule, unlike the adjudicatory process. Rulemaking also is practical in that it can prevent increased numbers of termination proceedings against banks encountering difficulties. (The FDIC's "heavy and profound regulatory responsibilities" cannot be disrupted by an entirely preventable increase in its enforcement caseload. *See Investment Company Institute* v. *FDIC*, 728 F.2d 518, 526 (D.C. Cir. 1984).)

Some comments argued that the exception clause of section 9 "Tenth" of the FDI Act which limits the Board of Directors' authority to issue regulations "to the extent that authority has been expressly and exclusively granted to any other regulatory agency," 12 U.S.C. 1819 Tenth, removes the authority from the FDIC to adopt these regulations. The exception clause does not remove the FDIC's authority to adopt regulations with respect to state-chartered banks even if those regulations conflict with state laws. Validly promulgated FDIC regulations clearly preempt any state law to the contrary. *See Fidelity Federal savings Bank* v. *de la Cuesta*, 458 U.S. 141 (1982); *Conference of State Bank Supervisors* v. *Conover*, 710 F.2d 878 (D.C. Cir 1983). In fact, the FDIC has long prohibited insured state nonmember banks from doing a surety business, insuring the fidelity of others, insuring, guaranteeing or certifying titles to real estate, and guaranteeing or becoming surety upon the obligations of others. 12 CFR Part 332, with respect to real estate and insurance activities, the FDIC cannot be accused of overriding state laws in the many states that do not permit such activities. Even in those states where such activities are permitted, the FDIC is simply prescribing procedures for their safe and sound conduct which procedures may or may not be more restrictive than procedures established by state law. For example, California-chartered commercial banks may have direct real estate investments not to exceed the total shareholders' equity in the bank (Cal. [Fin.] Code § 751.3).

With respect to national banks, state members banks, federal savings banks, and isured branches of foreign banks, the Board of Directors believes that the authority to issue regulations governing the safety and soundness of such entitlies with a mind toward protecting the FDIC's paramount interest in the deposit insurance fund has nowhere been expressly and exclusively delegated to the Comptroller of the Currency, the FRB, or the Federal Home Loan Bank Board. Nonetheless, the proposed regulation does not address areas of activity to which the latter three agencies have already spoken. Currently, national banks and state member banks may not engage in real estate development, insurance underwriting, or reinsurance activities. By the same token, FDIC-insured federal savings banks also may not directly engage in such activities except to the extent that they were authorized to do so under state law prior to their conversion to federal charters. *See* 12 U.S.C. 1464(i)(5). The FDIC's regulation of such grandfathered activities is not inconsistent with federal law as the FDIC has the retained authority, as clearly demonstrated above, to prohibit unsafe and unsound practices. The FDIC's proposed regulation does not conflict with the recently-issued FHLBB regulation governing the regulation of direct investment by FSLIC-insured institutions because that regulation specifically excludes FDIC-insured federal savings banks from its scope. (50 FR 6,912). Although FHLBB is the primary regulator of FDIC-insured federal savings banks, FDIC paramount interest in preserving its insurance fund is again a sufficient nexus to give FDIC the ability to provide for the safety and soundness of such institutions. This is especially the case where FHLBB is silent on the issue of investment powers with respect to Federal savings banks while imposting safety and soundness guidelines on all other FHLBB-regulated, but FSLIC-insured, institutions.

Finally, the proposed regulation's provisions on affiliation and on restrictions on transaction with affiliates do not interfere with the FRB's regulation of bank holding companies and their nonbank subsidiaries. Those provisions of the proposed rule would apply solely to the insured banks in furtherance of safe and sound banking practices. No regulation of the affiliate (*i.e.*, bank holding company or nonbank subisdiary) is involved; only the insured bank is within the abmit of the regulation.

Bases for Concern

Real Estate Development

The FDIC believes there is a strong factual basis for regulating real estate development activities by insured banks. This belief arises from the nature or real estate development activities as well as from more general distinctions that can be made between equity investments and lending activities.

Risk Compariosn of Equity Investment vs. Lending. It is more risky to make equity investments in any given industry than it is to make loans to individuals or business entities engaged in the same types of activities. Traditionally, in our economic system, investors have been risk takers fully aware of the rewards and losses which can accrue as a result of their decision. Lenders, on the other hand, have traditionally made an effort to minimize risk. While loans can be very risky, they are often repaid in full even if a project shows no profit or a negative profit. Returns to equity investments, however, are dependent upon the eventual success of a project. A project that does not show a profit can result in a total loss for the equity holder. Moveover, real estate projects offered to financial institutions for direct investment are likely to be riskier than projects for which straight loans are sought, since developers will be less willing to share the rewards to equity provided by their "best" investments. A recent study based on a sample of Texas-charatered savings and loan institutions lends further support to the view that real estate equity investments by financial institutions generally have greater risk than real estate loans.[3] IN recognition of the fact that equity investments are likely to be riskier than loans, the FDIC traditionally has not permitted banks to make equity investments. To the extent that equity investments in real estate are permitted by state law, the proposal would limit a bank's exposure, in the aggregate, and with respect to any one investment.

Cyclical Nature of Real Estate Markets. Beyond the general distinctions that can be made between loans and equity investments, there is sufficient evidence of riskiness in real estate development itself to warrant concern. One needs only to look at the current vacancy rates for office building (See Chart 1), apartments and commercial buildings in major cities across the country to see the risks inherent in real estate development activities. Downtown Office vacancy rates in Houston, Denver, Dallas and Los Angeles as of year-end 1984 were 20.9, 23.7, 17.2 and 11.8%, respectively, while the suburban vacancy rates in these same metropolitan areas were even higher.[4] Apartment vacancy rates are up to 20% in Houston, 11.2% in Phonex, 9% in Dallas-Ft. Worth, and 24% in Denver. In Oklahama City, apartment owners are offering free trips to Hawaii in an effort to work off inventory.[5] The nationwide mortgage banking firm of Lomas & Nettleton projects that a rental oversupply will arrive in Atlanta, Austin, Orlando and Tampa within a year. The time lag between initial construction and the final completion of real estate development projects may contribute to the cyclical nature of the real estates markets since projects often are initiated when markets are strong, but completed after they have weakened. (See Charts 2 and 3 for evidence of the cyclical nature of real estate markets.)

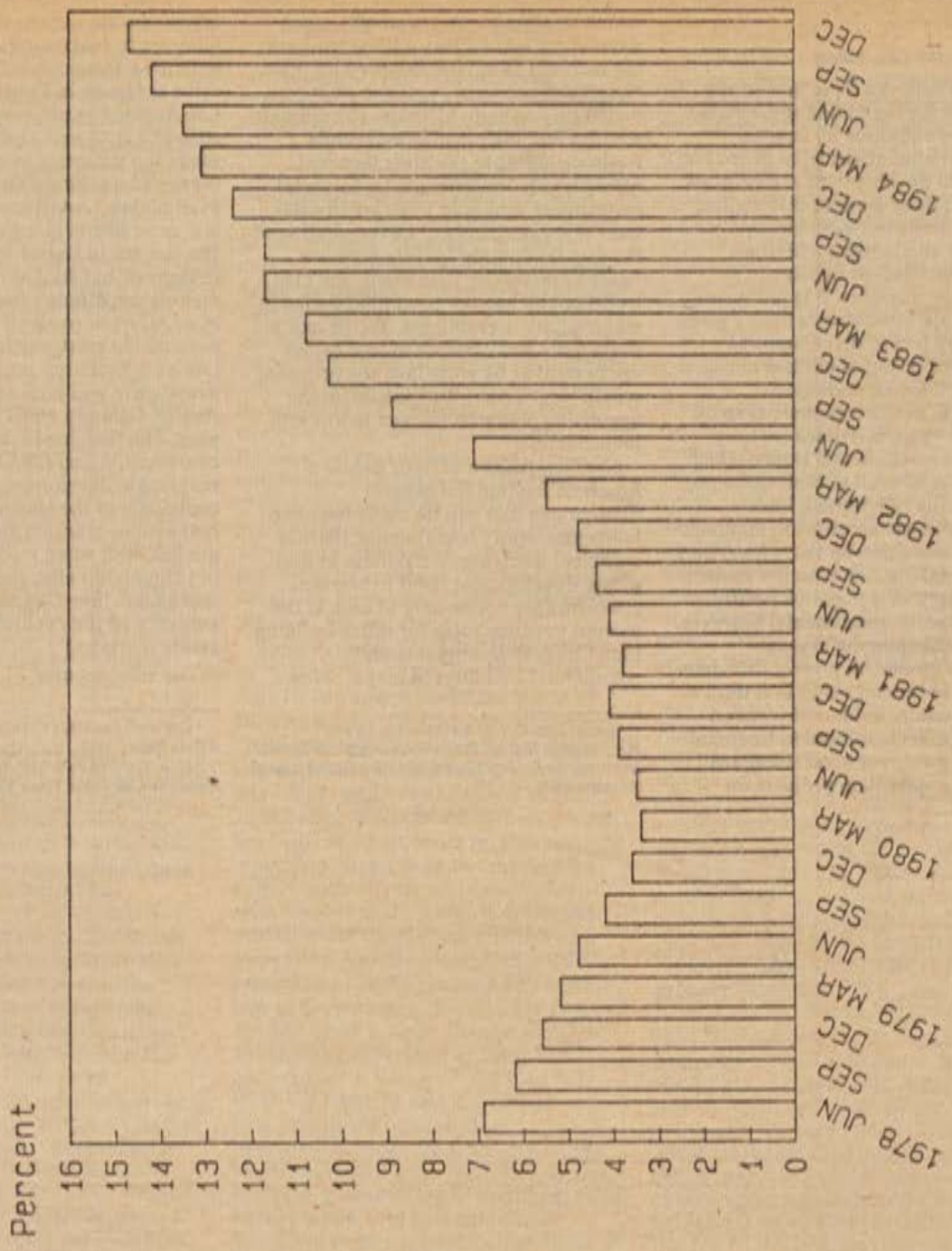
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[3] J. Crockett, C. Fry, & P. Horvitz, *Equity Participation in Real Estate by Savings and Loans: Implications for Pofitability and Risk* (University of Houston 1985).

[4] Coldwell Banker, *Office Building and Real Estate Data* (1985).

[5] *How Tax Laws Pushed Apartment Builders into Overdrive*, Business Week 124 (May 13, 1985).

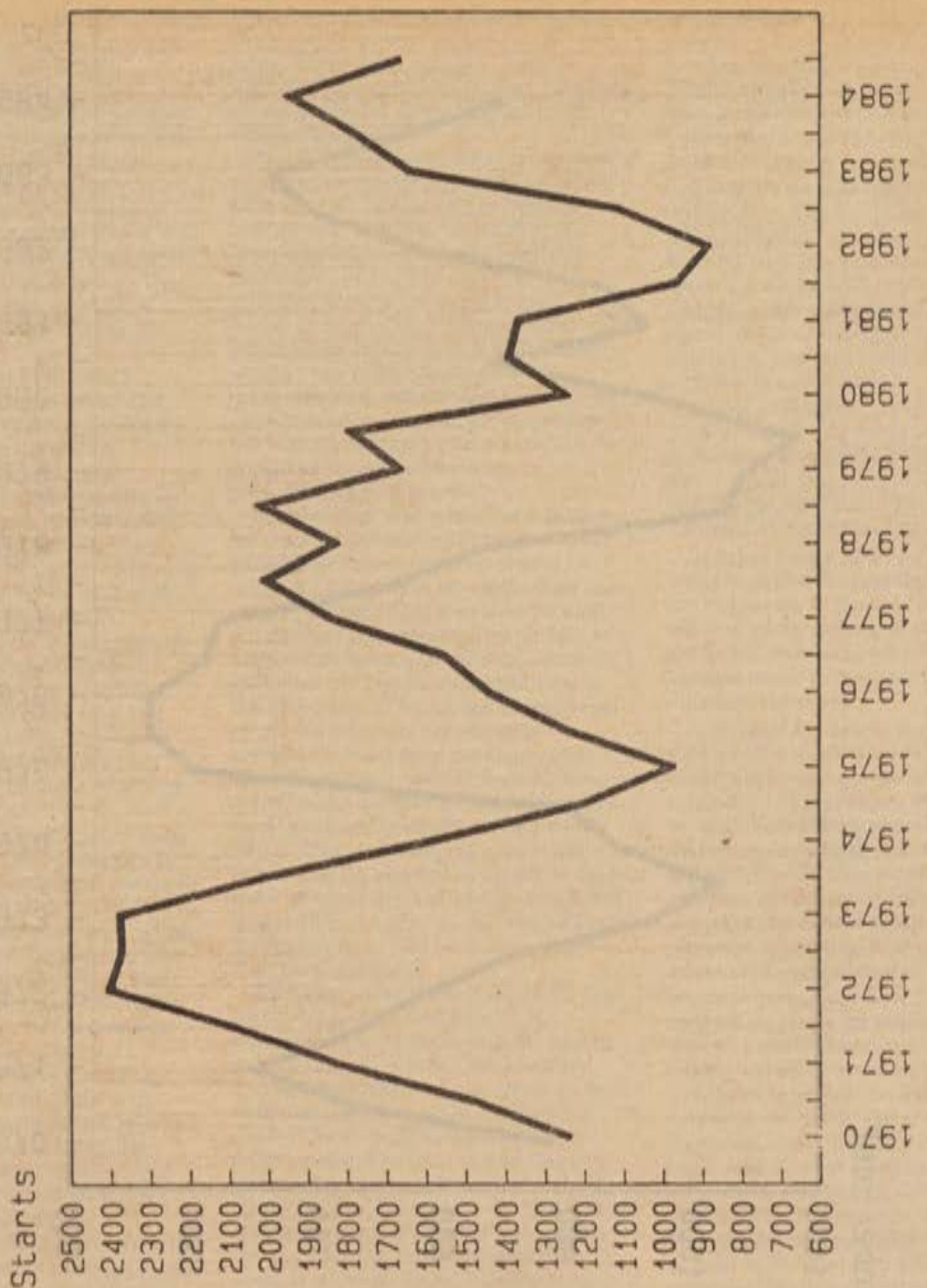
Chart 1
Office Vacancy Rates
(Downtown Areas)



Source: Coldwell Banker.

Chart 2

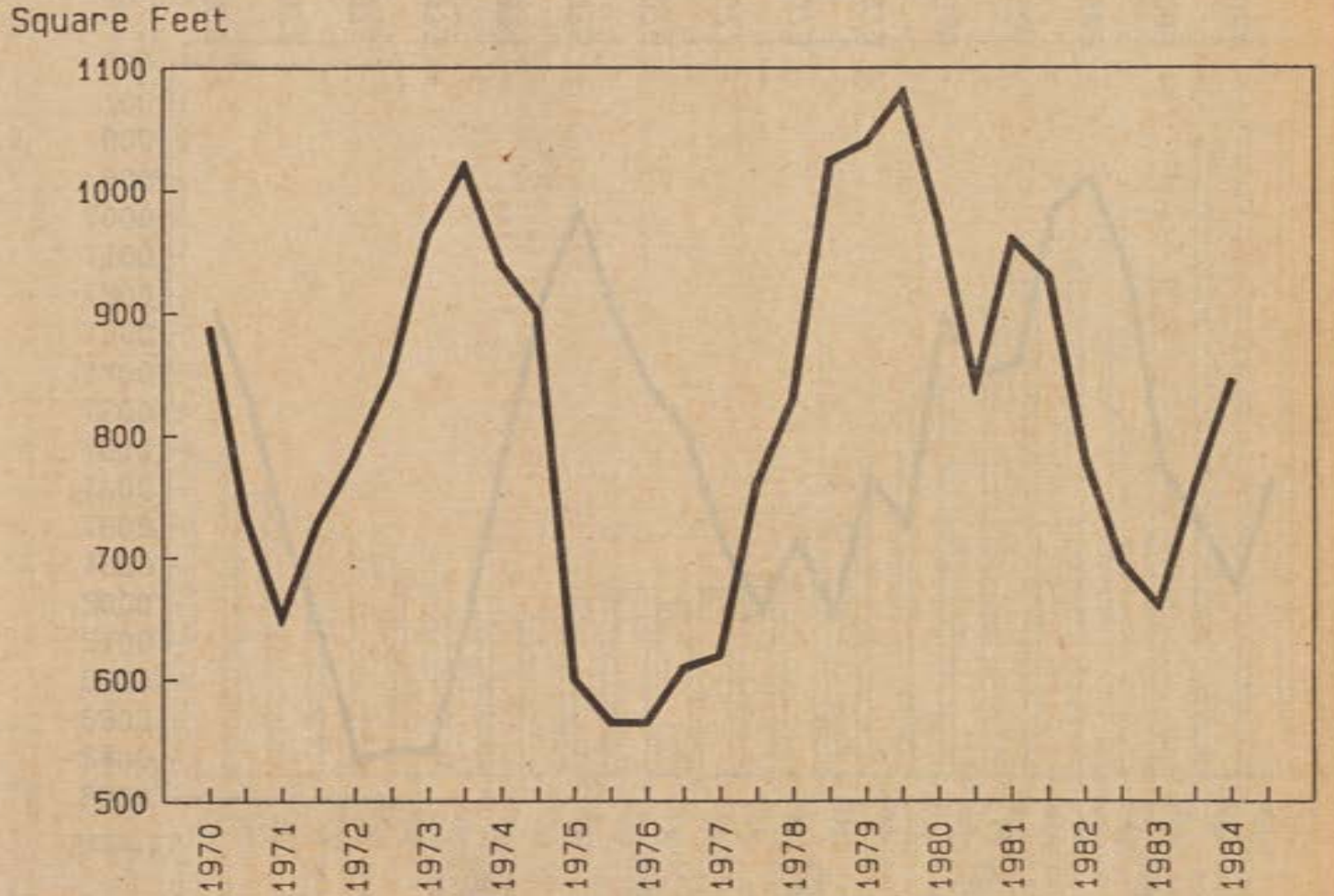
Housing Starts
(thousands of units)



Source: U.S. Department of Commerce.

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Chart 3
Commercial & Industrial Building
(millions of sq. ft.)



Source: F. W. Dodge.

The real estate downturn of the mid-1970s caused serious distress for many financial institutions which were creditors for real estate projects, difficulties which would have been even greater had they had equity positions in the underlying properties. By March 1976, at least 32 savings and loan associations with aggregate assets of $10 billion had service corporations with serious real estate problems. Real estate losses were contributing factors in the failures of five S&Ls with aggregate assets of over $700 million during the mid-1970s.

The virtual collapse of the REIT industry during this period presented similar problems for commercial banks. For the three-year period ending December 31, 1977, the 20 largest banking companies had charge-offs on loans to REITs in excess of $750 million. While there were differences in the overall portfolios of the various REITs in existence at this time, in the aggregate their most important investment category was short-term development/construction loans. Many real estate developers had difficulty prepaying these loans as interest rates rose and construction costs steadily increased during the mid-1970s. For REITs this created cash flow problems and a large number of bankruptcies.

While the financial problems of S&Ls and REITs during the mid-1970s can be partly attributed to the cyclical nature of the real market, there were several others reasons for their problems, which help illustrate some of the reasons why more direct bank participation in real estate-related activities could increase overall bank risk. One major problem, highlighted during Congressional hearings on the REIT issue, was that unrealistic property appraisals were made in numerous cases, which resulted in loan to value ratio that were often greater than 100 percent.[6] While fraud can be involved in inflated property values, inexperience and poor judgement are more often the underlying cause of problems due to inaccurate real estate appraisals. The appraised value of a property should be the present value of the net cash flow stream. To give just one example of how an inaccurate appraisal may arise, if the so-called appraised value was based on the gross sellout value, which did not take into account sales expenses, taxes, etc. and did not bring the cash flow back to a present value figure, the appraisal could easily be overvalued by 50% or more. There are a number of other legitimate appraisal methods which may create problems when applied in the wrong situations.[7]

The FDIC has found numerous cases where inapropriate appraisal methods have led to large losses for financial institutions. This illustrates that the inexperienced real estate investor is much more apt to run into financial difficulty than is the experienced investor. Since direct investment in real estate is an area in which many banks would have to be considered inexperienced, pitfalls that arise for the experienced real estate investor (due to the natural riskiness of the activity) would be magnified for banks participating in this area.

Another risk that would be inherent for most banks engaged in direct real estate investment is that it would be difficult for banks to diversify their risks geographically. This was also pointed out during Congressional testimony as a factor contributing to the real estate problems of depository institutions in the mid-1970s.[8] The values of local real estate investments are strongly correlated, since they are dependent upon the same economic factors. Since many banks operate within relatively small geographic markets, they would find it difficult to diversify their risks. Banks that do attempt to diversify these risks by obtaining out-of-territory loans face a different type of risk due to their inexperience in real markets outside their own territory.[9]

There are other potential pitfalls that await depository institutions as relatively new entrants into the equity market for real estate. One aspect of real estate markets which elevates their potential riskiness is the inefficiency created by information gaps. While millions of active traders and frequent transactions keep stock prices near their "true" (realizable values, the thinness of real estate markets makes them more prone to pricing errors. Knowledge about a given property is likely to be highly specialized and costly to obtain because there may be a mere handful of potential buyers having true interest in a property's value at any given time. Further, few transactions involving similar neighboring properties may have transpired in the recent past so that buyers and sellers have little guidance as to what prices are "realistic." Locating those who have the best information may be difficult, especially if the potential buyer (or seller) is not familiar with the local real estate market, and the high cost of obtaining adequate information creates a significant probability that uneconomic purchases and sales will be made. This problem is compounded by the need to diversify real estate investments geographically for safety purposes. Real estate investors must look to markets about which they have little first-hand knowledge, and this exposes them to the information problems just discussed.

Another safety and soundness concern is that real estate investments are not liquid. In periods of economic distress when cash flow considerations are most likely to necessitate selling the asset, it might be particularly difficult to liquidate the asset.

Empirical Evidence. A number of studies offer additional factual evidence of the risks inherent in real estate-related activities. These studies utilize several methods for examining the risks real estate activities pose for banking organizations.[10] One method is to compare an activity's variability of earnings and failure rate with those of banks. A second method is to look at the effect of diversification on a bank organization's cash flow. The second method accounts for the fact that some "risky" activities can actually reduce risk by reducing the variability of the combined organization's cash flow. This would occur if the "risky" activity produced most of its cash flow when bank cash flow is weak but produced little when a bank's cash flow was strong. In such a case the combined cash flow would be less variable than either of their individual flows. One way to examine the diversification effects is to look at the level and variance of earnings of banking and other activities, and then look at the correlation between those earnings. Equity investments in real estate could reduce bank risk if either (1) the earnings from a nonbank activity are less volatile than in banking, or (2) earnings from the nonbanking activity are negatively correlated with

[6] *Real Estate Investment Trusts and the Effect They Have Had and May Be Expected to Have on the Banking System: Hearings Before the Senate Committe on Banking, Housing and Urban Affairs*, 94th Cong., 2d Sess. 297 (1976) [hereinafter cited as *Hearings*.]

[7] These include: appraisals based on a valuation "when completed and occupied on a fully stabilized basis" when a project is not completed or fully stabilized; valuations based on sales at "typical terms" when such typical terms are not carefully specified; "in use" valuations when a property is out of use; and valuations based on "the highest and best use".

[8] *Hearings*, *supra* note 6, at 297.

[9] *See Banks Warned to Avoid Risky Real Estate Swaps*, American Banker, May 2, 1985, at 1, col. 2, for a view on one type of problem that can arise from the purchase of out-of-territory real estate loans.

[10] The discussion of methods that can be used in measuring risk is taken largely from L. Wall & R. Eisenbeis, *Risk Considerations in Deregulating Banking Activities*, Federal Reserve Bank of Atlanta Economic Review 6, 12–13 (May 1984).

those of banking. A bank's risk could increase if its engages in financial activities that have more volatile earnings than banking and whose returns are highly correlated with banking. The studies reviewed in the following paragraphs discuss measures of variability of earnings and correlation in examining the risks equity investments in real estate may pose to banks. While none of the studies alone provides conclusive evidence that a bank's real estate equity investment activity should be placed in a bona fide subsidiary, in the aggregate these studies, along with the additional evidence presented in this section, present a strong case in favor of the FDIC's proposed regulation.

Wall and Eisenbeis (1984) examined annual returns from 1970 to 1980 and found that exposure to real estate could have posed significant risks to banking institutions over this period.[11] Two types of evidence supported this conclusion: comparisons of earnings variability between banking and real estate-related activities, and measures of the correlation between annual real estate earnings and bank returns. The ratio of net income to assets was used to measure earnings for both activities, and data were drawn from the real estate and banking subsidiaries of U.S. bank holding companies. Individual holding company data were aggregated to obtain measures of average industrywide earnings for banking and (each of) several real estate-related functions. The authors used these industrywide averages to calculate statistical measures of relative risk.

TABLE 1.—RISK MEASURES: AGGREGATE BANK HOLDING COMPANY DATA, 1970–1980

Type of activity	Coefficient of variation	Coefficient of determination
Real Estate Operators, Lessors of Buildings	.200242	+.645042
Condominium Management and Co-op Housing Associations	.542500	+.928662
Lessors of Mining, Oil, etc	.434163	+.370005
Subdividers and Developers	.306568	+.560607
Lessors of Railroad Property and Other Property Not Allocable	.124316	−.36543
Other Real Estate	.184351	+.310724
All Real Estate	.216494	+.605346
Banking (Banks, Trusts, and Mutual Savings Banks)	.173503	+1.0

NOTES.—Data are annual, constructed from the Corporate Source Book of Income which uses Federal tax returns to compute firms' profits. Coefficient of variation measures the variability of earnings and is thus indicative of the risk of the activity by itself. Coefficient of determination measures the correlation of the activity's earnings with bank earnings and thus measures the degree of portfolio risk that the activity may bring to banks. A coefficient of determination of +1.0 means that the activity's earnings oscillate exactly as bank returns do, and inclusion of the activity in a bank's portfolio would increase the amplitude of swings in bank returns, *i.e.*, banks receive no diversification benefits from such an investment.

Source: Wall and Eisenbeis 15 (1984).

[11] *Id.* at 6–19

Relevant findings from this study are summarized in Table 1. The measures of earnings variability ("coefficients of variation") show that five of the six real estate activities examined had more variable earnings than banking over the sample period. Moreover, the correlation measures ("coefficients of determination") show that the earnings of all but one real estate function were positively and strongly correlated with bank returns during the 1970s. This suggests that a strong move into real estate investments could have aggravated the volatility already present in a "typical" bank's earnings during this period. The combined earnings of all individual real estate activities ("All Real Estate" in Table 1) were significantly more variable than bank returns in the sample and showed a strongly positive coefficient of determination. Such evidence indicates that, from 1970 to 1980, even a bank whose real estate interests were well-diversified by type of activity may not have been able to avoid a substantial increase in earnings volatility as a result of its exposure to real estate.

Boyd, Hanweck, and Pithyachariyakul (1980) also examined rate-of-return variability in real estate and banking.[12] Two different methods of measuring this variability (*i.e.*, standard deviation) were used for annual data spanning the 1971–77 period. The first method followed that of most other studies and used industrywide average rates of return to compute a standard deviation statistic for each industry (*e.g.*, real estate and banking). A standard deviation thus compiled was called an "industry statistic." The second method initially computed a rate-of-return and its standard deviation for each individual firm. These statistics were then pooled into (unweighted) averages to derive a measure of the industry's rate-of-return variation. Standard deviation statistics computed in this manner were called "individual firm" statistics.

Both methods used data collected from bank holding company subsidiaries. Individual firm statistics reflected intra-industry (inter-firm) variability in rates-of-return while industry statistics did not. The standard deviation of an individual firm's rate-of-return received no weight in industry statistics, because earnings were aggregated before any standard deviation was computed. Individual firm statistics provided a broader measure of risk by incorporating the entire spectrum of individual performances and then weighting them equally to represent the industry's rate-of-return variation.

Both measures employed in this study suggest that real estate returns were vastly more variable than bank earnings over the sample period. Table 2 reveals that the "industry" standard deviation for real estate returns was 182 times as large as the analogous measure of variability for bank earnings. Similarly, the "individual firm" statistic suggests that real estate returns were 62 times more variable than bank returns during this six-year period. In a separate exercise it was shown using "industry" data that the correlation coefficient between real estate returns and bank returns over this period was +.8322. The coefficient constructed from individual firm data appeared weakly negative at −.1383. While the alternative measures disagree as to the diversification benefits available from real estate investment, the weight of the evidence appears to favor a positive correlation of returns. At best, the individual firm data suggest a weak offsetting of bank earnings variability by real estate returns, while the industry data indicate that the diversification benefits available to banks through real estate investment were negligible. When these findings are combined with Table 2's evidence, the summary statistics indicate a strong possibility that real estate investment would raise the risk exposure of commercial banks.

TABLE 2.—RISK MEASURES: "INDUSTRY" AND "INDIVIDUAL FIRM" METHODS (1971–77 ANNUAL DATA)

	Standard deviations for rates of return	
	Industry	Individual firm
Leasing, Land, Real Estate	.0728	.0602
Commercial Banks	.0004	.0013

NOTES.—Rates of return are defined as the ratio of after tax profits to total assets.

Source: Boyd, Hanweck and Pithyachariyakul (1980) 118–19.

Eisemann (1976) used monthly rate-of-return data to investigate earnings volatility in many different industries.[13] Rates of return were calculated from indices of stock market performance and thus reflected the investor's point of view. Dividends and capital gains rather than corporate profits *per se* were the primary elements in the rate-of-return

[12] Boyd, G. Hanweck & P. Pithyachariyakul, *Bank Holding Company Diversification*, Proceedings of a Conference on Bank Structure and Competition, Federal Reserve Bank of Chicago 105–121 (1980).

[13] P. Eisemann, *Diversification and the Congeneric Bank Holding Company*, Journal of Bank Research 68–77 (Spring 1976).

calculation. Rates of return for individual firms were aggregated and weighted by the firm's share of the industry's market value in order to obtain an "industry" rate of return. Monthly data from December 1961 to December 1968 were compiled for the analysis and standard deviations were computed on the basis of the aggregate (industry) rates of return.

The results using monthly data corroborate the findings of annual studies. For banking, the deviation of returns was .04578 over the sample period, while three real estate-related industries showed substantially greater earnings variablity: returns to land development, leasing, and property management had standard deviations of .10710, .09060, and .13044, respectively. Hence, the average "risk" associated with real estate investments was more than twice as great as the banking risk reflected in monthly standard deviation.

Sirmans (1984a and 1984b) examined the components of risk in a hypothetical portfolio which included direct investment in real estate.[14] In addition to real estate, the assets comprising the assumed portfolio included commercial loans, fixed and adjustable rate mortgages, and Standard and Poor's 500 Index Fund. Two alternative indices were used to measure quarterly rates of return to real estate. The first index reflected net operating income from apartments, hotels, shopping centers, industrial plants and office buildings *plus* any quarterly changes in the appraised values of such properties. The alternative measure reflected actual market rates of return to a popular real estate investment trust (REIT) index fund. Rates of return were calculated as the ratio of dividends plus capital gains to beginning-of-quarter share prices. Quarterly yields on the portfolio's other assets were also obtained for the sample period, 1978:1 to 1984:2, and these were used to construct a set of "efficient portfolios" for each real estate index. (An "efficient" portfolio contains the unique mix of assets that would have maximized expected returns over the sample period for a given level of risk exposure (standard deviation). The efficient *set* shows one such portfolio for each conceivable level of risk.

This exercise revealed that increases in real estate investment would have entailed major increases in portfolio risk for a wide range of portfolio compositions. For both measures of real estate returns, the standard deviation of portfolio earnings rose steadily as real estate's share of the asset composition was increased. Expected returns also rose with real estate's share of the portfolio, but modern portfolio theory suggests that this effect may have been due precisely to real estate's greater riskiness (as compared to that of displaced assets). Because each of the real estate indices has different deficiencies which could mask the true variability in returns, the broad agreement of these measures on the nature of real estate risk over the sample period suggests that volatility was clearly present in the rate-of-return data of 1978:1 to 1984:2.

Crockett, Fry and Horvitz (1985) interviewed the top management of several large Texas S&L's in order to examine the nature of risk inherent in "typical" real estate ventures which have been conducted by these financial institutions.[15] While expanded powers granted to Texas S&L's have afforded them an opportunity to use direct real estate investment as a diversification tool, the authors did not draw the general conclusion that the risk-reducing benefits of diversification have been fully realized:

> For example, Texas S&L's are mainly interested in taking positions where projects will be sold and profits will be realized in a few years. Over a relatively short horizon, many of these projects, which produce little if any cash flow and lack liquidity, may be unfavorably affected by an increase in interest rates (pp. 17–18).

The inference is that, although recent opportunities for financial institutions to invest directly in real estate have permitted a reduction of risk through greater diversification, such powers also have been used imprudently to elevate risk exposure. This judgment is supported by several recent failures of thrift institutions which regulators have linked to real estate dealings. Even without benefit of these latest experiences, Crockett, Fry and Horvitz were able to detect from interviews that operative diversification strategies at some financial institutions were potentially inadequate to safely accommodate real estate investment:

> If thrifts are to become more involved in equity investment in real estate, an effort should be made to insure that projects are chosen not only on the basis of the riskiness of the individual investment, but on the basis of its contribution to the risk of the portfolio as a whole (p. 18).

On balance, past experience and current practice suggest that financial institutions frequently lack effective internal controls for limiting real estate exposure.

Current Real Estate-Related Problems. All of the above-mentioned studies suggest that real estate-related activities are riskier than a bank's traditional activities and could increase bank risk. It is worth noting that much of this evidence was for a period of time (*i.e.*, the 1970s) that was characterized by generally high inflation. If anything inflation helps to improve the earnings prospects of real estate investments since land values increase with inflation. During the latter part of the 1970s it is almost certain that inflation was responsible for the profitability of many real estate ventures. What this suggests is that, since a noninflationary environment currently prevails, it may not be as easy to obtain profits from real estate ventures as it was in the past.

Indeed the FDIC is currently faced with a number of banks with problems that are primarily due to real estate investments, while these are not equity investments, since the large majority of FDIC-insured institutions are not authorized to engage in direct real estate investments, they indicate the problems the real estate market is experiencing and the greater problems banks may incur should they be permitted to make equity investments in real estate without the protection afforded by a bona fide subsidiary and other restrictions put in place by the rule.

In addition to the problems banks are experiencing with their real estate portfolios, the Federal Home Loan Bank Board has indicated that many of the savings and loan institutions that it insures are experiencing asset-quality problems due to equity investments in real estate. The FHLBB noted in its final rule on regulation of direct investment by institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC) that the recent failures of San Marino Savings and Loan and Empire Savings and Loan were caused primarily by real estate equity investments. 50 FR 6912, 6918. The FHLBB estimates that its losses as a result of these two failures may exceed $400 million.

In an internal memorandum circulated December 10, 1984 and released to the public in connection with its final rule on direct investments, the FHLBB provided examples of numerous other problem institutions that may fail due to their direct investments in real estate activities. The following example presents a typical case.

[14] G.S. Sirmans, *Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments*, Office of Policy and Economic Research, Federal Home Loan Bank Board (Nov. 29, 1984a) and *Reestimation of a Thrift Institution's Efficient Frontiers*, Office of Policy and Economic Research, Federal Home Loan Bank Board (Dec. 10, 1985b).

[15] Crockett, Fry & Horvitz, *supra* note 3.

Institution A

Problem: Funds were used for speculative real estate development and construction loans and condo conversion loans. These loans were actually direct investments and many were made that exceeded net worth. Loans were often funded at 98% of value as based upon inflated appraisals and in fact far exceeded the actual value of the security property.

Losses: Reappraisals indicate losses of over $30m, well in excess of net worth.

Net worth: At period of greatest growth, it declined from a positive to a substantially negative net worth because of poor asset quality.

There have been more recent examples of savings and loan institutions that are failing or near failing due primarily to poor real estate investments as reported in the press. To illustrate the events of a single week, on Monday, April 22, 1985 the *American Banker* highlighted the real estate-related problems of Shoreline Savings Bank in California; while on the same day another California S&L with problem real estate transactions, Beverly Hills Savings and Loan Association, was taken over by the FHLBB. The April 23 issue of *American Banker* included an article on the real estate loan problems of Coronado Federal Savings and Loan Association in Kansas. On April 26th, the *Wall Street Journal* described the "high-risk real estate development loans" of Sunrise Savings and Loan Association of Florida, while on the same day the *New York Times* brought attention to the real estate losses of Bell Savings and Loan Association in San Mateo, California. As many articles pointed out, real estate losses are expected to spread among other S&Ls because many of these troubled thrifts were active sellers of participations nationwide.

A further indication of the concern federal bank regulators have regarding equity investments in real estate by depository institutions, is that the Federal Reserve Board also has indicated its support for rules limiting direct investment in real estate by depository institutions. The Chairman of the Federal Reserve, Paul Volcker, indicated in a letter to Edwin Gray, Chairman of the Federal Home Loan Bank Board that:

> The Federal Reserve shares your concern about the risks the heavy investments in certain types of assets [including real estate] imply for depository institutions; our own experience supports your evaluation of such risks. In addition, our staff concurs with the assessment of your staff about the conclusions presented by consultants hired by opponents of the proposed rule: neither the facts nor the analysis presented by consultants are sufficient to justify the finding that real estate and equity investment does not increase the risk of loss to thrift institutions.
>
> The Federal Reserve Board shares your view that ultimately the cost of excessive risk taking by these institutions must be borne by the federal insurance agencies and the public. We are currently reviewing steps that might be taken to limit such activity within a bank holding company system, and we support your efforts to impose prudent restraints on investment activity by those state-chartered institutions insured by the FSLIC that have been granted increasingly broad asset powers.

Limits on Direct Investments in Real Estate. Despite these reasons for concern, the risk posed to insured banks from real estate investment can be controlled by ensuring adequate diversification. While geographic diversification can reduce a bank's overall exposure, real estate returns in different markets are subject to many of the same factors. Thus it is appropriate to set a limit on a bank's aggregate real estate investment. Moreover, the FDIC feels that it is more appropriate to determine this limit as a percentage of a bank's capital than as a percentage of total assets, as it is a bank's capital that provides a buffer against losses. The proposed regulation would thus allow banks to engage directly in real estate development provided that the bank's equity investment in any one real estate development does not exceed 10% of primary capital and its total equity investment in real estate does not exceed 50% of capital. While there is some arbitrariness in any specific percentage limit, a limit set at 50% of primary capital is justifiable, since under such a limit a bank's real estate exposure alone could not cause a bank to fail. (The FDIC specifically requests comments on whether these limits are too high or too low.) Under a worst-case scenario a bank may lose 50–60% of its real estate investment, in which case it would not lose more than 25–30% of its capital.

While the benefits of diversification are a well understood principle of financial theory, a study commissioned by the FHLBB gave additional support to this notion as well as to the FDIC's view that limits are more appropriately expressed as a percentage of capital than as a percentage of assets. An outside consulting firm contacted persons knowledgeable in the field of investment risk analysis who were also familiar with the U.S. thrift industry to see whether there was consensus on the effect of the FHLBB's proposed regulation on the risk to the FSLIC. The persons interviewed included representatives of insurance rating companies, investment banks/brokerage houses, lending institutions (banks), academia, accounting firms, and fund management companies. Of the 21 respondents, 19 stated that the proposed limit on aggregate direct investment would reduce risk to FSLIC as compared with no limitations. Moreover, the judgment predominating among the experts was that the aggregate direct investment limit should be tied to net worth rather than total thrift assets.[16]

If a bank wishes to engage in real estate development on a broader scale, the FDIC proposal indicates that (1) it must do so indirectly through a bona fide subsidiary, and (2) any investment in such a subsidiary will not be counted toward the bank's regulatory capital. The exclusion of a bank's investment as part of regulatory capital and the use of a bona fide subsidiary as defined in this proposal ensure that the bank is sufficiently isolated from risks posed by real estate development activities over and above the limit set for direct investment. While there is always room for abuse and thus some possibility of loss to the bank as a result of the actions of a subsidiary, corporate law makes it quite clear that in the absence of fraud or willful deceit banks and their bona fide subsidiaries would be separate legal entities, and one would not be held liable for the actions of the other.[17]

Insurance Underwriting

When looking at the riskiness of bank involvement in insurance activities it is essential to distinguish between different types of insurance (particularly between the life/health and property/casualty sectors) and between underwriting and brokerage activities. Historically banks have had a long involvement in insurance brokerage activities. As early as 1916 national banks were authorized to act as insurance brokers in order to ease the strain on profit margins for banks operating in small towns (with a population of 5,000 or less). Such activity is quite prevalent to this day, generally in Midwestern states, and it has not caused safety and soundness problems for banks. Insurance brokerage activities have been repeatedly authorized for banking organizations at the federal level under the National Banking Act, the Bank Holding Company Act, and reaffirmed

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[16] SRI International, *Possible Regulations of the FHLBB to Limit Direct Investment of State Chartered, Federal Insurance Savings Associations*, December 1984.

[17] Samuel Chase & Co., *Corporate Separateness as a Tool of Bank Regulation* (Washington, D.C. 1983).

most recently in the Garn-St Germain Depository Institutions Act of 1982.

Bank participation in insurance underwriting activities has largely been confined to life insurance. National banks generally are restricted to the underwriting and sale of credit life insurance. Savings banks in New York, Connecticut and Massachusetts have engaged in life insurance underwriting activities for the past 50 years (in Massachusetts, for the past 100 years) and there is no evidence that safety and soundness concerns have arisen for these banks due to their insurance activities. With respect to property/casualty insurance, however, banks historically have been largely prohibited from engaging in such activities. Thus, they have no particular expertise in this area.

The limited experience banks have in underwriting insurance (other than life insurance) is an important factor in the FDIC's belief that these other insurance underwriting activities be conducted in a separate bona fide subsidiary apart from the bank's non-insurance activities. It is generally recognized that new activities pose greater risks than activities in which the participants are more experienced. The FDIC has observed this with respect to banking as newly-chartered banks have higher failure rates than do more well-established and hence, more experienced, banks.[18]

Certainly, insurance underwriting must be viewed as an area where banks lack expertise, since the nature of the activity is very different from traditional bank activities. Bankers and insurers essentially have different attitudes toward risk. Insurance underwriting is risk taking and it is assumed that losses will materialize in a certain percentage of transactions. In banking, credit decisions are made with less of an expectation that losses will materialize. This difference between banking and insurance underwriting was noted by the Federal Reserve Board in 1974 when it denied applications submitted by BankAmerica Corporation and First National City Overseas Investment Corporation to engage in general insurance underwriting activities overseas through subsidiary investments. In denying the applications the board noted:

> General insurance underwriting involves the management of risk qualitatively different from those encountered in ordinary banking and familiar to bank management. It is an activity that requires a large amount of capital and specialized managerial resources.

Other factors partly responsible for the high risk banks will face as new entrants to the insurance underwriting business are the high startup costs and the limited opportunity, even for the largest banks, to leverage profitability upon their existing customer base. The latter factor is particularly relevant in the property and casualty field because of the individualized nature of the insurance product and the differing needs of a diversified commercial bank clientele. Many banking organizations would find it difficult to achieve a prudent level of risk diversification if they chose to offer only selected insurance lines to an existing, localized customer base.

Also, the FDIC's concern about the lack of experience banks have in most types of insurance underwriting activities is heightened given current market conditions in the insurance industry. Bank entry into property and casualty underwriting, for example, should logically enhance competition, and benefit insurance customers. In the current insurance environment, however, it would be difficult for a new entrant to build the market share necessary for prudent diversification without engaging in some price cutting. Bank entry would not, in and of itself, generate any significant volume of new property and casualty business and, by competing for an existing insurance customer base, could serve to lower margins for all underwriters. An additional danger is that the competition for high quality insurance clients could become quite intense with the new (bank) entrants attracting a relatively high proportion of marginal risks and subsequently experiencing relatively high underwriting losses.

Presently, the property and casualty sector of the insurance industry is suffering from a number of problems. Net income for property and casualty companies in the aggregate has been declining since 1980, and is likely to show a net loss for 1984. Underwriting losses have been incurred annually since 1979. Currently, there are a number of individual property/casualty companies facing financial difficulties. There are 124 firms on the National Association of Insurance Commissioners' "red flag" list of financially weak insurers and 15 firms failed during 1984. (There are about 3500 property and casualty insurers in the U.S.) Industry analysts project that as many as 200 additional property and casualty insurers may fail, merge with other institutions or drop the majority of their product lines during the waning stages of the present underwriting cycle.[19] The Insurance Information Institute has projected that when the figures are in for 1984, they will show that the property and casualty sector of the insurance industry posted a negative net income of about $3.6 billion.

The early 1984 figures from the giant firms of the industry reflect continuing difficulties in underwriting operations. For example, Cigna Corporation posted a $929 million underwriting loss on revenues of $11 billion through the first nine months of 1984. Aetna Life and Casualty reported a $45 million loss on commercial lines alone over the same period. In short, these figures suggest that underwriting performance continues to suffer from the same malaise that has persisted since 1978.

One of the factors responsible for the industry's poor performance in recent years is the operation of a periodic "underwriting cycle" in property and casualty insurance. Historically, profitable periods of any significant length have led to periods of premium-cutting and relatively lax underwriting standards by property and casualty firms intent on enlarging their market shares. Prior to about 1978, the completion of an entire underwriting cycle took roughly 6 to 8 years: 3 to 4 years of price discounting and falling profitability followed by 3 to 4 years of firmer standards which ultimately would return profitability to underwriting. A.M. Best Co. identifies 6 such underwriting cycles between 1924 and 1976.

The presence of periodic downturns in the financial condition of the insurance industry has adverse implications for banks that wish to participate in the market and lends further support to the FDIC's contention that insurance underwriting activities should be conducted in a bona fide subsidiary rather than in the bank itself. While the current downturn may be nearly completed (although this is not certain), future downturns are inevitable and it is also likely that these downturns will be severe enough to force a number of firms, particularly newly-established insurers, into bankruptcy.

The downturn in the previous underwriting cycle, which ended in 1976, was not as prolonged as the current downturns, but it too was quite severe. For the five-year period between 1972–76, underwriting losses for property and casualty insurers amounted to $8.17 billion. The fifth largest automobile

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[18] J. Bovenzi & L. Nejezchleb, *Bank Failures: Why Are There So Many?* FDIC Economic Outlook 21–22 (Aug. 1984).

[19] *Insurers Are Scrambling to Break Their Losing Streak*, Business Week 145 (Dec. 3, 1984).

insurance firm in the country, Government Employees Insurance Co. (GEICO), was nearly forced into bankruptcy in 1976. Only a bail-out by the nation's other major property and casualty insurers and a transfusion of cash from stockholders saved the company from insolvency. At the time there was widespread concern that should GEICO fail, a domino effect could occur, resulting in failure throughout the industry. the domino effect would have been due to the fact that property and casualty insurers that operated in states where GEICO did business would have had to contribute to the state's insolvency fund, which is used to meet claims against an insolvent company. While the impact on individual companies was unclear, there were a number of other property and casualty insurers experiencing financial difficulties at that time and a number of additional failures may have resulted.[20]

There is no reason why similar problems may not occur in the future. GEICO's financial troubles were largely attributed to its aggressive efforts to increase its market share by cutting its prices. As pointed out, such premium cutting and the tendency to ease underwriting standards when profits are relatively high are the reasons why underwriting cycles exists, since these actions eventually lead to higher losses.

In addition to the existence of underwriting cycles, a second factor which may have contributed to the industry's current problems is the intense competition that has followed in the wake of recent financial deregulation. The potential threat of new entrants to the insurance industry may have prompted a more aggressive attempt at market-share expansion than otherwise would have been undertaken, and this may account for much of the large underwriting losses of the 1980s.

A third factor impacting insurers, which is likely to persist in the years ahead, has been the recent increase in the incidence of litigated liability claims and the huge increase in the average size of awards handed down in such cases. A decidedly greater willingness to sue for damages emerged among liability claimants during the 1970's and has persisted to date. This has been accompanied by an apparently increased acceptance of the "compensatory justice" principles by juries and judges alike. While it is difficult to distinguish causes from effects among these developments, the result for insurers clearly has been an enlarged number and magnitude of liability payments. Highly publicized cases involving claimants' exposure to asbestos, toxic wastes and harmful drugs are representative of the huge claims becoming commonplace to property and casualty insurers, and even a single award can pose persisting financial difficulties for the insuring firm. For example, while Aetna Life and Casualty collected no premiums for liability on the Dalkon Shield after after 1977, it has paid (along with the producer) more than $315 million since that time in settlements of liability claims. With respect to claims filed by workers exposed to asbestos, in 1982 alone, insurers paid an estimated $400 million in legal fees attempting to avoid payment on these claims.[21] Potential liability estimates vary between $5 billion and $38 billion over the next 30 years in compensation costs alone. Litigation costs may exceed total compensation by four times, placing the total cost estimate between $25 and $190 billion.[22] The widespread emergence of similar cases has increased the severity of the present underwriting downturn and extended its duration.[23]

These examples of the large losses an insurer may incur from a single event provide a further indication of the differences between banking and insurance underwriting. In banking, an institution's potential losses are generally limited to the amount it has lent or invested. This is not the case for insurance underwriters. Total insurance coverage is a more appropriate indicator of an insurer's maximum potential loss, and unlike banking, an insurer's risk exposure is far greater than its total assets. In this sense, while a capital-to-assets ratio may provide an indication of a bank's risk exposure, the same measure would seriously understate an insurance underwriter's exposure. For these reasons the FDIC is concerned that, should property and casualty insurance underwriting activities be conducted within the bank itself, the potential losses to the deposit insurance fund would be much greater. In effect the FDIC potentially would be liable for losses from a failed bank's insurance activities, but it would not be collecting additional insurance premiums to offset its greater risk exposure.

Another factor that can partially explain the unprecedented persistence of reported underwriting losses in the present cycle is the extraordinarily large number of catastrophic occurrences. Catastrophe losses for 1979 and 1982 were the largest ever incurred (annually) in the property and casualty industry ($1.6 and $1.5 billion, respectively). These record losses largely were attributable to severe weather. Moreover, it appears that 1983's weather-related losses ultimately may prove to be even greater. Hurricane Alicia will generate payments exceeding $1 billion—the largest single disaster settlement in history. The 1982–83 catastrophe claims also coincided with the depletion of deferred tax credits available to many property and casualty firms and, hence, the subsequent ability to cushion underwriting losses has been undermined.

Additional evidence supporting the proposition that most insurance underwriting activities would increase bank risk can be obtained by looking at failure rates and statistics on the variability of earnings. The average failure rate for property and casualty insurers has been approximately .22 percent per year since 1969. This compares to a .14 percent annual failure rate for commercial banks. Using failure rates as a measure of risk suggests that the underwriting of property and casualty insurance would add to the riskiness of banks. The same measure of risk would also suggest that underwriting life insurance would be a relatively safe activity for banks since, between 1976 and mid-1983 only four life insurers failed. (There are currently about 2100 life and health insurance firms operating in the United States.) Historically, failures of life insurance firms appear to be concentrated among small firms and often these firms appear to have been managed by persons of dubious integrity.

Using the standard deviation of the annual return-on-equity as a measure of relative riskiness it again seems clear that underwriting property and casualty insurance could increase bank risk, while life insurance underwriting could reduce it. From 1970 to 1980 the coefficient of variation for the annual return on assets for property and casualty insurers exceeded .40, compared to 0.17 for commercial banks and 0.10 for life and health insurers.[24]

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[20] *Seeking Money for GEICO*, Business Week 98 (Mar. 29, 1976).

[21] J. Kalcalik et al., *Costs of Asbestos Litigation*, (Santa Monica, California: The Rand Corporation, Institute for Civil Justice).

[22] A. Cornish, *Asbestos Liability: A Problem of the Future Becomes a Current Reality*, Industry Comments (New York: Lehman Brothers Kuhn Loeb Research).

[23] While these examples do not necessarily indicate problems inherent in the property and casualty sector of the insurance industry, they do point to the potential for large losses and the risks inherent for individual firms within the industry.

[24] Wall and Eisenbeis, *supra* note 19.

The relative safety of life insurance underwriting is not surprising given that, unlike most other types of insurance, losses can be actuarially determined in advance with a very high level of precision, and premium rates can be set accordingly.

Aside from the additional risks insurance underwriting activities would present to banking operations, a general requirement that all insurance underwriting activities be separated from an insured bank's other activities is justifiable for accounting and regulatory reasons. Insurance companies, like banks, are highly regulated and overall regulatory costs will be lower if there is separate recordkeeping and accounting. Moreover, since accounting standards are different for the two industries it would be difficult to analyze the condition of the combined entity or each respective part if financial records for insurance and banking activities were not kept separate. For example, compared to banks, insurance firms are heavily capitalized. As of year-end 1983, FDIC-insured banks had an average capital to assets ratio of 6 percent. In the life/health sector capital was 7.1 percent of assets as of year-end 1983, and the analogous figure for property and casualty insurers was 26 percent. The larger capital ratio for property and casualty insurers mainly reflects the greater unpredictability of their earnings and the larger risk of catastrophic loss. The nearly self-funding nature of life insurance policies makes capital and reserves less important to these insurers.

Each provision of the revised regulation is discussed more fully below. Specific comments have been summarized where relevant to the explanation of the proposed regulation.

1. Prohibited Activities

The regulation as originally proposed would have prohibited any insured bank from directly conducting the following activities: (1) Underwriting casualty insurance, property insurance, life insurance (other than credit life), annuity contracts, mortgage guarantee insurance, or any other type of insurance, (2) reinsurance, (3) real estate development, real estate syndication real estate equity participation, or any other form of real estate underwriting, (4) insuring, guaranteeing, or certifying title to real estate, (5) with certain limited exceptions, guaranteeing or becoming surety upon the obligations of others, and (6) conducting a surety business. These activities would not be prohibited, however, to a bona fide subsidiary of the bank. The prohibition did not apply in the case of any such activity if the activity was one that was authorized by statute, regulation, or interpretation to a national bank or an operations subsidiary of a national bank, (*i.e.*, any insured bank could directly conduct that activity).

A significant portion of the total comments on the proposed regulation was directed to the prohibition on the above activities and the requirement that any subsidiary of an insured bank that engaged in the activities be a bona fide subsidiary. Many of those comments addressed these restrictions in terms of the definition of the term "bona fide subsidiary" as proposed by the FDIC. (These comments will be discussed in paragraph #2 below.) After reviewing the comments, the FDIC has determined to revise this portion of the proposal as more fully described below. In addition, the FDIC has deleted the national bank activity exclusion; in that regard several comments argued that it was inappropriate for the FDIC to fail to regulate an activity simply because the Comptroller of the Currency determined that national banks may, consistent with the National Bank Act, engage in a certain activity.

Real Estate Development

The FDIC received a large number of comments critical of the proposed requirement that real estate development, real estate syndication, real estate equity participation, and any other form of real estate underwriting be placed in a bona fide subsidiary of the bank. The major thrust of the objections was that real estate development requires many of the same skills necessary for real estate development financing and that the risk of loss in real estate development is no different than the risk of loss if the bank were to finance a real estate development. Therefore, the comments argued, the FDIC should not bar insured banks from directly conducting real estate development activities. Among the other objections were the following: (1) The bona fide subsidiary requirement will preclude many small, community banks from engaging in real estate development intermittently or on a small scale (this could deprive the communities in which they are located of development opportunities), (2) the proposal could be read to require real estate activities involving DPC property and other "traditional" real estate involvements on the part of banks to be placed in a bona fide subsidiary, (3) the FDIC has not presented any evidence that there is a need for the FDIC to regulate real estate activities on the part of insured banks, (4) the use of the term "underwriting" in connection with real estate is misplaced and confusing, (5) the proposal will override real estate investment powers recently granted to banks in New York, California and elsewhere, (6) the proposal deprives banks of added income sources in that it permits real estate lending but deprives banks of the opportunity to share in greater potential profits as equity participants, (7) forcing real estate activities into a subsidiary will deprive banks of certain tax benefits otherwise available to them, and (8) with proper management and safeguards, real estate development can be conducted safely in-house. Although the FDIC has retained the basis approach of the original proposal, *i.e.*, requiring a bona fide subsidiary for real estate development activities, a number of revisions are being made to the proposal based upon the above comments. In addition, the prior discussion set forth the bases upon which the FDIC has determined that there is a need to regulate the conduct of real estate activities on the part of insured banks.

The major revision to the bona fide subsidiary requirement insofar as it applies to real estate activities is the inclusion in the proposal of a de minimis transaction exemption which permits an insured bank to conduct a certain amount of real estate development in the bank itself, provided of course that the bank's chartering authority authorizes such activities to the bank. The exemption is limited in the following manner: (1) The bank's aggregate investments in real estate developments, including any related extensions of credit, may not exceed 50 percent of the bank's primary capital, and (2) the bank's aggregate investment in any one real estate development may not exceed 10 percent of the bank's primary capital. Additionally, in order for an insured bank to take advantage of the exemption, the bank must meet the recently adopted minimum capital requirements set forth in section 325.3 of the FDIC's regulations (*See* 50 *FR* 11,128). If an insured bank wishes to participate in real estate development activities in excess of these ceilings, the activities must be conducted through a bona fide subsidiary of the bank. Only those activities falling within the definition of "real estate development" as defined in the revised proposal are counted toward the ceiling. (See paragraph #5 below for a discussion of what constitutes a real estate development.)

The de minimis transaction exemption addresses the concerns of comments which argued that real estate lending

and real estate development require many of the same skills and that requiring all real estate development to take place in a bona fide subsidiary of a bank (1) precludes small, community banks from being involved in real estate projects on a limited or intermittent basis and (2) effectively preempts state law in those states which have granted bank real estate development powers. The de minimis transaction exemption should afford banks flexibility in structuring real estate transactions. The exemption also lessens, and may in some cases eliminate, any conflict with state or federal law granting real estate powers to banks. At the same time, the exemption is not inconsistent with the FDIC's safety and soundness concerns recounted above. The exemption should not expose banks to undue risks as a bank is subject to an aggregate limit on real estate development and is forced to diversify its real estate investments by virtue of the limit on investments in any one project.

The FDIC is specifically requesting comment on whether or not the ceilings contained in the de minimis transaction exemption should be set at some other level. For example, should the levels be greater than 50 percent of primary capital for the aggregate ceiling and 10 percent of primary capital for the individual project ceiling, or would some lower ceilings be more appropriate? Additionally, the FDIC specifically invites comment on whether or not this exemption exposes insured banks to any undue risks; whether any additional restriction(s) should be imposed in connection with the exemption if it is adopted by the FDIC; and whether any other conditions in lieu of the ones proposed should be utilized. With respect to each of the above, a full explanation of the basis for the comment should be provided.

Insurance Underwriting

The regulation as originally proposed prohibited insured banks from directly engaging in any insurance underwriting activity (other than credit life underwriting). Such activities could take place, however, in a bona fide subsidiary of the insured bank. Most of the comments concerning insurance activities on the part of insured banks addressed insurance agency activities rather than insurance underwriting. Among the comments which did address the latter were several that described life insurance as not inherently unsafe or unsound and further characterized insurance underwriting as compatible with traditional banking. One comment described a life insurer as, in essence, a company that in a manner similar to banks takes deposits (premiums), invests those deposits, and agrees to repay the deposits at a future date with a stated interest. Other comments pointed out that life insurance is not a risky activity as the insurer can predict losses based upon acturial tables. These comments contrasted life insurance with property and casualty insurance in which the risk of loss is not as capable of prediction. Other comments were opposed to distinguishing between types of insurance underwriting (*i.e.*, all insurance activities should be in a subsidiary of the bank as opposed to in-house), or were opposed to banks entering into insurance underwriting whatsoever. The latter generally objected to bank entry on competitive grounds (banks would have an unfair competitive advantage), argued that such entry would result in express and implicit tying arrangements to the detriment of consumers, and argued that insurance activities would expose banks to increased risks.

Several comments were received from savings banks in New England that underwrite savings banks life insurance ("SBLI"). Comments regarding SBLI were also received from the Commissioner of the Connecticut Department of Banking, the Commissioner for the Massachusetts Department of Banking and Insurance, and the Superintendent of Banking for the State of New York. All three urged the FDIC to exempt SBLI from the prohibition on direct insurance underwriting. These comments requested the exemption for the following reasons: (1) The savings banks in their respective states have underwritten and/or sold life insurance policies and annuities through a separate department of the bank for many years, (2) the life insurance departments of these banks have been profitable, (3) there has been no demonstrated adverse effect on the condition of these banks due to their life insurance underwriting activities, and (4) the state statutory schemes which authorize savings banks to operate life insurance departments effectively separate the insurance department from the bank. These statutes require that: (1) The assets and liabilities of the insurance department be separate from those of the other departments of the bank, (2) the assets of the bank cannot be used to satisfy the obligations, liabilities, or expenses of the insurance department, (3) the insurance department keep separate records and accounts, (4) the insurance department may not make investments of a type not authorized to the bank, and (5) the insurance department is liquidated separately and does not form part of the receivership if the bank fails (usually the policies are transferred to an insurance department of another bank).

The FDIC also received several comments urging that the agency prohibit insured banks from entering the mortgage guarantee insurance industry for the following reasons: (1) Banks will have an unfair competitive advantage, (2) mortgage guarantee insurance requires significant amounts of capital, (3) bank entry into mortgage guarantee insurance is fraught with conflicts of interests that could result in lowered underwriting standards and impact the safety and soundness of banks, and (4) the financial stability of the "captive" mortgage insurer may be jeopardized as its portfolio is more likely to be geographically concentrated. These comments urged the FDIC, at a minimum, to prohibit any insured bank from insuring its mortgage portfolio through its mortgage insurance subsidiary or affiliate. Similar concerns and objections were raised by other comments directed toward bank entry into title insurance.

After reviewing the comments; the FDIC has determined to revise the insurance underwritting provisions of the proposed regulation in one major respect. The revised proposal permits an insured bank to conduct life insurance underwriting through a department of the bank provided that the state or federal statute or regulation which authorizes the bank to operate a life insurance underwriting department establishes certain safeguards as to that department. Those safeguards are: (1) The assets, liabilities, obligations, and expenses of the insurance department are separate and distinct from those of the other departments of the bank, (2) the assets of the other departments of the bank cannot be used to satisfy the obligations, liabilities, or expenses of the insurance department, (3) the insurance department keeps separate accounting and other records, (4) the insurance department may not make investments not permitted to the bank, and (5) the insurance department is liquidated separately from the other departments of the bank and does not form part of the receivership of the bank in the event of the bank's insolvency.

The remainder of the insurance underwriting provision is unchanged from the original proposal with the exception that the credit life exclusion has been broadened to encompass insurance designed to repay the outstanding balance on an extension of credit in the event of disability or

involuntary unemployment. The regulation does not affirmatively prohibit insured banks from becoming affiliated with a mortgage or title insurer or form establishing or acquiring a mortgage or title insurance subsidiary. In the FDIC's opinion the bona fide subsidiary requirement as well as the other restrictions of the proposed regulation adequately address the risks, if any, presented to an insured bank due to the operation of any subsidiary or affiliate that engages in a prohibited activity. It is the FDIC's intent, insofar as any conflicts of interest may arise due to an insured bank indirectly acting as its own mortgage or title insurer through its own subsidiary or affiliate, to address those conserns in a subsequent policy statement.

Even though the separation achieved by the restrictions described above in the case of a life insurance department is not as complete as in the case of a bona fide subsidiary, the restrictions do statutorily separate the insurance department from the remainder of the bank in much the same way. As the bank's assets cannot be used to satisfy the obligations, liabilities or expenses of the insurance department, that department stands as a separate economic entity. If the department suffers extreme losses, the losses should not affect the bank's financial viability. The bank is further protected in that the insurance department may not make investments of a type not otherwise permitted to the bank itself. The FDIC is persuaded by the historical record of the New England savings banks that have underwritten SBLI under type of statutory schemes exempted by the revised proposal for as long as 50 years (and in the case of Massachusetts for nearly 100 years) that its safety and soundness concerns are adequately addressed to the extent that an insurance department operates under such a statutory scheme. (The FDIC has been informed that no savings bank in New England has ever failed due to, or been adversely affected by, its operation of an SBLI department.) The revised proposal does not contain a similar exemption for other types of insurance underwriting as there is no historical record with respect to property and casualty insurance, etc. In the absence of such a record, the FDIC does not feel that it is appropriate at this time to propose a similar exemption for insurance underwriting in general.

It must be stressed that the FDIC cannot, and has not, authorized any insured bank to engage in mortgage guarantee insurance or any other insurance activity by virtue of this proposal. That authority must come from another source.

The FDIC can, however, as it has done here, evaluate the risks posed to an insured bank by the conduct of insurance activities. The FDIC believes that the insurance activities dealt with by this proposal, if conducted in accordance herewith, will not pose a safety and soundness problem for insured banks. The FDIC has not made any policy decisions on the propriety of a bank's chartering authority insurance activities. The FDIC has merely proposed certain prudential restrictions in order to protect bank safety and soundness, and the insurance fund.

Guarantor of Surety

The proposed regulation would have, with certain exceptions, prohibited an insured bank from acting as guarantor or surety upon the obligations of others, insuring the fidelity of others, or conducting a surety business. This provision of the regulation has been retained as originally proposed with two exceptions. The revised proposal expressly indicates that the prohibition does not apply to the issuance of standby letters of credit or other similar arrangements, and the exceptions have been expressly set out in the text of the regulation.

The FDIC received several comments from insured banks objecting to the apparent prohibition under the proposal on a bank entering into standby letter of credit arrangements, inasmuch as it was not FDIC's intent to prohibit such arrangements to insured banks (insured nonmember banks are not now prohibited from entering such arrangements directly, see § 337.2 of the FDIC's regulations) the proposal has been clarified in this regard.

2. Bona Fide Subsidiary

The basic structure adopted by the proposed regulation prohibited insured banks from conducting certain activities found to present risks. The proposal in turn allowed such activities to be conducted in a bona fide subsidiary of the bank. The FDIC's goal in proposing this regulatory scheme was, and continues to be, to: (1) Insulate insured banks from potential risks, (2) avoid regulatory overlap, and (3) make examination of these activities easier. (The FDIC has the authority under section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)) to examine the affairs of any subsidiary or affiliate of an insured bank to disclose fully the relations between the bank and its affiliate and subsidiary and the effect of such relations upon the insured bank.) The proposed definition of the term "bona fide subsidiary" was designed to assure that any subsidiary of an insured bank that engages in activities prohibited to the bank is an independent, well managed, financially viable corporate entity whose operation will not pose a threat to the bank and whose obligations and liabilities, as well as whose products or services offered to the public, will be perceived by the public to be its own and not those of the bank.

The proposed regulation defined the term "bona fide subsidiary" to mean a subsidiary of an insured bank that at a minimum meets the following criteria: (1) The subsidiary is adquately capitalized, (2) the subsidiary is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the subsidiary, access to which is through a separate entrance from that used for the insured bank except that the bank's and subsidiary's offices may be accessed through a common outer lobby or common corridor, (3) the subsidiary does not share a common name or logo with the bank, (4) the subsidiary maintains separate accounting and other corporate records, (5) the subsidiary observes separate formalities such as separate board of directors meetings, (6) the subsidiary maintains separate employees who are compensated by the subsidiary, (7) the subsidiary shares no common officers with the bank, (8) a majority of the subsidiary's board of directors is composed of persons who are neither directors nor officers of the bank, and (9) the subsidiary conducts business pursuant to independent policies and procedures designed to inform customers and prosepctive customers of the subsidiary that the subsidiary is a separate organization from the bank and that investments recommended, offered or sold by the subsidiary are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the subsidiary otherwise undertakings or obligations of the bank.

A substantial number of the comments received on the proposed regulation objected to one or another of the criteria used to define bona fide subsidiary. In addition, several comments objected to the bona fide subsidiary approach in and of itself arguing that: (1) Placing so called "risky" activities in a subsidiary will not necessarily insulate a bank from risk, (2) none of the activities required by the proposal to be placed in a subsidiary

need be relegated to a subsidiary as they do not present any more risks to a bank than many "traditional" bank activities, (3) proper management of any activity is the key as opposed to whether the activity takes place in-house or not, (4) the FDIC would have better oversight of the activities if they were conducted by banks in-house, (5) the costs associated with forming a subsidiary outweigh any perceived benefits, (6) because of a Federal Reserve Board interpretation of the Bank Holding Company Act, the subsidiary requirement will preclude most banks in holding company structures from engaging indirectly as well as directly in real estate development, etc., (7) the subsidiary requirement will have a disproportionate adverse impact on small banks due to the costs involved in forming a subsidiary, and (8) the question of what activities are appropriate for insured banks and whether those activities should be conducted in-house or not should be left to the bank's chartering authority.

After considering these comments, the FDIC has retained the bona fide subsidiary approach. The FDIC has determined that real estate development and insurance underwriting activities can present risks to the viability of insured banks and the insurance fund and further that the subsidiary structure is an appropriate regulatory tool to insulate insured banks from those risks. (*See* "Bases for Concern" above.) Even though the FDIC has not found the risks to be so great as to warrant prohibiting the indirect conduct of those activities, the risks are such that it is still appropriate to limit a bank's risk exposure by requiring the activities to be in a separate subsidiary or affiliate of the insured bank. Any costs entailed by such an approach are thus, in the FDIC's opinion, justified. (The de minimis tansaction exemption for real estate development activities discussed in paragraph #1 should substantially reduce the number of insured banks that would in fact, in any event, incur such costs.)

One of the criticisms leveled at bank expansion into nonbanking activities has been that a bank will "come to the aid" of its nonbanking subsidiaries or affiliates that are encountering financial difficulties whether or not the bank is legally obligated to do so. There is in fact a basis for concern that this will happen. For example, in 1963 the American Express Company assumed liability for approximately $60 million in claims against its subsidiary American Express Warehousing, Ltd., and, in 1969, United California Bank assumed responsibility for the debts of its Swiss subsidiary United California Bank of Basel, after the Swiss bank suffered large losses. Although this is not always the case (in 1968 Raytheon walked away from its Italian subsidiary which declared bankruptcy), whether or not a bank comes to the aid of its subsidiary or affiliate seems to involve a management decision on the part of the bank. One goal of the FDIC in formulating the proposed definition of bona fide subsidiary is to put insured banks in a position which they are free to make the decision to walk away. Additionally, the proposed regulation establishes lending and other restrictions (see paragraph #7, 8, and 9) in order to counteract the temptation (to the extent that it exists) on the part of the bank to divert resources to the aid of troubled subsidiaries and affiliates.

The proposed definition of bona fide subsidiary has been retained in the revised proposal without amendment. The criteria necessary in order for a subsidiary to be bona fide and the comments received in response thereto are discussed more fully below.

Adequate Capital

The presence of adequate capital is typically viewed as a central issue by a court when assessing whether or not a parent will be held liable for the obligations and acts of its subsidiary. Adequate capital is also very important from a safety and soundness point of view as a parent bank is less likely to be harmed if the subsidiary has adequate capital. Adequate capital will enable the subsidiary to absorb its losses as well as any liabilities arising from its operation without having to look to its parent.

The FDIC has not proposed a definition of adequate capital but will look rather to industry standards. The insurance industry, for example, is highly regulated and has established capital requirements usually set by state statute. Although the real estate industry is for the most part unregulated in comparision with the insurance industry, industry standards should be identifiable. The FDIC still intends, however, to reserve the option of requiring that the subsidiary have capital over and above any such industry standard if the FDIC at any time finds such requirements to be warranted. It is the FDIC's intention to make this determination during the notice period (see § 332.5 of the proposal) and to inform the bank whether, in the FDIC's opinion, the capital position of the subsidiary is adequate. It is the FDIC's belief that such a flexible approach will better serve the FDIC's supervisory interest of insuring the safety and soundness of insured banks and that it will also avoid conflict with existing regulatory and supervisory systems governing the insurance and real estate industries. The adequacy of a subsidiary's capital will thereafter be reviewed on an ongoing basis as a part of the regulatory process.

This aspect of the bona fide subsidiary definition received favorable comment.

Physical Separation

The proposed regulation would permit an insurance underwriting subsidiary or real estate development subsidiary of an insured bank to operate out of an office within a branch of an insured bank so long as the office is clearly demarcated as belonging to the subsidiary and the subsidiary's office has a separate entrance from that used by the insured bank. The bank's and subsidiary's offices may be accessed, however, through a common outer lobby or common corridor. The FDIC will require that insured banks, when formulating plans to establish or acquire a subsidiary that will engage in prohibited activities, to plan to locate the subsidiary's offices so as to allow for separate entrances. Any insured bank that presently has such a subsidiary whose operation is located within a branch of the bank will be required to establish a separate, clearly identified office for the subsidiary and make whatever changes are necessary to allow for a separate entrance from the bank except for a common outer lobby or common corridor. This aspect of the bona fide subsidiary definition received some critical comment on the basis that the requirement for a separate facility would create an added, unnecessary cost. The FDIC is retaining this requirement in the definition, however, as a shared facility is a factor considered by the courts in determining whether or not to pierce the corporate veil between a subsidiary and its parent. Additionally, the FDIC strongly feels that any added costs associated with a separate facility are justified by the reduction in potential confusion on the part of the subsidiary's customers with whom they are dealing.

Common Name or Logo

The regulation as proposed would prohibit an insured bank and its subsidiary from using a common name or logo. The proposed regulation specifically indicates, however, that the ban on the use of a common name or logo does not preclude a bank from

advertising and/or otherwise disclosing the relationship between its subsidiary and itself. For example, bank X may advertise the real estate services of its real estate development subsidiary, Y company, and denote Y company as a subsidiary of bank X. In this way, a bank may still obtain some benefits of name recognition but the public confusion that may arise if the subsidiary uses a common name (especially if that subsidiary operates out of the bank's branch) is lessened.

The FDIC is proposing this restriction as name identification is a factor used by the courts in deciding whether to pierce the corporate veil, is a factor in public identification of the subsidiary's operation with the parent bank, plays a role in public misconception as to the insured status of investments made through the subsidiary, and plays a role in engendering an expectation that the bank is liable for the obligations of the subsidiary. Additionally, an insured bank may be reluctant to allow its subsidiary to fail if that subsidiary carries the bank's name. (See for example the experience in the 1970's with REITs when bank whose only connection with a REIT was a common name and an investment advisory relationship dramatically increased lending to those REITs when the REIT industry took a downturn.)

Although this portion of the bona fide subsidiary requirement did not receive as many comments as the other factors set forth in the proposed definition, several comments critized including a ban on common name or logo in the definition. These comments objected to this factor as: (1) A company's name is an asset upon which it should be permitted to trade, (2) the FDIC has not demonstrated that the presence of a common name or logo can adversely affect the safety and soundness of banks, (3) public confusion arises from misleading sales practices and not from the existence of a common name or logo, and (4) the ban on common name or logo serves no purpose not already addressed by other criteria in the bona fide subsidiary definition.

After reviewing the criticism, the FDIC has retained the prohibition on the use of a common name or logo. The FDIC recognizes that the link between a parent and its subsidiary cannot be totally obliterated. It is for this reason that the regulation contains the exception that permits a bank to advertise or disclose its relationship with its subsidiary. Furthermore, although the FDIC agrees that public confusion can and does arise from misleading sales practices (the last item in the bona fide subsidiary definition is designed to meet that concern), public confusion can arise from other sources such as the presence of a common name of logo. For all of these reasons, and the reasons set forth in connection with the prior proposal, the FDIC is convinced that is is necessary to propose a ban on the use of a common name or logo between a bank and its subsidiary that engages in prohibited activities.

Separate Employee Requirement

The proposed regulation requires that the subsidiary maintain separate employees who are compensated by the subsidiary. The restriction does not, however, extend to the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact, *e.g.*, such as accounting, data processing, and recordkeeping, so long as the bank and the subsidiary contract for such services on an arms-length basis.

The FDIC is continuing to propose the separate employee requirement as it is felt that the use of separate employees in customer contact positions is an extremely important factor in maintaining the separate corporate identity of the subsidiary and the bank and will help avoid public confusion. The requirement is also expected to have the added benefit of encouraging banks to hire experienced personnel to operate the subsidiary. Although the FDIC acknowledges that a separate employee requirement can produce additional costs for insured banks, the FDIC anticipates that the exception contained in the proposed regulation allowing bank employees to perform administrative, non-customer contact activities will reduce any inefficiency and added cost that might otherwise arise. Furthermore, the addition of the de minimis transaction exemption for real estate development in the revised proposal should accommodate many of the banks that objected to the bona fide subsidiary requirement due to the additional costs that such a structure can entail. These banks will be permitted under the exception to conduct a certain amount of real estate development activities in-house and thus need not incur the expenses associated with a bona fide subsidiary (including the expense of separate personnel) unless it is the bank's intention to enter into the real estate development area to a significant degree. Likewise, the exception for a life insurance department provided for by the revised proposed regulation provides insured banks the same option with respect to underwriting life insurance.

Common Officer/Director Restriction

The revised proposed regulation continues to prohibit the bank and subsidiary from sharing common officers and likewise continues to require that a majority of the board of directors of the subsidiary be composed of persons who are neither directors nor officers of the bank. Under the proposal, the CEO president, or some other officer of an insured bank may not at the same time serve as an officer of the bank's subsidiary. That officer, however, as well as other officers and/or directors of the bank, may form all but a majority of the board of directors of the subsidiary.

This aspect of the bona fide subsidiary definition received by far the greatest amount of criticism. The comments objecting to the prohibition on shared management did so for the following reasons: (1) Having to duplicate management is costly, (2) the bank runs the risk of losing control over its subsidiary due to the management prohibition (this could lead to the subsidiary adopting policies incompatible with those of the bank), (3) the subsidiary will not be able to use the existing real estate expertise of bank personnel, (4) the subsidiary's officers and directors will be forced to adopt aggressive policies in order to produce enough business to justify their salary cost, and (5) the presence of shared management in and of itself will not result in a court piercing the corporate veil between the bank and its subsidiary. Most if not all of these comments were raised in the context of a real estate development subsidiary. (Several banks out that they currently operate real estate development subsidiary that share a total identity of managmeent with the bank.)

The FDIC concedes that the proposed management restriction can produce some additional costs but at the same time the FDIC does not feel that the costs will be inordinate nor that the costs are unjustified. In the case of a real estate development subsidiary, the costs only need be incurred if the bank enters into real estate development in excess of the de minimis transaction exemption. Even then the subsidiary is not precluded from taking advantage of the bank's existing real estate expertise as any bank officer responsible for real estate lending can serve as a director of the subsidiary. Thus the FDIC is not persuaded by the comments that the restriction as proposed will cause the bank to lose oversight of the operation of its subsidiary to the detriment of the bank. Lastly while the FDIC agrees that shared management in and of itself will

probably not cause a court to pierce the corporate veil between a bank and its subsidiary, shared management is an important factor in a court deciding to do so. The FDIC has not proposed, as it could, that the subsidiary share no management with the bank. Instead the agency has attempted to strike a fair balance between two competing concerns: the interest, as expressed by insured banks, to expand into additional activities and the interest of the FDIC to protect insured banks and the deposit insurance fund.

Separate Records, Board of Directors' Meetings, and Independent Policies

The revised proposal continues to requires that the subsidiary maintain separate accounting and other corporate records, that the subsidiary observe separate corporate formalities, and that the subsidiary conduct business pursuant to independent policies and procedures designed to adequately apprise customers that: (1) The subsidiary is a separate organization from the bank, (2) any insurance policy or annuity underwritten by the subsidiary, as well as any real estate investment recommended, offered, or sold by the subsidiary, are not insured deposits, and (3) any undertakings or obligations of the subsidiary are not undertakings or obligations of the bank. These requirements received favorable comment.

3. Investment in Subsidiary

The revised proposed regulation provides that no insured bank may establish or acquire a subsidiary that underwrites insurance (excluding credit life insurance), engages in real estate development, or acts as guarantor or surety unless the bank's capital (exclusive of its direct investment in such subsidiary or subsidiaries) meets the minimum level set forth in section 325.3 of the FDIC's regulations. Furthermore, any such subsidiary will not be consolidated with its insured bank parent and any direct investment therein will be deducted from the parent bank's primary capital (as defined in 12 CFR 325.2) and total assets.

The provision provides the FDIC with an enforcement tool to help safeguard the safety and soundness of insured banks that enter into these activities through their subsidiaries. If, for example, the FDIC should determine after receiving notice under proposed § 332.5 that an insured bank's capital is not adequate after making the necessary adjustments previously described, the bank could be subject to enforcement action if it were to proceed with the acquisition. This restriction will serve to prevent institutions with indequate capital from entering into these activities and possibly incurring unwarranted additional risks. Further, it is the FDIC's opinion that the exclusion of a bank's investment in any such subsidiary will provide greater assurance that the bank and the subsidiary are independent, financiallly viable entities.

4. Filing of Notice

The original proposed regulation required that an insured bank that intended to acquire or establish a subsidiary that engages in insurance underwriting or real estate development must file notice of intent with the appropriate FDIC Regional Office at least sixty days prior to the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. The bank was also required to notify the FDIC Regional Office in writing ten days after the consummation of the acquisition or commencement of the operation of the subsidiary, whichever is earlier. These notice requirements were waivable under the original proposal by the FDIC, in its discretion, where such notice was found to be impracticable.

The notice requirements as proposed received favorable comment and therefore are being retained in the revised proposal subject only to the following modifications. As originally proposed, the notice requirements did not apply when an insured bank was to become affiliated with a company that engages in prohibited activities. The revised proposal extends the notice requirement to such situations as the FDIC, upon further reflection, has determined that it will not always have the benefit of prior notice of affiliation of an insured bank with such a company from some other application such as a change in bank control or deposit insurance application. Inasmuch as it is still the FDIC's intent to not duplicate an existing prior notice mechanism, the revised proposed regulation indicates that the notice requirements do not apply in the case of an affiliation that will arise out of a change in bank control or bank merger provided that the bank has filed a change in bank control notice with the FDIC or has filed an application with the FDIC for the agency's prior consent to a merger, consolidation, or purchase and assumption transaction or has filed such a notice or application with another federal or state agency required by statute or regulation to consult with the FDIC with respect to the notice or application. Lastly, the notice requirements have been made to apply to a subsidiary or affiliate that engages in guarantor or surety activities. The original proposal had neglected to extend the notice requirements to such subsidiaries, and the revised proposal corrects this omission. (The omission has been corrected throughout the other provisions of the revised proposed regulation as well.)

Again, the revised proposal does not specify the content of the written notice of intent. By not specifying the content of the notice, The FDIC is permitting a bank to satisfy the notice requirements in any way it finds most convenient. It is the FDIC's intent to use the notice as a point of reference and for the regional office to contact the insured bank seeking further information if the bank's condition or other facts warrant a closer review. The proposal thus requires that the notice be received in the regional office at least sixty days prior to the consummation of the transaction. (Contrary to the reading of the proposal by several comments, an insured bank would not be required to give sixty days prior notice to the FDIC each time it enters into a real estate development project.)

Although the notice requirement is not an approval process, the FDIC would not be precluded from intervening in the intended acquisition or establishment of the subsidiary or the intended affiliation if such intervention was warranted. For example, if the subsidiary would not appear to meet the requirements for a bona fide subsidiary or any details of the planned transaction (such as the source of funding for the establishment or acquisition of the subsidiary) present any supervisory concerns, the FDIC could intercede.

5. Definition of Real Estate Development

Unlike the original proposal, the revised proposed regulation contains a definition of the term "real estate development". As defined therein, real estate development means any form of direct or indirect equity interest in real property. The definition specifically excludes the following: (1) An interest in real property that is primarily used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business, (2) an interest in real property that is acquired in satisfaction of debts previously contracted in good faith provided that the property is not held longer than permitted by any applicable law or regulation, (3) an interest in real property that is acquired at sales under judgments, decrees or mortgages held by the bank provided that the property is not held longer than permitted by any

applicable law or regulation, (4) the right to receive a portion of a borrower's gross or net income earned from the operation of real property or upon the sale or refinancing of the real property when that right is acquired as an addition to, or in lieu of, interest on a loan to the borrower secured by such real property, and (5) interests in real property that are primarily in the nature of charitable contributions to community development.

The exclusion for interests in real property acquired in satisfaction of debts previously contracted for in good faith and interests in real property acquired at sales under judgments, decrees or mortgages held by the bank apply only to the amounts booked at the time of acquisition plus any additional funds necessary to substantially complete the projects. If the real property is not substantially complete, and funds are expended toward the completion of the project, the interest in the real property will be considered real estate development.

Real estate lending activities will not normally be considered to constitute real estate development unless the lending is structured in such as manner that the lending bank has virtually the same risks and potential rewards as an investor in real estate. The following considerations, viewed individually or collectively, will be considered by the FDIC to provide evidence that a transaction is in substance real estate development and thus subject to the restrictions of the proposed regulation: (1) The bank provides all or substantially all of the funds for the real estate venture while the borrower, although legally holding title to the property, has little or no equity in the property, (2) the bank funds the loan commitment or origination fees for the borrower by including them in the amount of the loan, (3) the bank funds accrued interest during the term of the loan by adding interest to the borrower's loan balance, or by debiting an interest reserve account established from a portion of the loan proceeds, (4) the loan is secured only by the real estate and the lender has no recourse to other substantive assets of the borrower and the borrower has not guaranteed the debt, (5) the bank, in addition to receiving interest rates at a fair market rate, participates in over fifty percent of the expected residual profits during the life of the real estate project or upon the sale of the real property, (6) the bank in order to recover its investment must rely on the ability of the borrow to sell the real property or obtain refinancing from another source, and (7) the bank structures the lending arrangement so that foreclosure during the project's development is unlikely as the borrower is not required to fund any payments until the project is completed. If it is determined based upon the presence of one or more of the above considerations that the real estate loan is in fact a real estate development venture on the part of the bank, that portion of the loan which represents the real estate development interest as accounted for in accordance with FASB accounting procedures for acquisition, development, and construction loans shall be included towards the bank's de minimis transaction exclusion ceiling.

The FDIC specifically invites comments on the proposed definition and is particularly interested in receiving comments on whether or not the proposed definition is too restrictive or overly broad, or whether some other definition would better serve the interests of insured banks as well as the FDIC's regulatory interests.

6. Affiliation With a Company That Engages in Any Activity Prohibited to an Insured Bank

The current proposal preserves virtually intact from the original proposal the prohibition against an insured bank becoming affiliated with any company that engages in any activity prohibited under § 332.3 (including, in order to correct an oversight in the original proposal, an affiliate engaging in guarantee or surety activities) unless certain conditions are met. Those conditions, as set out in § 332.6 are: (1) The affiliate is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the affiliate, access to which is through a separate entrance from that used for the bank, except that the bank's and affiliate's offices may be accessed through a common outer lobby or a common corridor; (2) the bank and affiliate share no common officers; (3) a majority of the board of directors of the bank is composed of persons who are neither officers nor directors of the affiliate; (4) any employee of the affiliate who is also an employee of the bank does not conduct activities on behalf of the affiliate that involve customer contact; (5) the bank and affiliate do not share a common name or logo, and (6) the affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that any insurance policies or annuities underwritten by the affiliate, as well as any real estate investments recommended, offered, or sold by the affiliate, are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertaking on the part of the affiliate otherwise undertakings or obligations of the bank. A footnote specifically provides that an insured bank is not prohibited from advertising or otherwise disclosing its relationship to the affiliate.

The only differences between the currently proposed § 332.6 and the provision as it originally appeared are: (1) The phrase "investments recommended" has been expanded to include "any insurance policies or annuities underwritten by the affiliate" and (2) a footnote has been added which indicates that the proposed prohibition does not apply in the case of any affiliate that is principally engaged in business outside the United States.

This last change is made in order to avoid the regulation having any extraterritorial effect. (*See* paragraph #14 below.)

The restrictions of this provision are substantially the same as those that pertain to the qualifications for a bona fide subsidiary. Just as an insured bank may be held liable for the acts of a subsidiary (*see* paragraph #2 above), the law provides that a corporation can be held liable for the obligations and acts of its affiliate (either a parent or a sister corporation) when that corporation completely dominates the affairs of the affiliate as well as when other factors relevant to piercing the corporate veil are present. To have an insured bank held liable for the acts and obligations of its affiliates presents an obvious safety and soundness problem. Nonetheless, the FDIC's chief goal with regard to affiliate relationships is, as stated in the original proposal: (1) To protect the safety and soundness of insured banks by requiring that the bank be operated independently and in a manner consistent with safe and sound banking practice, and (2) to protect the deposit insurance fund by avoiding claims against the bank arising from the public's misconception about the entity with which it is dealing.

The FDIC only received three comments addressing the affiliate provision. Those comments were exclusively concerned with the common name or logo prohibition and will be discussed below. Despite the dearth of comments on the affiliation issue, in assessing that provision the FDIC has treated the comments objecting to the criteria used to define "bona fide

subsidiary" as equally applicable to the affiliation criteria due to the substantial similarity of the two provisions. The reasons for retaining the criteria for affiliation in this revised proposal are concomitantly similar to the reasons for retaining the bona fide subsidiary criteria as proposed (*see* paragraph #2 above). The restriction on common officers, directors, and employees is designed to ensure that the bank is run in an independent safe and sound manner as management's concerns will be focused on the bank and not on the affiliate. The remaining restrictions in § 332.6, including paragraph (4) which prohibits an employee of the affiliate who is also an employee of the bank from conducting activities on behalf of the affiliate that involve customer contact, are aimed at preventing the public from perceiving the insured bank and its affiliate to be one and the same entity. The avoidance of this perception will help to protect the deposit insurance fund by preserving confidence in a bank even when its affiliate encounters difficulties.

When a bank has failed due, at least in part, to the activities of its affiliate, compliance with § 332.6 (particularly those provisions aimed at avoiding customer confusion) will help immunize the deposit insurance fund from claims that either the bank or the affiliate, as authorized by the bank, misrepresented the nature of the obligations of the affiliate. In the case of a deposit payoff, compliance with the above provisions should be a defense against claims that the obligations of the affiliate are deposits of the failed bank. In the case of an assumption by a healthy bank of the deposits and other liabilities of a failed bank, in which case the FDIC advances an amount from the insurance fund to the assuming bank equal to the difference between the amount of all liabilities assumed and the amount of assets assumed, compliance with § 332.6 protects the fund by ensuring that the liabilities of the affiliate are not those of the failed bank subject to assumption by the healthy bank. For example, after the failure of the American Bank & Trust Co., New York, N.Y. ("AB&T") in 1976, individuals who thought they had purchased certificates of deposit from the bank but in fact had purchased commercial paper of the similarly named American B & T Corp. (the bank's holding company), were given standing to proceed under the securities laws to state a case that they were in reality holding obligations of American Bank & Trust. *Adato v. Ragan*, 599 F.2d 1111 (2d Cir. 1979). Another example of harm to the deposit insurance fund that can result from public confusion over affiliates relationships is the nearly devastating run on a large mid-western bank in the mid-1970s because of the losses incurred by a real estate investment trust owned by the bank's holding company. The REIT and the bank were not even similarly named, yet the losses incurred by the REIT were enough to set off a run on the bank by sophisticated, large-denomination depositors. A common name or logo clearly would have exacerbated the problem. (*See* paragraph #2 above for an explanation of the exception in the regulation permitting a bank to disclose its relationship to its affiliates.) Other problems created for banks by virtue of similarly named affiliated REIT in the 1970s are well known.

As mentioned, FDIC received three comments exclusively devoted to the prohibition against a common name or logo. All three strongly opposed this restriction. One of these comments was from an insured bank owned by a well-known national insurance company, while another was from a national bank owned by a well-known national retailer. The FDIC believes that the *Adato* case cited above, the REIT experience, and the other analyses set forth in connection with this proposal and the prior proposal support retention of the prohibition on a common name or logo. The FDIC rejected the idea of grandfathering existing common names because of the continued possibility of public confusion.

7. Restrictions on Lending

Section 332.7 of the original proposal contained several restrictions on the extent to which, and the manner in which, an insured bank may deal with its subsidiary or affiliate that engages in insurance underwriting (excluding credit life insurance), real estate development, reinsurance, or insures, guarantees, or certifies title to real estate. With several modifications and additions, the restrictions in the current proposal remain the same as the ones set forth in the original proposal. The currently proposed restrictions apply to any insured bank that has a subsidiary that engages in activities prohibited to the bank under §332.3 and to any insured bank that has an affiliate which is subject to the restrictions of section 332.6. (The restrictions of § 332.7 are applicable to banks with subsidiaries or affiliates that engage in insurance underwriting, real estate development, or guarantee or surety activities, thereby correcting an oversight in the first proposal which had only covered insurance underwriting and real estate development.)

As revised, § 332.7 provides that: (1) Any extension of credit by an insured bank to a subsidiary that engages in prohibited activities may not be in excess of 10% of the bank's primary capital, (2) the bank's aggregate extensions of credit to all such subsidiaries may not exceed 20% of the bank's primary capital, (3) any extension of credit by an insured bank where the purpose of the extension of credit is to acquire an interest in any real estate developed by the bank's subsidiary or affiliate must be consistent with safe and sound banking practices and the aggregate of such purpose loans may not exceed 10% of the bank's primary capital, and (4) any extension of credit by an insured bank to any real estate develoment in which the bank's subsidiary or affiliate has an equity interest may not exceed 15% of the bank's primary capital.

The currently proposed restrictions on extensions of credit by an insured bank deletes the reference to section 23A of the Federal Reserve Act contained in the original proposal and removes affiliates from the reach of the prohibition. As section 23A already covers extensions of credit to affiliates, covering affiliates under this provision would merely be superfluous. The current proposal has dropped the reference to section 23A in order to avoid the inadvertent impression that the FDIC was trying to extend section 23A to bank subsidiaries. It had been the FDIC's intent merely to borrow from that regulatory structure in formulating prudential restrictions. The prudential limitations set on extensions of credit by the proposal for safety and soundness reasons track the percentages used in section 23A, but do not contain any collateral requirements such as those used in section 23A. (Several comments objected to imposing collateral requirements.) Several comments suggested imposing restrictions on transactions *between* subsidiaries of an insured bank to avoid circumvention of the limits on loans to any one subsidiary. These comments, however, overlook the aggregate limit on loans to all subsidiaries. The FDIC believes that the aggregate limit is sufficient to safeguard against such circumvention.

The current proposal continues virtually unchanged from the former proposal the restriction against an insured bank making loans for the purpose of acquiring any interest in real estate developed by the bank's subsidiary or affiliate unless the terms and conditions of the extension of credit are consistent with safe and sound bank practice. The aggregate of such "purpose

loans" may not exceed 10% of the bank's primary capital. This restriction is designed to prevent an insured bank from making excessive and/or imprudent loans in order to "move" the subsidiary's or affiliate's real estate. Likewise, the requirement that the extensions of credit by the bank to any real estate development in which the bank's subsidiary or affiliate has an equity interest may not exceed 15% of the bank's primary capital is designed to prevent a bank from making excessive and/or imprudent loans to a real estate venture in which its subsidiary or affiliate has an equity interest in an effort to protect the subsidiary's or affiliate's investment position. (The original proposal had contained a cross reference to 12 U.S.C. 84 which places a limit on loans to one borrower. That cross reference has been dropped for the same reasons the reference to section 23A of the Federal Reserve Act has been dropped.)

Despite several comments arguing that the restrictions overly limit an insured bank's ability to lend to projects of an affiliate or subsidiary, the FDIC reaffirms its statement made in the original proposal that, "taken together, these restrictions are designed to prevent abuses while at the same time allowing purpose lending and other direct and indirect financing of real estate." Additionally, the FDIC has determined that this proposal's allowance of certain in-house real estate activities significantly diminishes the concerns expressed in the comments by permitting increased direct involvement in real estate development.

8. Trust Department Restrictions

Proposed § 332.7(a)(5) prohibits any insured bank that has a subsidiary that engages in activities prohibited to the bank under § 332.3, and any insured bank that has an affiliate that is subject to the restrictions of § 332.6, from purchasing as fiduciary, co-fiduciary or managing agent on behalf of any account for which the bank has sole investment discretion any interest in real estate developed by such subsidiary or affiliate or any insurance policy or annuity underwritten by such subsidiary or affiliate unless: (1) The purchase is expressly authorized by the managing agency agreement, the trust instrument, court order or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure; (2) the purchase, although not expressly authorized under item (1), is otherwise consistent with the bank's common law fiduciary obligation; or (3) the purchase is permissible under applicable state and federal law or regulation. Except for minor wording changes, this provision is as originally proposed.

The FDIC intends by this provisions to ensure against abuses that can arise in the adminstration of trust and other accounts over which the bank has investment discretion. The provision is, for the most part, simply a restatement of a bank's common law fiduciary obligation to refrain from dealing with itself in the adminstration of a trust. The provision has been styled as proposed (in the alternative) in order to take into account, for example, federal law governing employee benefit and pension plans that would permit, in certain instances, transactions involving such funds and affiliates of their trustees. An insured bank would still be subject to any applicable stricter federal or state statutory regulatory requirement. For example, if a particular transaction is specifically prohibited under state law, a bank could not rely on § 332.7(a)(5) as authority to enter into the transaction.

9. Tying

The revised proposal continues, with slight modifications, to prohibit directly or indirectly conditioning any extension of credit on the requirement that a borrower purchase any real estate developed by the bank's subsidiary or affiliate or purchase any insurance poliy or annuity underwritten by the bank's subsidiary or affililate. While some commens argued that this prohibition as unnecessary due to similar restrictions found in section 106(b) of the Bank Holding Company Act, many other comments evidenced extreme concern about tying arangements and urged the FDIC to bar bank entry into nonbanking areas in order to avoid tie-ins. The FDIC has retained this provision, however, inasmuch as not all insured banks are encompassed by the restrictions of section 106(b) of the Bank Holding Company Act (*e.g.*, nonbank banks) and because tying arrangements involving subsidiaries of banks not in a holding company system may not be covered thereby. The provision is not duplicative as to banks that are covered by section 106(b) as § 332.7(a)(4) contains a footnote which provides that compliance with section 106(b) shall deemed to be compliance with the proposal's anti-tying provisions.

10. Restrictions on Operations of Bank Insurance Departments and Permissible Real Estate Activities

Because the current proposal permits insured banks to: (1) Engage directly in real estate development up to certain limits pursuant to § 332.3(b)(2)(i) and (2) underwrite life insurance and annuities through a department of the bank pursuant to § 332.3(c)(2)(i), certain restrictions are necessary to prevent abuses that might arise. Paragraphs (3) and (4) of § 332.7(b) have therefore been added to the proposal. These paragraphs parallel the trust department restrictions and anti-tying provisions explained above that are applicable to insured banks that have subsidiaries or affiliates that engage in real estate or insurance activities.

Paragraphs (1) and (2) of new § 332.7(b) are designed to prevent customer confusion when an insured bank operates a life insurance department. Paragraph (1) prohibits an insured bank from referring to federal deposit insurance in any life insurance department advertisement, solicitation, or promotional material, and paragraph (2) requires any life insurance policy or annuity underwritten by the insurance department or an insured bank to be accompanied by a written disclosure stressing that only the assets of the insurance department are available to pay the liabilities of the insurance department. The FDIC hopes, by adopting these requirements, to avoid situations in which customers of the life insurance department mistakenly believe that they have an insured deposit when, in fact, the customer has purchased an annuity.

The FDIC specifically requests comments on whether any other conditions in lieu of, or in addition to, the ones proposed should be imposed when an insured bank directly engages in real estate development and/or operates a life insurance department. For example, should the FDIC require that the life insurance department be physically separate and distinct within the bank from the other departments? Should the same bank employee be prohibited from selling annuities and setting up money market deposit accounts?

11. Waiver

In response to several comments, a provisions has been added to the revised proposal that provides for a waiver by the FDIC's Board of Directors. The standard for the waiver as set forth in the proposal is that the Board of Directors may, by resolution, waive all or any portion of the regulation when the Board of Directors deems it necessary and in the public interest to do so. In addition to waiving the regulation, the Board of Directors may impose such other conditions as it determines to be appropriate. This provision will allow the FDIC at the request of an insured bank or upon the

agency's own initiative to waive any particular portion of the regulations and tailor make such conditions or restrictions that the Board of Directors feels are appropriate under the individual circumstances.

12. Insurance Sales, Real Estate Brokerage, Travel Services, EDP Services

The regulation as originally proposed contained several restrictions applicable to instances in which an insured bank, its subsidiary, or affilliate were providing certain brokerage services, EDP services and/or travel agency services. The restrictions were primarily designed to address conflicts of interest and anti-tying concerns. Comments received in response to the proposed restrictions were overwhemingly critical. Banks presently involved in these activities objected to the restictions as unnecessary and duplicative. Nonbanking trade groups objected to the "attempt" on the part of the FDIC to "authorize" insured banks to conduct such activities.

Upon reconsideration of the issue, the FDIC has determined to withdraw these proposed requirements. The effect of doing so is not, however, to preclude insured banks from conducting brokerage, EDP, and travel activities nor does it means that the FDIC will not address any problems that may arise due to the involvement of an insured bank in such activities. It is the FDIC's opinion that these activities pose only minimal safety and soundness concerns and that these concerns may be adequately addressed during the examiation process or otherwise where the need arises. If further experience in this area demonstrates the need for a regulation to address conflicts of interest and tying, the FDIC will initiate rulemaking or take other appropriate action.

13. Definition of "Affiliate", "Subsidiary", "Extension of Credit" and "Company"

The original proposed regulation defined the term "affiliate" to mean a company that directly or indirectly controls an insured bank or is under common control with an insured bank. "Control" was defined as the power to directly or indirectly vote twenty-five percent of a bank's or company's stock, the ability to control the election of a majority of a bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. At a minimum, the original proposed regulation treated as affiliates of an insured bank the bank's parent company, a company that controls twenty-five percent or more of the bank's stock, and any companies by either of the above.

The term "subsidiary" was defined in the original proposal to mean a company directly or indirectly controlled by a bank. As "company" was defined in the proposed regulation to include corporations (other than banks), partnerships, businesses trusts, associations, joint ventures, pools, syndicates or other similar business organizations, the term subsidiary as originally proposed encompassed a business entity operated by several insured banks in a cooperative effort.

The term "extension of credit" as defined in the original proposed regulation had generally the same meaning as found in Federal Reserve Board Regulation O (12 CFR 215.3) which concerns insider transactions. As defined in the original proposal, however, the term covered purchases "whether or not under repurchase agreement" of securities, other assets, or obligations. The "whether or not" language was included in the proposed regulation in an attempt to control the extent to which a bank may indirectly divert funds into a subsidiary by means of purchasing securities and other assets from the subsidiary. The term also differed from that used in Regulation O in that a "draw" upon a line of credit was an extension of credit whereas a "grant" of a line of credit was not.

The revised proposed regulation retains the above definitions as originally proposed without any modifications. (The agency did not receive any comments directed to the definitions.) A footnote has been added to proposed § 332.7 ("Restrictions") in response to comments that including a purchase of securities in the definition of extension of credit raised the question of whether or not a bank's direct investment in its subsidiary through a purchase of securities issued by that subsidiary was subject to the lending restrictions established by § 332.7. That footnote indicates that the lending restriction does not limit such purchases.

14. Scope of Regulation

The revised proposed regulation continues to apply to all FDIC-insured banks, *i.e.*, nonmember banks, state banks that are members of the Federal Reserve System, national banks, federal savings banks insured by the FDIC, and insured branches of foreign banks. Numerous comments challenged the FDIC's authority to adopt a regulation that would apply to insured banks other than insured state nonmember banks. For the reasons set forth at length in the statutory authority discussion above, the FDIC has determined not only that it has the authority to adopt a regulation applicable to all insured banks but also that the adoption of this particular proposed regulation is necessary to the protection of the insurance fund and the safety and soundness of insured banks. As a practical matter, national banks and state banks that are members of the Federal Reserve System, as well as affiliates of insured banks that are nonbank subsidiaries of a bank holding company, are not impacted by the proposed regulation. Such entities are either not presently authorized to engage in insurance underwriting or real estate development or are precluded by some other federal law and/or regulation from engaging in such activities. To the extent that state nonmember banks and federal savings banks insured by the FDIC may be affected by the regulation (those entities may be authorized by state or federal law or regulation to engage in insurance underwriting or real estate development), the FDIC has determined that such impact is both advisable and within the agency's authority. Again, the FDIC feels that the revisions made to the proposed regulation will minimize, if not eliminate, any conflict with state or other federal law. Lastly, insofar as the proscription on acting as guarantor or surety is concerned, it would appear that this prohibition is no broader than similar prohibitions already applicable to national banks, member banks, and federal savings banks insured by the FDIC.

Foreign banks and insured branches of foreign banks—The FDIC received a comment on behalf of the Institute of Foreign Bankers urging the FDIC to clarify that a foreign bank with an insured branch is not an insured bank for the purposes of the regulation. The comment also urged the FDIC to exclude from the reach of the regulation: (1) The non-U.S. affiliates of insured branches of foreign banks, (2) the non-U.S. affiliates of domestic bank subsidiaries of foreign banks, and (3) the affiliates of domestic bank subsidiaries and insured branches of foreign banks where their U.S. nonbanking activities are either (a) grandfathered under section 8 of the International Banking Act (12 U.S.C. 3106) or (b) are permissible under the Bank Holding Company Act.

Section 332.1 of the revised proposed regulation ("Purpose and Scope") has been amended to indicate that the foreign bank parent of an insured branch is not within the scope of the regulation. It is clear, even without this

indication, however, that the foreign bank parent of an insured branch or of a domestic bank subsidiary is not an affiliate subject to the restrictions of the regulation. This is so as an affiliated company does not include a bank. (*See* § 332.2(a)). Non-U.S. companies that are affiliated with an insured bank (including an insured branch of a foreign bank or a domestic bank subsidiary of a foreign bank) have also been excluded from coverage under § 332.6 of the regulation. These affiliates are also therefore not subject to the restrictions of § 332.7(a) as the preface of that paragraph recites that the restrictions therein apply to any insured bank that has an affiliate that is subject to the restrictions of § 332.6.

The above exclusions are designed to prevent the regulation from having an extraterritorial effect. There is no need to exclude from the regulation the affiliates of insured branches or of domestic bank subsidiaries of foreign banks that engage in activities permissible under the Bank Holding Company Act. The activities covered by the regulation have not been found to be closely related to banking and therefore are not permissible under tht statute. U.S. nonbanking activities grandfathered by the International Banking Act on the part of affiliates of insured branches of foreign banks and affiliates of domestic bank subsidiaries of foreign banks have also not been excluded from coverage under the regulation. Although the Federal Reserve Board has the authority to terminate the grandfather status conferred by the International Banking Act, the FDIC is of the opinion that that authority does not preclude the FDIC from regulating insured banks and their relationship to such affiliates nor does it remove the need for the FDIC to do so.

Exemption for certain subsidiaries—The original proposed regulation contained a provision which indicated that the restriction of §§ 332.4, 332.5, and 332.7 did not apply in the case of a subsidiary of an insured bank that exclusively conducted any activity that is specifically authorized by statute, regulation, or interpretation to national banks or their operating subsidiaries. (A companion exclusion in § 332.3(b) provided that no insured bank was required to establish or acquire a bona fide subsidiary in order to conduct any such activity.) Upon reconsideration, the FDIC has determined to delete these exclusions from the revised proposed regulation.

15. Compliance

The revised proposed regulation requires that any insured bank that, prior to the date of publication of the proposal in the **Federal Register**, engaged in any activity prohibited to the bank shall have one year from the effective date of the regulation to move the operation into a bona fide subsidiary. Thus, for example, an insured bank that underwrites property and casualty insurance will have one year to establish a bona fide subsidiary to take over that operation. In the case of real estate development, the bank will be permitted to complete any real estate development project that is ongoing as of the date of publication of the proposal in the **Federal Register** as well as any real estate development project for which it has, as of such date, entered into a binding contractual obligation. The bank will not be permitted, however, to enter into any new real estate development projects after the effective date of the regulation other than in compliance with the regulation. Thus, if an insured bank is involved in one or more real estate development projects that exceed the de minimis real estate transaction exclusion, the bank will be permitted to complete the projects but any additional real estate developments must be entered into through a bona fide subsidiary of the bank until the bank can again comply (for example, because of sales of development interests or growth of primary capital) with the de minimis requirement.

This limited grandfather aspect of the compliance provision is designed to prevent undue disruption to existing real estate operations to the detriment of the bank, *i.e.*, avoid forcing a bank to precipitously divest its interests in ongoing real estate developments. The revised compliance provision should provide more flexibility than the provision as originally proposed which would have given a bank two years to move an existing operation but did not establish a limited grandfather for ongoing real estate development. The provision as revised is thus responsive to comments which urged the FDIC to grandfather existing levels of real estate investment so as to not force a bank to divest assets at a liquidation price. The proposal does not simply grandfather insured banks that are conducting directly or indirectly activities authorized by their state or federal chartering authority as requested by some comments. This approach has not been adopted for all the reasons more fully discussed in the "Bases of Concern" discussion above.

The FDIC is specifically requesting comment on whether the regulation should identify when a real estate project is "completed" and invites comment on how to determine when that has occurred. Additionally, the FDIC invites comment on whether the regulation should establish a specific time period on the limited grandfather and whether the one year compliance period for all other prohibited activities is sufficient.

If an insured bank, prior to the date of publication of the proposal in the **Federal Register**, acquired or established a subsidiary that engages in prohibited activities or, prior to such date, because affiliated with a company that engages in such activities, the bank has one year from the effective date of the regulation to comply therewith with the following exceptions. The subsidiary must meet the definition of a bona fide subsidiary within 180 days and the affiliate provision of the regulation must be in compliance with within 180 days. The lending and other restrictions of § 332.7 must be met within 90 days.

16. Paperwork Reduction Act

The notice requirements contained in the proposed regulations do not constitute "collections of information for purposes of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and therefore are not subject to the Office of Management and Budget ("OMB") clearance provisions of that Act. This is because the notice requirements fall within the exception to the definition of "information" set out in § 1320.7(k)(1) of the OMB regulations implementing the "collection of information clearance" provisions of the Act (5 CFR Part 1320). It is recognized, however, that the notice requirements do place an affirmative obligation on an insured bank to notify the FDIC of its intended action, to confirm whether or not the transaction has been consummated, and to notify the FDIC if the bank has a subsidiary that engages in restricted activities or is affiliated with a company that engages in restricted activities. Any costs associated with these notices would appear, however, to be minimal. The proposed regulation does not specify the content of the written notices nor does it require insured banks to provide the FDIC with any specific information.

17. Regulatory Flexibility Act Analysis

In accordance with the FDIC's policy statement entitled "Development and Review of FDIC Rules and Regulations" and the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FDIC conducted an analysis of the proposed regulation. The results of that analysis follow.

The proposed regulation would prohibit, with certain exceptions, an

insured bank from conducting insurance or real estate underwriting activities unless such activities were conducted in a bona fide subsidiary of the bank. There are several benefits to such a restriction. By separating these activities from the bank, there will be less regulatory overlap and it will be easier for the various regulatory agencies to monitor the conditions of the institutions for which they are responsible. Moreover, by providing some insulation between the bank and its real estate and insurance underwriting activities, the safety of the bank is less likely to be threatened should its real estate or insurance subsidiaries encounter financial difficulty.

The provisions which would require independent capitalization, limit intercompany dealing, and prohibit insured banks from becoming affiliated with companies engaging in insurance or real estate underwriting activities unless the affiliate is physically separate from the bank and has a separate name and logo are consistent with the desire to limit the overall exposure of the banking organization by maintaining some separation between an insured institution's banking and nonbanking activities. These restrictions should not impose substantial costs on insured banks and will make it less likely that financial problems encountered by an affiliate will result in problems for the bank itself. The absence of an investment cap in the insured bank's subsidiaries will enable even relatively small insured banks to compete in these markets. The exclusion of bank's investment in its subsidiary does not eliminate any of the potential benefits that will result from increased competition in these markets. It does, however, encourage asset diversification by ensuring that insured banks do not become overexposed to cyclical declines in any of these activities.

As already stated, the FDIC does not believe that this regulation will result in excessive costs for insured banks in general or for small banks in particular. The primary concern, with respect to real estate development (particularly for small banks), would be if banks did not plan to engage in real estate development activities on a large enough scale to warrant the costs associated with forming a bona fide subsidiary. In such cases the regulation might discourage the bank from participating in real estate development activities and some public benefit might be lost. However, this potential concern is alleviated under the revised proposed regulation. Any bank that wished to engage in real estate activities on a limited basis would not have to incur any additional costs as a result of the proposed regulation since real estate investments that did not exceed 50% of primary capital could be conducted in the bank itself. Only those institutions that wish to participate in this market on a large scale would be required to set up a bona fide subsidiary, and in those instances the bank's real estate activities would be on a large scale to justify the costs associated with the formation of a bona fide subsidiary.

With respect to insurance activities by insured banks, it is unlikely that the proposed regulation will create unjustifiable costs or deter market entry. Banks that want to service their customer's insurance needs on a limited basis would be more interested in insurance brokerage than insurance underwriting, and the proposed regulation does not prohibit insurance brokerage activities. There are economies of scale associated with insurance underwriting which suggest that banks should not participate in this market unless they are willing to enter on a large enough scale to make the costs associated with forming a bona fide subsidiary a relatively minor part of their total costs. These economies of scale result from the need to soufficiently diversify underwriting risks.

Based on the above, the Board of Director hereby certified that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 332

Banks, Banking, Foreign banks, banking, State nonmember banks.

In consideration of the foregoing, the FDIC is proposing to revise Part 332 of title 12 *Code of Federal Regulations* as follows:

PART 332—POWERS INCONSISTENT WITH PURPOSES OF FEDERAL DEPOSIT INSURANCE LAW

Sec.

332.1 Purpose and scope.
332.2 Definitions.
332.3 Prohibited activities.
332.4 Investment in subsidiary.
332.5 Notice.
332.6 Affiliation.
332.7 Restrictions.
332.8 Waiver.
332.9 Compliance.
332.10 Enforcement.

Authority: Sec. 6, Stat 876, 12 U.S.C. 1816; sec. 8(a), sec. 2[8(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 879), effective September 21, 1950, as amended by sec. 204 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1054), effective October 16, 1966; sec. 6(c)(14) of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 618), effective September 17, 1978; and sec. 113(g) of title I of the Act of October 15, 1982 (Pub. L. No. 97-320; 96 Stat. 1473 and 1474), effective October 15, 1982; 12 U.S.C. 1818(a); sec. 8(b), sec. 2[8(b)] of the Act of September 21, 1950 (Pub. L. No. 797), as added by sec. 202 of title II of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1046), as amended by sec. 110 of title I of the Act of October 28, 1974 (Pub. L. No. 93-495; 88 Stat. 1506); sec. 11 of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 624); secs. 107(a)(1) and 107(b) of title I of the Act of November 10, 1978 (Pub. L. No. 95-630; 92 Stat. 3649 and 3653); and secs. 404[c], 425(b), and 425[c] of title IV of the Act of October 15, 1982 (Pub. L. No. 97-320; 96 Stat. 1512 and 1524); 12 U.S.C. 1818(b); sec. 9, 64 Stat. 881-882, 12 U.S.C. 1819; sec. 11(a), sec. 2[11(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 884), effective September 21, 1950, as amended by sec. 301(c) of title III of the Act of October 16, 1966 (Pub. L. No. 89-695; 80 Stat. 1055), effective October 16, 1966; section 7(a)(3) of title I of the Act of December 23, 1969 (Pub. L. No. 91-151; 83 Stat. 375), effective December 23, 1969; secs. 101(a)(3) and 102(a)(3) of title I of the Act of October 28, 1974 (Pub. L. No. 93-495; 88 Stat. 1500 and 1502), effective November 27, 1974; sec. 1401(a) of title XIV of the Act of November 10, 1978 (Pub. L. No. 95-630; 92 Stat. 3712), effective March 10, 1979; sec. 323 of title III of the Act of December 21, 1979 (Pub. L. No. 96-153; 93 Stat. 1120); sec. 308 of title III of the Act of March 31, 1980 (Pub. L. No. 96-221; 94 Stat. 147), effective March 31, 1980; and sec. 103 of title I of the Act of December 28, 1981 (Pub. L. No. 97-110; 95 Stat. 1514), effective December 28, 1981; sec. 11(f), section 2[11(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 885), effective September 21, 1950, as amended by sec. 6(c)(20) of the Act of September 17, 1978 (Pub. L. No. 95-369; 92 Stat. 619), effective September 17, 1978, 12 U.S.C. 1821(f).

§ 332.1 Purpose and scope.

The provisions of this part apply to all insured banks including state chartered banks that are members of the Federal Reserve System, insured nonmember banks, national banks, insured branches of foreign banks (but not the foreign bank itself), and federal savings banks that are insured by the FDIC. The purpose of this part is to assure the safe and sound operation of insured banks by prohibiting activities that are inconsistent with the purposes of federal deposit insurance.

§ 332.2 Definitions.

For the purposes of this part, the following definitions apply.

(a) "Affiliate" shall mean any company that directly or indirectly controls or is under common control with an insured bank.

(b) "Bona fide subsidiary" shall mean a subsidiary of an insured bank that at a minimum:

(1) Is adequately capitalized;

(2) Is physically separate and distinct in its operations from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the subsidiary, access to which is through a separate entrance from that used for the insured bank, except that the bank's and subsidiary's offices may be accessed through a common outer lobby or common corridor;

(3) Does not share a common name or logo with the bank;[1]

(4) Maintains separate accounting and other corporate records;

(5) Observes separate formalities such as separate board of directors' meetings;

(6) Maintains separate employees who are compensated by the subsidiary; [2]

(7) Shares no common offices with the bank;

(8) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and

(9) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank, that any insurance policies or annuities underwritten by the subsidiary, as well as any real estate investments recommended, offered or sold by the subsidiary, are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank and that any undertakings or obligations of the subsidiary are not undertakings or obligations of the bank.

(c) "Company" shall mean any corporation (other than a bank), partnership, business trust, association, joint venture, pool, syndicate, or other similar business organization.

(d) "Control" shall mean the power to directly or indirectly vote 25 per centum or more of the voting stock of a bank or company, the ability to control in any manner the election of a majority of bank's or company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company.

[1] This requirement shall not prohibit the subsidiary from advertising or otherwise disclosing its relationship to the insured bank.

[2] This requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to the those agreed to by independent entities.

(e) "Extension of credit" shall mean the making or renewal of any loan a draw upon a line of credit, or an extension of credit in any manner whatsoever and includes, but is not limited to:

(1) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(2) An advance by means of an overdraft, cash item or otherwise;

(3) Issuance of standby letter of credit (or other similar arrangement regardless of name or description);

(4) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which a natural person or company may be liable as maker, drawer, endorser, guarantor, or surety;

(5) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(6) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance, or other expenses incidental to the existing indebtedness; or

(7) Any other transaction as a result of which a natural person or company becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

(f) "Primary capital" shall have the meaning set forth in §325.2(h) of the FDIC's regulations.

(g) "Real estate development" shall mean any form of direct or indirect equity interest in real property other than the following:

(1) An interest in real property that is primarily used by the bank, its subsidiaries, or affiliates as offices or related facilities for the conduct of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted in good faith provided that the property is not held longer than permitted by any applicable law or regulation;

(3) An interest in real property that is acquired at sales under judgments, decrees or mortgages held by the bank provided that the property is not held longer than permitted by any applicable law or regulation;

(4) The right to receive a portion of a borrower's gross or net income earned from the operation of real property or upon sale or refinancing of the real property when that right is acquired as an addition to, or in lieu of, interest on a loan to the borrower secured by such real property; and

(5) Interests in real property that are primarily in the nature of charitable contributions to community development.

(h) "Subsidiary" shall mean any company directly or indirectly controlled by an insured bank.

§ 332.3 Prohibited activities.

(a) *Acting as surety or guarantor.* (1) Except as otherwise provided in paragraph (a)(2), no insured bank may directly on indirectly conduct a surety business, insure the fidelity of others, or guarantee the obligations of others.

(2)(i) An insured bank may directly: (A) In the case of an insured branch of a foreign bank, guarantee or become surety upon the obligations of others as provided in § 347.3(c)(1) of the FDIC's regulations, (B) guarantee or become surety upon the obligations of others through an acceptance, endorsement, or letter of credit made or issued in the usual course of the banking business, (C) issue standby letters of credit as that term is defined in § 337.2 of the FDIC's regulations or enter into other similar arrangements, (D) guarantee or become surety upon the obligations of others if the bank has a substantial interest in the performance of the transaction or has a segregated deposit sufficient in amount to cover the bank's total liability, (E) enter into check guaranty card programs, customer-sponsored credit card programs, and similar arrangements on behalf of its retail banking deposit customers provided that the bank establishes the credit-worthiness of the individual before undertaking to guarantee his/her obligations, and (F) endorse or otherwise guarantee notes or other obligations sold by the bank for its own account.

(ii) An insured bank may, through a bona fide subsidiary of the bank, indirectly engage in activities otherwise prohibited to the bank under paragraph (a)(1) of this section.

(b) *Real estate development.* (1) Except as otherwise provided in paragraph (b)(2), no insured bank may directly or indirectly engage in real estate development.

(2)(i) An insured bank may directly engage in real estate development provided that: (A) the bank meets at least the minimum capital requirements set forth in § 325.3 of the FDIC's regulations, (B) the bank's aggregate investments in such real estate development, including any related extensions of credit, do not exceed 50%

of the bank's primary capital, and (C) the bank's aggregate investment in any one real estate development (including any related extensions of credit) does not exceed 10% of the bank's primary capital;

(ii) An insured bank may, through a bona fide subsidiary of the bank, indirectly engage in real estate development activities otherwise prohibited to the bank under paragraph (b)(1) of this section.

(c) *Insurance underwriting.* (1) Except as otherwise provided in this paragraph and paragraph (c)(2), no insured bank may directly or indirectly underwrite insurance or engage in reinsurance. This prohibition extends, but is not limited to, casualty insurance, property insurance, life insurance (exclusive of insurance limited to assuring repayment of the outstanding balance due on an extension of credit in the event of death, disability, or involuntary unemployment), annuities, mortgage guarantee insurance, and title insurance.

(2)(i) An insured bank may underwrite life insurance and annuities through a department of the bank provided that the state of federal statutes or regulation which authorizes the bank to do so requires that: (A) The assets, liabilities, obligations, and expenses of the insurance department are separate and distinct from those of the other departments of the bank, (B) the assets of the other departments of the bank cannot be used to satisfy the obligations, liabilities, or expense of the insurance department, (C) the insurance department keeps separate accounting and other records, (D) the insurance department may not make investments not permitted to the bank, and (E) the insurance department is liquidated separately from the other departments of the bank and does not form part of the receivership in the event of the insolvency of the bank;

(ii) An insured bank may, through a bona fide subsidiary of the bank, indirectly engage in insurance underwriting activities otherwise prohibited to the bank under paragraph (c)(1) of this section.

§ 332.4 Investment in subsidiary.

(a) No insured bank may establish or acquire a subsidiary that engages in any activity prohibited to an insured bank under § 332.3 unless the bank meets at least the minimum capital requirements set forth in § 325.3 of the FDIC's regulations.

(b) An insured bank's direct investment in a subsidiary that engages in any activity prohibited to an insured bank under § 332.3 will not be counted toward the bank's consolidated capital.

§ 332.5 Notice.

(a) *Notice of intent.* (1) Any insured bank that intends to (i) establish or acquire a subsidiary that engages in activities prohibited to the bank under § 332.3, or (ii) become affiliated with a company that engages in any such activity, shall file a written notice of intent with the regional director of the FDIC region in which the bank is located. This notice must be received in the regional office at least 60 days prior to consummation of the transaction. Any insured bank that files a notice pursuant to this paragraph must also notify the regional director in writing within 10 days after the consummation of the transaction.[3]

(2) The notices required by paragraph (a)(1) may be waived in the FDIC's discretion where such notices are impracticable or where waiver would be in the public interest.

(b) *Notice of existing relationship.* Any insured bank that as of [insert effective date of the regulation] has a subsidiary that engages in activities prohibited to an insured bank under § 332.3 or, is as of that date affiliated with a company encompassed by § 332.6, must notify in writing the regional director of the FDIC region in which the bank is located of the existence of that relationship. This notice must be received in the regional office no later than (insert a date 30 days from the effective date of the regulation).

§ 332.6 Affiliation.[4]

No insured bank may become affiliated with any company that engages in any activity prohibited to an insured bank under § 332.3 unless:

(a) The affiliate is physically separate and distinct in its operation from the operation of the bank, such physical separation being achieved at a minimum by separate offices clearly demarcated as belonging to the affiliate, access to which is through a separate entrance from that used for the bank, except that the bank's and affiliate's offices may be accessed through a common outer lobby or a common corridor;

(b) The bank and affiliate share no common officers;

(c) A majority of the board of directors of the bank is composed of persons who are neither officers nor directors of the affiliate;

(d) Any employee of the affiliate who is also an employee of the bank does not conduct activities on behalf of the affiliate that involve customer contact;

(e) The bank and affiliate do not share a common name or logo;[5] and

(f) The affiliate conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the affiliate that the affiliate is a separate organization from the bank and that any insurance policies or annuities underwritten by the affiliate, as well as any real estate investments recommended, offered, or sold by the affiliate, are not bank deposits, are not insured by the FDIC, and are not guaranteed by the bank nor are any undertakings on the part of the affiliate otherwise undertakings or obligations of the bank.

§ 332.7 Restrictions.

(a) *Transactions with subsidiary or affiliate.* Any insured bank that has a subsidiary that engages in activities prohibited to the bank under § 332.3 and any insured bank that has an affiliate that is subject to the restrictions of § 332.6 shall not:

(1) Directly or indirectly make any extension of credit to any such subsidiary in excess of 10% of the bank's primary capital;

(2) Directly or indirectly make extensions of credit in the aggregate to all such subsidiaries in excess of 20% of the bank's primary capital;[6]

(3) Make any extension of credit where the proceeds are to be used by the borrower to acquire any interest in real estate developed by such subsidiary or affiliate unless the terms and conditions of the extension of credit are consistent with safe and sound banking practice. The aggregate of such extensions of credit shall not exceed 10% of the banks's primary capital.

(4) Directly or indirectly condition any extension of credit on the requirement that the borrower purchase any real estate developed by such subsidiary or affiliate or purchase any insurance

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[3] In the case of an affiliation that will arise out of a change in bank control or bank merger, the notice requirements of § 332.5(a) shall not apply provided that (1) the bank has filed a change in bank control notice with the FDIC pursuant to § 303.15 of the FDIC's regulations, (2) has filed an application with the FDIC for prior written consent to merge, consolidate, acquire assets, or enter into a purchase and assumption transaction, or (3) has filed such a notice or application with another federal or state agency that is required by statute or regulation to consult with the FDIC with respect to the notice or application.

[4] The restrictions of § 332.6 shall not apply in the case of any affiliate that is principally engaged in business outside the United States.

[5] This requirement shall not be construed to prohibit the bank from advertising or otherwise disclosing its relationship to the affiliate.

[6] Section 332.2(e)(1) notwithstanding, a bank's investment in stock issued by its subsidiary shall not be considered an extension of credit subject to the restrictions of paragraphs (a)(1) or (a)(2) of § 332.7(a).

policy or annuity underwritten by such subsidiary or affiliate.[7]

(5) Purchase as fiduciary, co-fiduciary, or managing agent on behalf of any account for which the bank has sole investment discretion any interest in real estate developed by such subsidiary or affiliate or any insurance policy or annuity underwritten by such subsidiary or affiliates unless: (i) The purchase is expressly authorized by the managing agency agreement, trust instrument, court order, or local law, or specific authority for the purchase is obtained from all interested parties after full disclosure, (ii) the purchase, although not expressly authorized under (i), is otherwise consistent with the bank's common law fiduciary obligation, or (iii) the purchase is permissible under applicable state and federal law or regulation.

(6) Make any extension of credit in excess of 15% of the bank's primary capital to any real estate development in which the bank's subsidiary or affiliate has an equity interest.

(b) *Operation of insurance department/permissible real estate development.* Any insured bank that operates a life insurance department as permitted by § 332.3(c)(2), and any insured bank that directly engages in real estate development pursuant to § 332.3(b)(2), shall comply with the following:

(1) The bank is prohibited from referring to federal deposit insurance in any life insurance department advertisement, solicitation, or promotional material.

(2) Any life insurance policy or annuity underwritten by the insurance department of the bank must be accompanied by the following, or a similar statement, either on the face of the policy or annuity or in a written disclosure given to the customer: "The only assets of this bank which are liable for and applicable to the payment and satisfaction of the liabilities, obligations, and expenses of the insurance department of this bank are the assets of the insurance department of this bank."

(3) The bank shall not directly or indirectly condition any extension of credit on the requirement that the borrower purchase any interest in real estate developed by the bank, or purchase any life insurance policy or annuity underwritten by the bank.

(4) The bank shall not purchase as fiduciary, co-fiduciary, or managing agent on behalf of any account for which the bank has investment discretion any interest in any real estate developed by the bank, or any annuity underwritten by the bank, unless the requirements of § 332.7(a)(5) are met.

[7] Compliance with section 106(b)(1) of the Bank Holding Company Act (12 U.S.C. 1972) shall be deemed to be compliance herewith.

§ 332.8 Waiver.

The Board of Directors, in its discretion, may be resolution waive all or any portion of this part when it deems it necessary and in the public interest to do so. In doing so, the Board of Directors may impose such conditions as it determines to be appropriate.

§ 332.9 Compliance.

(a) *Existing operation moved to subsidiary.* Any insured bank that prior to June 7, 1985 engaged in any activity prohibited to an insured bank by § 332.3 shall comply with that section within one year from [insert the effective date of the regulation]; provided, however, that the bank may complete any real estate development project that is ongoing as of June 7, 1985 as well as any real estate development project for which, as of such date, the bank had entered into a binding contractual obligation. No new real estate development project may be entered into after [insert effective date of the regulation] other than in compliance with this part.

(b) *Existing subsidiary or affiliate.* Any insured bank that prior to June 7, 1985, acquired or established a subsidiary that engages in any activity prohibited to an insured bank under § 332.3, or prior to such date became affiliated with a company encompassed by § 332.6, shall comply with this part within one year from [insert the effective date of the regulation]; provided, however, that such bank shall comply with §§ 332.3 and 332.6 within 180 days of the effective date of the regulation and § 332.7 within 90 days of such date.

§ 332.10 Enforcement.

Any insured bank that is not operating in compliance with this part shall be deemed to be operating in an unsafe and unsound condition and in a manner inconsistent with the purposes of federal deposit insurance and will be subject to termination of deposit insurance in accordance with section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)).

By Order of the Board of Directors, this 3rd day of June, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13657 Filed 6-6-85; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-18-AD]

Airworthiness Directives; Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B, and AA-1C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C airplanes. This AD would require replacement of the seat belt attachment brackets. It is possible for the seat belt attachment bracket to fail in the event of decelerations experienced in a minor crash, which could result in injury to an occupant. Replacement of the seat belt attachment brackets with increased strength brackets will prevent the possibility of failure during a minor crash.

DATE: Comments must be received on or before July 12, 1985.

ADDRESSES: Gulfstream Service Bulletin No. 173, dated March 11, 1985, which is applicable to this AD, may be obtained from Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402-2206; Telephone (912) 964-3000 or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Fridays, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE-120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

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 specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice 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 for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–CE–18–AD, Room 1558, 601 East 12th Street, Kansas City Missouri 64106.

Discussion

It has been found that the seat belt attachment brackets used on Gulfstream Models AA–1, AA–1A, AA–1B, and AA–1C airplanes may fail during decelerations occurring in a minor crash. Failure of this bracket could result in injury to an occupant. A strengthened replacement bracket has been developed which exceeds the emergency landing requirements of FAR 23.561. Since the FAA has determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design, and AD is being proposed which would require replacement of the seat belt attachment brackets in accordance with Gulfstream Aerospace Service Bulletin No. 173, dated March 11, 1985.

The FAA has determined there are approximately 1,800 airplanes affected by the proposed AD. The cost of modifying these airplanes as required by the proposed AD is estimated to be $30 per airplane. The total cost is estimated to be $54,000 to the private sector. The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Gulfstream Aerospace: Applies to Models AA–1 (S/Ns AA1–0001 to AA1–0459), AA–1A (S/N AA1A–0001 to AA1A–0470), AA–1B (S/N AA1B–0001 to AA1B–0680) and AA–1C (S/N AA1C–0001 to AA1C–0211) airplanes.

Compliance: Required within 25 hours time-in-service after the effective date of this AD unless already accomplished by installing parts in accordance with Gulfstream Aerospace Service Bulletin No. 173 dated March 11, 1985.

To prevent failure of the seat belt attachment bracket in a minor crash, accomplish the following:

(a) Replace the seat belt attachment bracket, (Part Number (P/N) 60152–2) as follows:

(1) Remove seat belts by removing the AN–3 bolts through the end fittings. Discard the bolts and nuts but retain the bushings and washers.

(2) Remove the P/N 60152–2 belt attach brackets by removing the two nuts holding them to the floor. Discard the brackets and nuts, but retain the washers. Visually inspect the retaining plates under the fuselage for corrosion and replace if necessary

(3) Install P/N 5102391–1 brackets, using the washers retained in paragraph (a)(2) above and new nuts. Torque the nuts to 20 to 25 inch pounds.

(4) Visually inspect the seat belts for fraying or other signs of deterioration and replace any worn or deteriorated belts.

(5) Reinstall the seat belts, using NAS623–3–8 bolts, MS20365–1032 nuts and the bushings and washers retained in paragraph (a)(1) above.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402–2206, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Gulfstream Aerospace Corporation Bulletin No. 173, dated March 11, 1985, covers the subject matter of this AD.

Issued in Kansas City, Missouri, on May 28, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–13706 Filed 6–6–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–ASW–55]

Airworthiness Directives; Hughes Helicopters, Inc., Model 369A, D, E, H, HE, HM, and HS Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) which would require a one-time dye penetrant and tap test inspection as well as repetitive pilot preflight checks of certain tail rotor blades for abrasion strip separation on Hughes Helicopter, Inc., Model 369A, D, E, H, HE, HM, and HS series helicopters. The proposed NPRM is prompted by reports of tail rotor blade abrasion strip separation which could result in loss of the tail rotor control and subsequent loss of the helicopter.

DATES: Comments must be received on or before July 19, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: Office of the Regional Counsel Southwest Region, Room 158, Building 3B, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Comments must be marked: Docket No. 84–ASW–55.

Comments may be inspected in Room 158, Building 3B, between 8 a.m. and 4:30 p.m., weekdays, except Federal holidays.

The applicable service information may be obtained from Hughes

Helicopters, Inc., Centinela Avenue and Teale Street, Culver City, California 90230.

A copy of each document supporting the proposed AD is contained in the Rules Docket at the Office of Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT:

Jerry Sullivan, Aerospace Engineer, Airframe Section, ANM-172W, Western Aircraft Certification Office, Northwest Mountain Region, FAA, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007, telephone (213) 536-6166.

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 notice may be changed in 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 Office of the Regional Counsel, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, 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 postcard on which the following statement is made: "Comments to Docket Number 84-ASW-55." The postcard will be date/time stamped and returned to the commenter.

The FAA has determined that one accident has occurred as a result of separation of a tail rotor blade abrasion strip during helicopter operation. In that case, loss of the abrasion strip on a Model 369A helicopter tall rotor blade caused rotor system imbalance and was the primary cause for subsequent failure of the tail rotor gearbox. An investigation by the manufacturer, Hughes Helicopters, Inc., has determined that the condition which results in debonding of the abrasion strip may exist or develop on certain other tail rotor blades of Mode 369 helicopters. Accordingly, an airworthiness directive is being proposed which requires a one-time dye penetrant and tap test inspection and a repetitive preflight pilot check of the abrasion strip bond.

Since this condition is likely to exist on other helicopters of the same type design, an airworthiness directive is proposed which would require removal from service of tail rotor blades with abrasion strip debonding on certain Hughes Helicopter, Inc., Mode 369 helicopters.

The FAA has determined that this proposed regulation involves only 550 helicopters, and it is estimated that that one-time cost of compliance is less than $50,000. Therefore, I certify that this action (1) in 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) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 2106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85; 49 CFR 1.47.

2. By adding the following new AD:

Hughes Helicopters, Inc. (Hughes Helicopters): Applies to all Model 369A (OH-6A), 369D, 369E, 369HE, 369HM, and 369HS series helicopters, certificated in all categories, equipped with Hughes Helicopters, Inc. tail rotor blades, Part Numbers (P/N) 369D21613-11, 369D21613-41, 369D21615, 369A1613-7, 369A1613-503, and 421-088.

Compliance is required as indicated (unless already accomplished).

To prevent possible loss of tail rotor control, accomplish the following:

(a) Within the next 100 hours' time in service after the effective data of this AD, perform a one-time dye penetrant and tap test inspection on the affected tail rotor blades, with the following serial numbers (S/N), in accordance with procedures detailed in paragraphs a through 1 of the "PROCEDURES" section of Part I of Hughes Service Information Notices (SIN) DN-130, EN-19, and HN-197, dated November 14, 1984, or an FAA-approved equivalent.

Note.—If desired, and alternate tap test tool to the one specified in paragraph h may be used.

Note.—Model 369A (OH-6A) is to comply with Hughes SIN HN-197.

Blade P/N's	Blade S/N's affected
369D21613-11	All S/N's.
369D21613-41	All S/N's.
369D21615	0383 and all prior.
369A1613-7	5747 and all prior.
369A1613-503	5607 and all prior.
421-088	0171 and all prior.

(b) Before the first flight of each day after the effective date of this AD, visually check each tail rotor blade abrasion strip for any evidence of bond failure along the entire abrasion strip/airfoil bond line and at the blade tip using the procedure specified in Part II, paragraph a, Hughes SIN's DN-130, EN-19, and HN-197, dated November 14, 1984, or an FAA-approved equivalent.

(c) If, during the check of paragraph (b), debonding along the abrasion strip/bond line or blade tip is suspected, inspect the tail rotor blade prior to further flight in accordance with Part II, paragraph b, Hughes SIN's DN-130, EN-19, and HN-197, dated November 14, 1984, or an FAA-approved equivalent.

(d) Remove from service all tail rotor blades where void indication or bond separation is noted.

Note.—Discrepant tail rotor blades may be returned to service after being repaired in accordance with FAA-approved data.

(e) Alternative inspection, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Western Aircraft Certification Office, Hawthorne, California.

(f) The check required by paragraph (b) of this AD may be performed by the pilot and must be recorded in accordance with FAR § 43.9

(f) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to ferry aircraft to a maintenance base in order in comply with the requirements of this AD.

Issued in Fort Worth, Texas, on May 22, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-13702 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 456

Ophthalmic Practice Rules; Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Postponement of Scheduled Public Hearings and Extension of Time Within Which to File Prepared Statements of Testimony by Witnesses and Exhibits.

SUMMARY: The Federal Trade Commission has postponed public hearings in the Ophthalmic Practice Rules Trade Regulation Rule Proceeding, scheduled for San Francisco, California, until July 1, 1985. The time for filing statements of testimony by witnesses and exhibits has been extended to June 7, 1985.

DATE: Public Hearings will commence in Room 12470, San Francisco Regional Office of the Federal Trade Commission at 9:30 a.m., July 1, 1985.

Prepared statements of testimony by witnesses and exhibits must be submitted on or before June 7, 1985.

ADDRESSES: Prepared statements of testimony by witnesses and exhibits should be sent to Presiding Officer James P. Greenan, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John Mooney, Renee Kinscheck or Jack L. Young, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, 202-523-4697, 202-523-3377 or 202-523-3596.

SUPPLEMENTARY INFORMATION: By Federal Register Notice of January 4, 1985 (50 FR 598) the Commission published the proposed rule, announced scheduled hearing dates and set dates for filing statements of testimony by witnesses and exhibits in the Ophthalmic Practice Trade Regulation Rule Proceeding (Public Record 215-63). In addition to scheduled hearings in Washington, D.C., hearings were also scheduled to commence in San Francisco, California, on June 17, 1985. In conjunction with the San Francisco hearings, prepared statements of testimony by witnesses and exhibits were to be filed on or before May 31, 1985.

In granting the motion of one of the participants in the rulemaking for modification of the procedural schedule, the Presiding Officer has postponed the commencement date for hearings in San Francisco, California, until July 1, 1985. In so doing, the Presiding Officer also extended the time within which to file prepared statements of testimony by witnesses and exhibits to June 7, 1985.

Issued: May 21, 1985.

James P. Greenan,

Presiding Officer.

[FR Doc. 85-13712 Filed 6-6-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Public Comment Period on a Proposed Amendment to the Alabama Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and public hearing on the substantive adequacy of a proposed program amendment submitted by the State of Alabama to modify the Alabama permanent regulatory program (hereinafter referred to as the Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed modification establishes requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E).

This notice sets forth the times and locations that the Alabama program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures for the hearing, if requested.

DATES: Written comments, data or other relevant information relating to the proposed amendment not received on or before 4:00 p.m. on July 8, 1985 will not necessarily be considered.

A public hearing on the proposed amendment has been scheduled for July 2, 1985, at the address listed below under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business June 24, 1985.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

The public hearing will be held at the Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Bimingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program and all written comments received in response to this notice, will be available for public review and copying at the OSM Field Office, the OSM Headquarters Office and the Office of the State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the amendment by contacting the OSM Birmingham Field Office.

Office of Surface Mining, Birmingham Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Birmingham Field Office, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the date listed under **"DATES."** If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program, can be found at 47 FR 22020–22058 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

III. Proposed Amendment

On May 22, 1985, Alabama submitted a proposed amendment to its approved regulatory program to establish requirements for operations extracting coal incidental to extraction of other minerals (Sub-chapter 880-X-2E). These amended rules establish the responsibility of those persons intending to conduct operations under this exemption to apply for a determination of eligibility for the exemption prior to conducting such operations. The proposed rules outline the informational requirements necessary for such applications and criteria to be used by the Alabama Surface Mining Commission (ASMC) to determine the eligibility of the proposed operation for exemption and establish conditions and requirements for maintaining such eligibility during the conduct of such operations.

Section 9–16–99(d) of the Code of Alabama provides that the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of tonnage of minerals removed for commercial sale or use are exempt from the provisions of Act 81–435 and authorizes the regulatory authority to establish regulations for such exemptions. Under existing ASMC rules, the provisions of the Act are repeated along with establishment of record keeping requirements, but guidelines are not presented establishing the means, procedure and criteria for determining eligibility for the exemption.

Current ASMC rules did not specifically require determination of eligibility prior to conducting coal extraction operations. Companies purporting to be exempt under the provisions of the Code of Alabama relating to incidental extraction have initiated operations without a prior determination by ASMC. In these circumstances, significant disturbance related to coal-extraction activities occurs prior to any determination of eligibility for the exemption, which creates a direct threat to public health, safety and welfare which ASMC has found justifies adoption of the rules included in the proposed program revision.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* the Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

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

List of Subjects in 30 CFR Part 901

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

Dated: May 31, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–13720 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Parts 3430 and 3450

Noncompetitive Leases and Management of Existing Leases; Amendments To Delete Cost Recovery Provisions for Fee Coal Exchanges and To Reinstate a Coal Lease Transfer Approval Requirement

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend two parts of the Coal Management regulations in 43 CFR Group 3400. The first amendment would remove the existing mandatory requirement for cost recovery for fee title exchanges in alluvial valley floors contained in 43 CFR Part 3430. This amendment reflects a change in policy by the Department of the Interior. The second amendment would reinstate a provision in 43 CFR Part 3450 giving the authorized officer authority to disapprove a coal lease transfer if financial data about the transfer are not submitted. The second amendment is required because the provision was inadvertently removed by the final rulemaking published in the **Federal Register** on July 30, 1982 (47 FR 33146).

DATE: Comments by August 6, 1985.

Comments received or postmarked after the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Main Interior Bldg., Room 5555, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 am to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Carole Smith, (202) 343–6821

or

Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: This proposed rulemaking would make two amendments to the existing regulations. The first amendment involves the imposition of cost recovery in connection with fee exchanges of coal bearing lands located in alluvial valley floors. Section 510(b) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1260) provides for the exchange of coal bearing lands in alluvial valley floors for other coal bearing lands located elsewhere. The Act requires that an exchange can be made only if, as of January 1, 1977, (1) coal had not been produced in commercial quantities from the lands during the preceding year, and (2) a specific permit to mine had not been granted on those lands, but (3) the operator had made substantial legal and financial commitments in connection with a coal mine operation on those lands.

The original regulations of the Department of the Interior implementing the provisions of section 510 of the Act were challenged in *Texaco and NCA* v. *Andrus*, Civil No. 79—2448 (D.D.C., August 15, 1980). That suit resulted in the Court requiring that the regulations implementing section 510(b) of the Act be revised. The Court-imposed revisions were published as a final rule-making in the **Federal Register** of July 30, 1982. In addition to making the court-mandated changes, that final rulemaking included a provision that an exchange proponent must bear all administrative costs of the exchange, including the costs of evaluating the coal resources affected. This requirement was imposed as part of the Department's effort to recover costs of services rendered for the benefit of an applicant that received a special benefit from those services.

The Department of the Interior has carefully reconsidered this requirement, taking into consideration the ruling in *Texaco and NCA* v. *Andrus* that fee title exchanges of coal bearing lands in alluvial valley floors are mandatory under the Surface Mining Control and Reclamation Act, while lease exchanges are discretionary. Even though the question of administrative fees was not discussed in the ruling, the decision that a fee coal exchange is mandatory leads to the conclusion that the United States should bear the cost of making those exchanges since it is a requirement imposed by a statute of the United States. The collection of an administrative fee would continue as a requirement for exchanges of coal leases, which are encouraged but are ot mandatory.

The Department of the Interior's continuing review of its regulations revealed that a provision of 43 CFR 3453.3–1 was inadvertently and unintentionally omitted from the final rulemaking published in the **Federal Register** on July 30, 1982. The provisions at 43 CFR 3453.3–1(a)(7) allowed the authorized officer to disapprove a coal lease transfer if financial data about the transfer are not submitted. This provision appeared in the Federal coal program regulations that were published in the **Federal Register** on July 19, 1979 (44 FR 42628), and was not proposed for removal by the proposed rulemaking that was published in the **Federal Register** on December 16, 1981 (46 FR 61390). The language, which is needed, was inadvertently omitted in the final rulemaking and it would be reinstated by this proposed rulemaking.

The principal author of this proposed rulemaking is Carole Smith, Division of Solid Mineral Leasing, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Changes made by this proposed rulemaking are of an adminstrative and financial nature. The amendment that would change the requirement for the collection of an administrative fee in 43 CFR 3436.1–2 and 3436.2–1 is of a financial nature. The amendment that would reinstate a provision in 43 CFR 3453.3–1 is also of a financial nature, but the impacts of it have already been examined in the *Final Environmental Impact Statement, Federal Coal Management Program* (April 1979). Therefore, the change to 43 CFR 3436.1–2 and 3436.2–1 qualifies for categorical exclusion and the environmental impacts of the change to 43 CFR 3453.3–1 have already been addressed. Based on the regulations for the implementation of the National Environmental Policy Act of 1969 (40 CFR 1501.4 and 1508.4) and the Department of the Interior policies for categorical exclusions set forth in Departmental Manual 516 DM6, Appendix 2, 2.4, B., these changes are exempt from the environmental review requirements.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes would reduce the costs of fee exchanges and would reinstate a requirement that had been a requirement of the existing regulations before it was inadvertently omitted. The changes would impact equally anyone who falls under their provision, whether large or small.

The proposed rulemaking contains no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 3430

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

43 CFR Part 3450

Coal, Mines, Public lands—mineral resources, Surety bonds.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Multiple Mineral Development Act (30 U.S.C. 521–531), the Federal Coal Leasing Amendments Act of 1976, as amended (90 Stat. 1083–1092), the Act of October 30, 1978 (92 Stat. 2073–2075), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), it is proposed to amend Parts 3430 and 3450, Group 3400, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 3430—[AMENDED]

1. The authority citation for Part 3430 would be revised to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

§ 3436.1–2 [Amended]

2. Section 3436.1–2(f) is amended by removing the period at the end thereof and adding the phrase ", if the exchange is completed."

§ 3436.2–3 [Amended]

3. Section 3436.2–3 is amended by removing paragraph (f) in its entirety.

PART 3450—[AMENDED]

4. The authority citation for Part 3450 would be revised to read:

Authority: 30 U.S.C. 181 et seq.; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 et seq.; and 43 U.S.C. 1701 et seq.

§ 3453.3–1 [Amended]

5. Section 3453.3–1(a) is amended by amending paragraph (7) by adding immediately after the citation "§ 3453.2–2(e)" where it appears, the phrase "and (f)".

Dated: May 13, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–13697 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket No. 85–141; FCC 85–239]

Amendment of the Rules Regarding Computation of Time

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the rule regarding computation of time in Commission proceedings. This action is necessary to clarify the rule. The proposal would simplify, reorganize and illustrate the basic time computation rule.

DATES: Comments must be received on or before July 8, 1985, and reply comments by July 29, 1985.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Proposed Rule Making

In the matter of amendment of Part 1 of the Rules Regarding Computation of Time; Gen. Docket No. 85–141.

Adopted: May 8, 1985.

Released: May 30, 1985.

By the Commission.

1. *Introduction.* Part 1 of the Rules specifies the method for computing time in Commission proceedings. 47 CFR 1.4. The general rule that emerges from Part 1 is that the first day to be counted when computing a period of time is the day after the day of public notice and the last day of the time period is the one on which action must be taken, unless an exception applies.[1]

2. The Commission, *sua sponte*, has decided to revise § 1.4 with the primary objective of simplifying the rule, reordering it in a more logical fashion and illustrating it with examples. The Commission is taking this action due to the number of questions of interpretation that have been raised by both the general public and practitioners.

3. The scope of this proceeding is limited to the proposed reordering and inclusion of examples in the Rule. It is not our intention to reexamine the underlying general rule of Section 1.4. We have found the underlying rule to be a fair and efficient means of putting parties on an equal footing with regard to the receipt of public notice of Commission action for the purpose of seeking agency reconsideration and judicial review.[2]

4. Comments from the public and the bar are sought on the proposed revisions and examples as set forth in the Appendix. Parties are invited to comment on any additional examples that may be necessary to clarify the rule. Comments on the underlying rule will *not* be entertained.

5. *Conclusion.* Notice is hereby given that the Commission proposes to amend 47 CFR Part 1 in accordance with the proposals outlined above and in the Appendix.

6. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission 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 rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554, (202) 632–7000.

7. Authority for issuance of this Notice is contained in sections 4(i), (j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), (j) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's Rules, interested persons may file comments on or before July 8, 1985 and reply comments on or before July 29, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

8. In accordance with § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554.

[1] The term "public notice" is a term of art defined in the Rules. 47 CFR 1.4(b)(1)–(4).

[2] *See* 85 FCC 2d 618, 623 (1981).

All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

9. In accordance with section 605 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 605), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities, because this proposal would simply clarify the rule regarding computation of time for filing certain documents with the Commission.

10. It is ordered that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

11. For further information on this proceeding, contact Randy W. Thomas, Office of General Counsel, (202) 632-6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read:

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

2. Section 1.4 is proposed to be revised to read as follows:

§ 1.4 Time computation.

(a) *General Rule—Computation of Beginning Date when action is initiated by Commission or Staff.* Unless otherwise provided, the first day to be counted when a period of time begins with an action taken by the Commission, Review Board, an Administrative Law Judge or by members of the Commission or its staff pursuant to delegated authority is the *day after the day* on which public notice of that action is given. Unless otherwise provided, all Rules measuring time from the date of the issuance of a Commission document entitled "Public Notice" shall be calculated in accordance with this section. Usually, such actions are reflected in a document. *See* § 1.4(e)(5) for definition of "public notice." In computing a period of time, it is immaterial whether the first day is a "holiday."

Example 1: The following illustrates how § 1.4(e)(5) is to be read in conjunction with § 1.4(a). A document in a Commission rule making proceeding is published in the **Federal Register** on Wednesday, May 1, 1985. Public notice commence at 3 P.M. on May 2, 1985. 47 CFR § 1.4(e)(5)(i). The first day to be counted in computing the beginning date of a period of time for action in response to the document is May 3, 1985.

Example 2: Commission Rule § 22.30 requires competing applicants to file a petition to deny within 30 days after issuance of public notice of the acceptance of a license application for filing. 47 CFR § 22.30(a)(4). A public notice of the acceptance of the license application of Acme Communications Corporation is issued on Friday, August 1, 1986. "Public notice" commences at 3 P.M. on August 2, 1986. The first day to be counted in computing the petition to deny deadline is August 3 (the day after the day of public notice); therefore, the 30th day is September 1, 1986.

(b) *General Rule—Computation of Beginning Date when action is initiated by Act, Event or Default.* Unless otherwise provided, the first day to be counted when a period of time begins with the occurence of an act, event or default is the day after the day on which the act, event or default occurs.

Example: Commission Rule § 21.39(d) requires the filing of an application requesting consent to involuntary assignment or control of the permit or license within thirty days after the occurence of the death or legal disability of the licensee or permitee. If a licensee passes away on March 1, the first day to be counted pursuant to § 1.4(b) is the day after the act or event. Therefore, March 2, is the first day of the thirty day period specified in § 21.39(d).

(c) *General Rule—Computation of Terminal Date.* Unless otherwise provided, when computing a period of time the last day of such period of time is included in the computation and any action require must be taken on or before that day.

Example: Rule 1.4(e)(5)(i) provides the "public notice" in a notice and comment rule making proceeding begins at 3 P.M. Eastern Time on the day after the day of **Federal Register** publication. Rule 1.4(a) provides that the first day to be counted in computng a terminal date is the "day after the day" on which public notice occurs. Therefore, if the Commission allows or requires an action to be taken 20 days after public notice in the **Federal Register**, the first day to be counted is the second day after the date of the **Federal Register** publication. Accordingly, if the **Federal Register** document is published on July 28, 1984, the first day to be counted in computing a 20 day period is July 28, 1984 (regardless of whether July 28 is a holiday). The 20th day or terminal date upon which action must be taken is August 17, 1984.

(d) The purpose of this Rule Section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission. It also applies to computation of time for seeking both reconsideration and judicial review of Commission decisions. Commission procedures frequently require the computation of a period of time where the period begins with the occurrence of an act, event or default and terminates a specific number of days thereafter. *See Memorandum Opinion and Order, Gen. Docket No. 80-488,* 85 FCC 2d 618, 627-28 (1981) for further examples of effective date and time computation.

(e) Definitions for purposes of this section:

(1) The term "holiday" means Saturday, Sunday, officially recognized legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 P.M. For example, a regularly scheduled Commission business day may become a "holiday" if its offices are closed prior to 5:30 P.M. due to adverse weather, emergency or other closing.

Note.—At present, officially recognized legal holidays are New Years' Day, January 1; Martin Luther King's Birthday, third Monday in January; Washington's Birthday, third Monday in February; Memorial Day, last Monday in May; Independence Day, July 4; Labor Day, first Monday in September; Columbus Day, second Monday in October; Veterans Day, November 11; Thanksgiving Day, fourth Thursday in November; Christmas Day, December 25. If a legal holiday falls on Saturday or Sunday, the holiday is taken, respectively, on the preceding Friday or the following Monday. In addition, January 20, (Inauguration Day) following a Presidential election year is a legal holiday in the metropolitan Washington, D.C. area. If Inauguration Day falls on Sunday, the next succeeding day is a legal holiday. *See* 5 U.S.C. 6103; Executive Order No. 11582, 36 FR 2957 (Feb. 11, 1971).

(2) The term "business day" means all days, including days when the Commission opens later than the time specified in Rule 0.403 (8:00 A.M.), which are not "holidays" as defined above.

(3) The term "filing period" means the number of days allowed or prescribed by statute, rule, order, notice or other Commission action for filing any document with the Commission. It does not include any additional days allowed for filing any document pursuant to (g), (h) and (j) of this section.

(4) The term "filing date" means the date upon which a document must be filed after all computations of time authorized by this section have been made.

(5) The term "public notice" means the date of the day, commencing at 3 P.M. Eastern Time, *after* any of the following dates:

(i) For documents in notice and comment rule making proceedings, the date of publication in the **Federal Register.**

Example: A Commission document in a rule making proceeding is published in the **Federal Register** on Wednesday, May 1, 1985. "Public Notice" of that document commences at 3 P.M. Eastern Time on Thursday, May 2, 1985.

(ii) For other documents released by the Commission or staff, whether or not published in the **Federal Register**, the release date. A document is "released" by making the full text available to the press and public in the Commission's Office of Congressional and Public Affairs. The release date appears on the face of the document.

(iii) If the full text of an action document is not to be released by the Commission, but a descriptive document entitled "Public Notice" describing the action is released, the date on which the descriptive "Public Notice" is released.

Example: At a public meeting the Commission considers an uncontested application to transfer control of a broadcast station. The Commission grants the application and does not plan to issue a full text of its decision on the uncontested matter. Five days after the meeting, a descriptive "Public Notice" announcing the action is publicly released. The date of public notice commences at 3 P.M. Eastern Time on the day after the release date, in accordance with § 1.4 (e) (5) (iii).

(iv) If a document is neither published in the **Federal Register** nor released, and if a descriptive document entitled "Public Notice" is not released, the date on which the document is sent (*e.g.*, mailed, telegraphed, etc.) to persons affected by the action.

Example: A Bureau grants a license to an applicant, or issues a waiver for non-conforming operation to an existing licensee, and no "Public Notice" announcing the action is released. The date of public notice commences at 3 P.M. Eastern Time on the day after the day on which the license is mailed to the applicant or the letter granting the waiver is mailed to the licensee.

(f) All petitions, pleadings, tariffs or other documents filed with the Commission must be tendered for filing in complete form before 5:30 P.M. in the Office of the Secretary. The Secretary will determine whether a tendered document is in complete form and whether it meets the pre-5:30 deadline.

(g) If the filing period is less than 7 days, intermediate holidays shall not be counted in determining the filing date.

Example: A reply is required to be filed within 5 days after the filing of an opposition in a license application proceeding. The opposition is filed on Wednesday. The first day to be counted in computing the 5 day time period is Thursday. Saturday and Sunday are not counted because they are "holidays." The document must be filed with the Commission on or before the following Wednesday.

(h) If a document is required to be served upon other parties by statute or Commission regulation and the document is in fact served by mail (see § 1.47(f)), and the filing period for a response is 10 days or less, an additional 3 days (excluding holidays) will be allowed for filing a response. This subsection (§ 1.4(h)) shall not apply to documents filed pursuant to §§ 1.89, 1.120(d), 1.315(b) or 1.316.

Example: A reply to an opposition for an application for review of an action taken pursuant to delegated authority must be filed within 10 days after the opposition is filed. 47 CFR 1.115(d). The rules require that the opposition be served on the person seeking review. 47 CFR 1.115(f). If the opposition is served on the party seeking review by mail and the opposition is filed with the Commission on November 4, 1985, the first day to be counted is November 5 (the day after the day on which the event occurred, § 1.4(a)), the tenth day is November 14, an additional 3 days (excluding holidays) is then added at the end of the 10 day period, and the reply must be filed no later than November 19, 1985.

(i) If both subsections (g) and (h) of this section are applicable, make the subsection (g) computation before the subsection (h) computation.

(j) If the filing date falls on a holiday, the document shall be filed on the next business day.

Example: The filing date falls on Friday, December 25. The document is required to be filed on the next business day which is Monday, December 28.

(k) Where specific provisions of Part 1 conflict with this section, those specific provisions are controlling. *See, e.g.*, §§ 1.45(d), 1.773(a)(3) and 1.773(b)(2).

[FR Doc. 85-13693 Filed 6-6-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Argyroxiphium Sandwicense var. Sandwicense (Mauna Kea Silversword)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status for *Argyroxiphium sandwicense* var. *sandwicense* (Mauna Kea silversword) and that the comment period on the proposal is reopened. The proposed rule was published in the **Federal Register** of March 6, 1985 (50 FR 9092). This plant is known only from one small population of 35 plants located on the east slope of Mauna Kea on the island of Hawaii, State of Hawaii.

This hearing and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The public hearing will be held from 7:00 to 9:00 p.m., on Monday, June 24, 1985, in Hilo, Hawaii. The comment period, which originally closed on May 6, 1985, now closes July 15, 1985.

ADDRESSES: The public hearing will be held in Conference Room A, State Building, 75 Aupuni Street, Hilo, Hawaii. Written comments and material should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: For information on the public hearing, contact Mr. Ernest Kosaka, Project Leader, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

SUPPLEMENTARY INFORMATION:

Background

The Mauna Key silversword is found only from one location on the east slope of Mauna Kea on the island of Hawaii. The lone population of this plant is vulnerable to any substantial habitat alteration and faces the present threat of elimination through grazing and trampling by feral animals and the potential threat of damage by insect larvae. A proposal of endangered status for the silversword was published in the **Federal Register** (50 FR 9092) on March 6, 1985.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On April 9, 1985, a request for a public hearing on this proposal was received from Mr. Tom Tagawa, Honolulu, Hawaii. The Service has scheduled this hearing for June 24, 1985, from 7:00 to 9:00 p.m. in Conference Room A of the State

Building, Hilo, Hawaii. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitations. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on May 6, 1985. In order to accommodate the hearing, the Service reopens the public comment period. Written comments may now be submitted until July 15, 1985, to the Service office in the Addresses section.

Author

The primary author of this notice is Carolyn A. Bohan, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority

The authority for this section is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: May 30, 1985.

William F. Shake,

Acting Regional Director.

[FR Doc. 85–13668 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 110
Friday, June 7, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum Agreement; Texas

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice. Programmatic Memorandum of Agreement regarding the identification, evaluation, and treatment of historic properties that will be affected by the U.S. Department of Energy, Strategic Petroleum Reserve's construction and operation of crude oil pipelines from (1) the Strategic Petroleum Reserve Seaway Terminal, Freeport, Texas to Texas City, Texas, and (2) Sun Terminal, Nederland, Texas to an undetermined terminal in Jefferson or Orange County, Texas.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the U.S. Department of Energy, Strategic Petroleum Reserve, and the Texas State Historic Preservation Officer providing for the management of historic properties that may be affected by the construction and operation of the Strategic Petroleum Reserve's pipelines from (1) the Strategic Petroleum Reserve Seaway Terminal, Freeport, Texas to Texas City, Texas and the Sun Terminal, Nederland, Texas to an undetermined terminal in Jefferson or Orange County, Texas. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated and protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

Comments Due: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this Programmatic Memorandum of Agreement is available from the Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, telephone (303) 236–2682.

Dated: June 4, 1985.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 85–13738 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Citizens' Advisory Committee on Equal Opportunity; Re-Establishment

Notice is hereby given that the Secretary of Agriculture has re-established the Citizens' Advisory Committee on Equal Opportunity.

The purpose of the Committee is to strengthen the Department's efforts in the area of Civil Rights. The Committee will advise the Secretary and other Officials of the Department on all aspects of the Department's policies, practices, and procedures which promote equal opportunity.

The re-establishment of this Committee is in the public interest in connection with the performance of duties and responsibilities of the Department.

John J. Franke, Jr.,

Assistant Secretary for Administration.

June 4, 1985.

[FR Doc. 85–13787 Filed 6–6–85; 8:45 am]

BILLING CODE 3410–95–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Industry Classification Questionnaire (FDIUS)
Form Number: Agency—BE–607; OMB—0608–0030
Type of Request: Extension of a currently approved collection
Burden: 1,600 respondents; 800 reporting hours

Needs and uses: The collected data is needed for classifying by industry, U.S. business enterprises in which a foreign person has an equity interest of 10 percent or more. The data is used to prepare the balance of payments and international investment accounts of the United States.

Affected public: Businesses or other for-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Procurement and Administrative Services
Title: Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs
Form Number: Agency—N/A; OMB—N/A
Type of request: New
Burden: 0 respondents; 1 reporting hours

Needs and uses: The information collected is to record the acquisition and displacement activities that may result from Commerce programs and to ensure that applicants' claims are paid and substantiated.

Affected public: Individuals or households, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Office of Finance and Federal Assistance
Title: Taxpayers Identification Number (TIN)
Form Number: Agency—N/A; OMB—N/A
Type of request: New collection
Burden: 2,500 respondents; 7 reporting hours

Needs and uses: The TIN will be collected in compliance with Pub. L. 97–365. The TIN will be used to check the taxpayer account status of each applicant for a grant or for financial assistance under an "included Federal loan program" before approving the

grant or loan. Commerce also needs the current address of delinquent debtors to collect its debts.

Affected Public: Individuals or households, businesses or other for-profit institutions, Federal agencies or employees, small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 3, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–13730 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Census of Transportation: 1987 Commodity Transportation Survey—Pretest
Form Number: Agency—N/A; OMB—0602–0468
Type of request: Reinstatement of a previously approved collection
Burden: 1,000 respondents; 4,550 reporting hours
Needs and uses: This pretest will provide statistical data about the geographic and mode of transportation characteristics of shipments made by establishments in manufacturing, mining, and selected wholesaling industries. The information collected will be used to investigate improved methods of collecting industrial flow data.
Affected public: Businesses or other for-profit institutions
Frequency: One time
Respondent's obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: June 3, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–13731 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Export Trade Certificate of Review; Issuance

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to AMATEX Export Trade Association, Inc. (AMATEX). This notice summarizes the conduct for which certification has been granted.

ADDRESS: The Department requests public comments on the certificate. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 85–00006."

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(b), which requires the Secretary of Commerce to publish in the **Federal Register** a summary of each certificate issued. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

New and used textile machinery and related auxiliary equipment and spare parts.

Export Trade Facilitation Services (as They Relate to the Export of Goods and Services)

(1) Coordination of the establishment of complete or partial textile mill projects; (2) engineering for complete or partial textile mill projects (including plant layout, machinery and manpower requirements, and purchasing services); (3) economic analysis for textile mill customers; (4) consulting services for the sale in the Export Markets of Textile Machinery Products and Related Services (including market and product intelligence, export-oriented information services, foreign customer visitation services, and selling trip and trade show participation services); (5) financing assistance (including credit instruments, credit insurance, and collection services); (6) shipping arrangements (including consolidation and freight forwarding services; (7) export documentation services; (8) services relating to compliance with customs requirements and with foreign and domestic government regulations; and (9) liaison services with U.S. and foreign government agencies and banking institutions. "Related Services" are those listed in items (1), (2), and (3) above, when related to the sale of Products in Export Markets.

Exports Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members

AZTEC Machinery Company, Inc.; The Bahnson Company; Draper Corporation; Gaston County Dyeing Machine Company; Gessner Company; John D. Hollingsworth on Wheels, Inc.; Jenkins Metal Corporation; Marshall and Williams Company; Morrison

Textile Machinery Company; Parks-Cramer Company; Reed-Chatwood, Inc.; Southern Machinery Company; Tubular Textile Machinery Corporation; and West Point Foundry and Machine Company.

Export Trade Activities and Methods of Operation

1. AMATEX may provide its Members or other Suppliers on an individual basis the benefit of any Export Trade Services to facilitate the export of Products and Related Services to Export Markets. This may be accomplished by AMATEX itself, or by agreements with Members or other parties.

2. AMATEX may enter into individual agreements with its Members and other Suppliers to act as an Export Intermediary in the sale of Products and Related Services in the Export Market.

3. AMATEX may enter into and terminate any number of agreements with its Members or other Suppliers of the Products and Related Services to:

(i) Contact the individual Suppliers of the Products and Related Services set forth in the invitation to bid or purchase specification,

(ii) Distribute to each Supplier bid requirements, bidding dates, purchase specifications and any other information provided by the prospective purchaser, and

(iii) Solicit and receive independent quotations for the Products and Related Services for individual Suppliers; provided AMATEX does not reveal to any Member or Supplier the quotation of any other Member or Supplier or the identity of the Member or Supplier that provided the quotation.

4. In response to purchase offers, requests for quotation or bid invitations for Products and Related Services in Export Markets, AMATEX may:

(i) Establish prices and quantities at which Products will be acquired, sold or resold in Export markets, and

(ii) Establish the price and other terms of sale at which Related Services will be acquired, sold or resold in Export Markets.

5. AMATEX may also bring together from time to time groups of Suppliers to plan how to fulfill the technical Product and Related Service requirements of a specific overseas textile mill project.

A copy of each certificate is available for inspection and copying in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230.

Dated: June 3, 1985.

Douglas A. Riggs,

General Counsel.

[FR Doc. 85-13719 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

[A-351-014]

Hot Rolled Carbon Steel Plate in Coil From Brazil; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil. The review covers the period from October 1, 1984. The petitioner and another domestic interested party to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel plate in coil entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 10692-10693) an antidumping duty order on hot rolled carbon steel plate in coil from Brazil.

In a letter dated March 29, 1985, Bethlehem Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received a similar letter from another domestic interested party to the proceeding, U.S. Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of hot rolled carbon steel plate in coil currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100, and 607.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that Bethlehem Steel Corporation's and U.S. Steel Corporation's affirmative statements of no interest in continuation of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil provide a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on hot rolled carbon steel plate in coil from Brazil effective October 1, 1984. We intend to 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 October 1, 1984 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of hot rolled carbon steel plate in coil from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five 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. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and § 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 29, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13558 Filed 6-6-85; 8:45 am]

BILLING CODE 3310-DS-M

[A-351-025]

Hot Rolled Carbon Steel Sheet From Brazil; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstanes sufficient to warrant an administrative review, under section order on hot rolled carbon steel sheet from Brazil. The review covers the period from October 1, 1984. The petitioner and another domestic interested party to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel sheet entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35536-35537) an antidumping duty order on hot rolled carbon steel sheet from Brazil.

In a letter dated May 1, 1985, U.S. Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received a similar letter from another domestic interested party to the proceeding, Bethlehem Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of hot rolled carbon steel sheet currently classificable under items 607.8320, 607.6710, 607.6720, 607.6730, 607.6740 and 607.8342 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that U.S. Steel Corporation's and Bethlehem Steel Corporation's affirmative statements of no interst in continuation of the antidumping duty order on hot rolled carbon steel sheet from Brazil provide a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on hot rolled carbon steel sheet from Brazil effective October 1, 1984. We intend to 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 October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of hot rolled carbon steel sheet from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five 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. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 30, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-13557 Filed 6-6-85; 8:45 am]

BILLING CODE 3310-DS-M

[A-351-012]

Hot Rolled Carbon Steel Plate Cut to Length From Brazil; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information

which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil. The review covers the period from October 1, 1984. The petitioner and another domestic interested party to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the Petitioner's notification, the revocation will apply to all hot rolled carbon steel plate cut to length entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Stephen Munroe or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 10692–10693) an antidumping duty order on hot rolled carbon steel plate cut to length from Brazil.

In a letter dated March 29, 1985, Bethlehem Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received a similar letter from another domestic interested party to the proceeding, U.S. Steel Corporation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of hot rolled carbon steel plate cut to length currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100, and 607.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that Bethlehem Steel Corporation's and U.S. Steel Corporation's affirmative statements of no interest in continuation of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil provide a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on hot rolled carbon steel plate cut to length from Brazil effective October 1, 1984. We intend to 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 October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of hot rolled carbon steel plate cut to length from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five 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. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: May 30, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–13556 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-DS-M

Transportation and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Test Equipment Technical Advisory Committee will be held June 26, 1985, 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue NW., Washington DC.

The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Industry participation requested in the area of marine and undersea vehicles and technology.
4. Subcommittee formation.
5. Selection of subcommittee chairmen.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matter listed in 5 U.S.C. 552b(c)(1)

and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: June 4, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–13750 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-DT-M

[A-351-503]

Certain Iron Construction Castings From Brazil; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–4087.

SUPPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry; Allegheny Foundry Company; Bingham & Taylor; Campbell Foundry Company; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Company; Municipal Castings Inc.; Neenah Foundry Company; Opelika Foundry Co., Inc.; Pinkerton Foundry Company; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc.; filing on behalf of the U.S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based the United States price on U.S. import statistics, U.S. resale transactions, direct import transactions and bid and price quotations.

Petitioners based foreign market value of heavy castings on price quotations from a Brazilian producer. Petitioners state that they were unable to obtain similar price data for light castings. They therefore used as the foreign market value for light castings a constructed value based upon Brazilian raw material costs and U.S. foundry costs adjusted for differences between U.S. and Brazilian labor costs, variable fabrication expenses, capital costs and general expenses. To the sum of materials, fabrication and general expenses they added the statutory minimum of 8 percent for profit. The amount of general expenses used was higher than the statutory minimum of 10 percent of the sum of the cost of materials and fabrication. Petitioners also provided a constructed value for heavy castings, based upon the same methodology used for light castings, as an alternative foreign market value for those castings.

Based on the comparison of these values, petitioners alleged dumping margins of from 18 to 136 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether castings from Brazil are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(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. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of certain iron construction castings from Brazil are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85–13804 Filed 6–6–85; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-403]

Egg Filler Flats From Canada; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final determination of sales at less than fair value.

SUMMARY: We determine that egg filler flats from Canada as described in the "Scope of the Investigation" section of this notice are being sold in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that egg filler flats from Canada are being sold in the United States at less than fair value, pursuant to section 735(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a))(the Act). One exporter, Cascades, Inc. (Cascades), is excluded from this determination because we found *de minimis* margins on the sales at less than fair value.

We have found that the foreign market value of egg filler flats exceeded the United States price on 88 percent of the sales compared. These margins ranged from 0 percent to 44.16 percent. The overall weighted-average margin on all sales compared is 14.93 percent. The weighted-average margins for individual companies investigated are listed in the "Suspension of Liquidation" section of this notice.

Case History

On August 3, 1984, we received a petition filed by Keyes Fibre Company and Packaging Corporation of America, on behalf of the United States industry producing egg filler flats. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of egg filler flats from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury or threaten material injury to a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 23, 1984 (49 FR 34381). On September 17, 1984, the ITC determined that there is a reasonable indication that imports of egg filler flats are threatening material injury to a United States industry (49 FR 37857).

On September 12, 1984, we presented questionnaires to Cascades and to Fripp Fibre Forms, Ltd. (Fripp), two producers of egg filler flats who account for virtually all of the Canadian exports to the United States of the merchandise under investigation. Cascades submitted its response to our questionnaire on October 26, 1984; Fripp submitted its response on October 29, 1984.

On January 10, 1985, we preliminarily determined that egg filler flats from Canada were being sold at less than fair value (50 FR 2320). Our notice of preliminary determination provided interested parties an opportunity to submit views orally and in writing. Since no interested party requested a public hearing, no such hearing was held.

On February 14, 1985, we extended the period for making the final determination until not later than May 31, 1985, at the request of an exporter who accounted for a significant proportion of the exports of this merchandise, in accordance with section 735(a)(2)(A) of the Act (50 F.R. 7206).

We verified Cascades' response during the week of March 4, 1985, and Fripp's response during the week of April 1, 1985. During both verifications, we requested and subsequently received supplemental verification documents.

Scope of Investigation

The merchandise covered by this investigation is molded pulp egg filler flats, as currently provided for in item number 256.7000 in the *Tariff Schedules of the United States, Annotated* (*TSUSA*). Since Cascades and Fripp produced and exported virtually all of the egg filler flats shipped from Canada to the United States during the period of investigation, we limited our investigation to these two companies.

We investigated sales of egg filler flats by these respondents during the period from March 1, 1984 to August 31, 1984.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of egg filler flats to represent the United States price for sales by the Canadian producers because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the c.i.f., or c.i.f. duty paid, packed price. We made deductions, where appropriate, for inland freight, insurance, discounts, United States customs duties and brokerage charges.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we used home market prices to determine foreign market value. The home market prices were based on ex-factory or delivered, packed prices to unrelated home market purchasers. In calculating foreign market value, we made currency conversions from Canadian dollars to United States dollars using the certified quarterly exchange rates, in accordance with § 353.56(a)(1) of the Commerce Regulations. We made deductions, where appropriate, for inland freight, insurance, and discounts. In accordance with § 353.15 of the Commerce Regulations, we made a circumstance of sale adjustment for differences in credit expenses in the two markets. We also made an adjustment, where appropriate, for commissions paid by Cascades in the home market; this adjustment was offset by indirect selling expenses in the United States, in accordance with section 353.15(c) of the Commerce Regulations.

The following claims for adjustment were disallowed. Cascades claimed an adjustment for differences in level of trade, as provided for in § 353.19 of the Commerce Regulations. This claim was disallowed because Cascades was unable to quantify that the differences in the price of the merchandise in the United States and Canadian markets were due to differences in the level of trade. Fripp also claimed a level of trade adjustment. This adjustment was disallowed because the documentation provided by Fripp to support the claim was not sufficient to prove that the differences in prices in the two markets were due to differences in the level of trade. Fripp claimed an adjustment for differences in quantity, as provided for

in § 353.14 of the Commerce Regulations. This claim was disallowed because Fripp was unable to show that differences in price between the United States and Canadian markets were due to savings specifically attributable to production of different quantities.

Verification

In accordance with section 776(a) of the Act, we verified all data used in reaching this determination by using standard verification procedures, including on-site examination of accounting records and selected documents containing relevant information.

Petitioners' Comments

Comment 1: Petitioners claim that the Department should reject Cascades' level of trade adjustment, since Cascades sells to distributors in the United States market and cooperatives in the home market and these two classes of customers operate at the same level of trade. Additionally, petitioners claim that the Department should reject Cascades' claimed adjustment because it is based on an estimate of price differentials caused by differences in the level of trade, and is therefore insufficiently documented.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 2: Petitioners claim that the Department should use certified exchange rates in making conversions from Canadian to United States dollars.

Response: In making our conversions from Canadian to United States currency, we used the certified quarterly exchange rates.

Comment 3: Petitioners claim that the Department should reject Fripp's level of trade adjustment because Fripp has failed to demonstrate that an insufficient number of sales were made at comparable levels of trade to permit a fair comparison, because Fripp has not proven that the two classes of purchasers in its claim do in fact constitute different levels of trade, because Fripp has not shown that differences in level of trade correlate directly with differences in price, and because Fripp has not demonstrated that additional costs were actually incurred in selling to one level of trade as compared to another.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 4: Petitioners claim that the amount of the adjustment for differences in credit expense employed by the Department in its preliminary determination is inconsistent with the data contained in Fripp's response, and urge the Department to investigate closely Fripp's credit costs at verification.

Response: The basis for Fripp's adjustment for differences in credit expense was its December 14, 1984, submission. We reviewed this submission and determined that the methodology contained within was a reasonable and accurate method of determining such costs. At the verification, the data upon which the December 14, 1984, submission was based were verified by Department personnel. Therefore, we used Fripp's claimed adjustment for differences in credit expense for the final determination. The only change from the preliminary determination is our use of official, certified exchange rates instead of those provided by Fripp to convert credit costs in the United States market into Canadian dollars.

Comment 5: Petitioners believe that Cascades may have understated its transportation costs by not fully allocating all applicable expenses related to the delivery of its merchandise by company trucks to the molded pulp division of the company. Petitioners therefore urge the Department to confirm at verification that all relevant costs are included in Cascades' calculation of its transportation costs.

Response: Department personnel verified that all expenses related to Cascades' use of its own trucks in the delivery of merchandise were included in the company's calculation of its transportation costs.

Comment 6: Petitioners claim that certain of Cascades' discounts in the home market do not meet the regulatory criteria for a quantity discount, and thus should not be allowed.

Response: We agree that the discounts in question do not meet the regulatory requirements for a quantity discount as outlined in § 353.14(b) (1) and (2) of the Commerce Regulations. However, in accordance with § 353.14(b)(3) of our regulations, we used the discounted price of the sales in question in calculating a weighted-average foreign market value. Thus, the discounts were deducted from the price of the merchandise.

Comment 7: Petitioners claim that the Department should disallow a circumstance of sale adjustment for Cascades' home market sales commissions since these commissions were paid to a related party and the Department has consistently interpreted the statute and regulations to preclude adjustments for intracompany transfers such as payments to related parties.

Response: We recognize that, in general, the Department has not permitted circumstance of sale adjustments for commission payments to related parties. The principle behind denying a circumstance of sale adjustment for payments to related parties is that such payments are merely intracompany transfers of funds; these payments are considered to be part of the general expenses of the company, not costs directly related to particular sales.

However, in this case, although the salesman was an employee of the company, he received no salary; all payments to the salesman were directly related to particular sales, in the form of a percentage of the revenue accruing from those sales. The percentage to be paid was detailed in a contract between the salesman and the company. Additionally, the salesman paid for all of his sales-related expenses, with the exception of certain medical and other non-salary benefits. The cost of these benefits to the company was not included in the claim for the commission adjustment. Thus, the claimed adjustment for the commissions paid to the salesman cannot be considered to be part of the general costs to Cascades, since it is directly related to specific sales, and included no expenses which could not be tied to those sales.

While we continue to hold that circumstance of sale adjustments for commission payments to related parties are not generally allowable, we determined in this case that the salesman in question operated as an urelated party, and an adjustment for commission payments to him was allowed.

Comment 8: Petitioners claim that Fripp's transportation costs for certain sales appear to be abnormally high, and urge the Department to review carefully the data supporting these claimed costs.

Response: We reviewed Fripp's methodology of calculating the transportation costs involved, and determined that this methodology was a reasonable and accurate way to arrive at these costs. We also determined, however, that those elements involved in the calculation of these costs which were not sufficiently documented by Fripp should not be allowed. We therefore excluded such unsubstantiated expenses from the calculation of transportation costs.

Comment 9: Petitioners claim that a certain deduction from Fripp's foreign market value should be treated as a commission, and not a customer category discount, and that this deduction should therefore be offset by

indirect selling expenses in the United States in accordance with § 353.15(c) of the Commerce Regulations.

Response: Though the deduction involved was in fact listed as a commission in Fripp's questionnaire response, we found at verification that it had been erroneously labeled so. From the documents presented to us, we were able to determine that his was in fact a discount to a distributor. We therefore allowed the deduction as a discount on the price of the sale, and did not offset the adjustment with United States indirect selling expenses.

Comment 10: Petitioners state that the Department should reject Fripp's claim for an adjustment for differences in quantity because Fripp has not demonstrated that differences in costs are specifically attributable to the production of different quantities of egg filler flats.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Cascades' Comments

Comment 1: Cascades claims that the Department should allow an adjustment for a commission paid on some of its home market sales as the commission is a directly-related selling expense and therefore meets the criteria for a circumstance of sale adjustment set out by the statute and regulations. Since the salesman in question received no salary from the company and was paid solely on the basis of his sales, any commissions paid to him were directly related to specific sales and cannot be considered to have been general expenses to the company.

Response: For our response to this comment, see our response to Petitioners' Comment 7.

Comment 2: Cascades claims that the Department should allow a level of trade adjustment, since it is improper to compare prices to end-users with prices to distributors. The amount of the adjustment should be the estimate provided by the petitioners in their petition. If this adjustment is rejected, then the Department should alternatively consider the additional cost incurred by Cascades to pay commissions in the home market as the basis for a level of trade adjustment.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 3: Cascades claims that the transportation costs on its United States sales should be adjusted downward, since in the questionnaire response the company had allocated these costs based upon an arbitrary historical formula that overstated the actual expenses incurred.

Response: We reviewed Cascades' accounting and transportation records during our verification, and found that the transportation costs on United States sales listed in Cascades' response were overstated. We therefore adjusted these costs so as to reflect Cascades' actual experience.

Fripp's Comments

Comment 1: Fripp claims that the Department should allow a level of trade adjustment to account for the fact that the company sold to a level of trade in the United States which it did not sell to in the home market. Fripp claims that an adequate comparison between United States and Canadian sales cannot be made without adjusting foreign market value to reflect the effects that the difference in level of trade had on prices in the two markets. Fripp further states that it has demonstrated the actual differences in costs of production and sales between the different levels of trade, and that these costs differences should form the basis of the Department's adjustment.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Comment 2: Fripp claims that the Department should allow a quantity adjustment to account for the lower per-unit costs for Fripp's sales to certain United States customers as compared to Canadian customers. Fripp claims that the lower costs were due to the greater quantities purchased by these United States customers.

Response: For our response to this comment, see the Foreign Market Value section of this notice.

Final Determination

Based on our investigation and in accordance with section 735(a) of the Act, we have reached a final determination that egg filler flats from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the Act.

Continuation of Suspension of Liquidation

Liquidation will continue to be suspended on all entries of egg filler flats from Canada that are entered into the United States, or withdrawn from warehouse, for consumption. The United States Customs Service will continue to require the posting of a cash deposit, bond or other security in amounts based on the following weighted-average margins. Imports of egg filler flats sold by Cascades are excluded from this suspension of liquidation, since the weighted-average margin is 0.08 percent, which is *de minimis*. The security amounts established in our preliminary determination published in the **Federal Register** on January 16, 1985 will no longer be in effect.

Manufacturers	Weighted-average margins (percent)
Cascades, Inc.	[1] 00.08
Fripp Fibre Forms, Ltd.	14.93
All Other Manufacturers/Producers/Exporters	14.93

[1] De Minimis, excluded.

ITC Notification

In accordance with section 734(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury does not exist, this proceeding will be terminated and all cash deposits, securities or bonds posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess an antidumping duty on egg filler flats entered, for consumption, on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price. This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Assistant Secretary for Trade Administration.

[FR Doc. 85-13806 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-401]

Termination of Antidumping Duty Investigation; Oil Country Tubular Goods From Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 23, 1985, Lone Star Steel Company and CF&I Steel Corporation withdrew their antidumping petition, filed on June 13, 1984, on oil country tubular goods from Korea. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Thran, 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) 377-3963.

SUPPLEMENTARY INFORMATION:

Case History

On June 13, 1984, we received a petition from Lone Star Steel Company and CF&I Steel Company filed on behalf of the U.S. industry producing oil country tubular goods.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on July 21, 1984 (49 FR 28088). On August 8, 1984, the ITC found that there was a reasonable indication that imports of OCTG from Korea materially injure, or threaten material injury to, a United States industry. On August 3, 1984, LTV Steel Company became an additional petitioner. On Janaury 9, 1985, we made a preliminary determination that OCTG from Korea were not being, nor were likely to be, sold in the United States at less than fair value (50 FR 2312).

Scope of Investigation

The products under investigation are oil country tubular goods (OCTG). OCTG are extension hollow steel products of circular cross section intended for use in the drilling of oil or gas. OCTG includes oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, to either American Petroleum Institute (API) or non-API specifications (such as proprietary), as currently provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244.

This investigation includes OCTG that are finished and unfinished.

Withdrawal of Petition

On May 23, 1985, petitioners notified us that they were withdrawing their petition, and requested that the investigation be terminated. Under section 734(a) of the Act, as amended by section 604 of the Trade and Tariff Act of 1984, upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on arrangements with the Government of Korea to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, and consuming interests and with the ITC. On the basis of our assessment of the public interest factors and our consultations with affected interests, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 30, 1985.

[FR Doc. 85-13805 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-408]

Termination of Countervailing Duty Investigation; Converted Paper-Related School and Office Supplies From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On May 17, 1985, the petitioner representing the U.S. producers of converted paper-related school and office supplies withdrew its countervailing duty petition, filed on November 16, 1984, on converted paper-related school and office supplies from Mexico. Based on the withdrawal, we are terminating the countervailing duty investigation.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1785.

Case History

On November 16, 1984, we received a petition in proper form from the Stationery International Trade Committee filed on behalf of the U.S. industry producing converted paper-related school and office supplies. 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 Mexico of converted paper-related school and office supplies receive bounties or grants.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate a countervailing duty investigation and, on December 6, 1984, we initiated this investigation (49 FR 48347). In our notice of initiation, we stated that we expected to issue a preliminary determination on or before July 24, 1985. On April 23, 1985, the Office of the United States Trade Representative announced that Mexico was a "country under the Agreement," as set out in section 701(b) of the Tariff Act of 1930, as amended (the Act). As a result, Title VII of the Act became applicable to the pending countervailing duty investigation.

According to section 102 of the Trade and Tariff Act of 1979, once Title VII becomes applicable, any pending investigation under section 303 of the Act must be terminated. Where an initiation, but not a preliminary determination, has been made under section 303, the case is to be treated as if it were initiated under section 702 on the day Title VII first applied to that country. Therefore, on May 14, 1985, we terminated our investigation under section 303 and initiated an investigation under Title VII (50 FR 20117). Then on May 17, 1985, the petitioner notified us that it was withdrawing the countervailing petition on converted paper-related school and office supplies from Mexico.

Scope of Terminated Investigation

The products covered by this investigation are converted paper-related school and office supplies, which comprise:

- Typing and filler paper.
- Wirebound notebooks and composition books.
- Pads.

These products are currently classified under item numbers 256.9080, 256.5600, 256.5800, and 256.9040 of the *Tariff Schedules of the United States, Annotated* (TSUSA).

Withdrawal of Petition

On May 17, 1985, petitioner notified us that it was withdrawing its petition, and requested that this investigation be terminated. Under section 704(a) of the Act (19 U.S.C. 1671c(a)), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation of petitioner's withdrawal and our intention to terminate. We have notified the parties of petitioner's withdrawal of the petition and of our intention to terminate. Pursuant to § 355.30(a) of the regulations (19 CFR 355.30(a)), we have determined that termination of this case is in the public interest.

For these reasons, we are terminating our investigation of converted paper-related school and office supplies from Mexico.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 1, 1985.

[FR Doc. 85-13799 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-357-405]

Barbed Wire and Barbless Fencing Wire From Argentina; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from Acindar Industria Argentina de Aceros (Acindar), the respondent in this investigation, that the final determination be postponed, as provided for in section 735(a)(2)(A), and, that we have determined to postpone our final determination as to whether sales of barbed wire and barbless fencing wire have occurred at less than fair value, until not later than September 16, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION: The Department of Commerce published on December 18, 1984, a notice in the **Federal Register** (49 FR 49126) that it was initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Argentina were being, or were likely to be, sold at less than fair value. On May 3, 1985, we published a preliminary determination sales are at less than fair value with respect to this merchandise (50 FR 18906). The notice stated that if this investigation proceeded normally we would make our final determination by July 12, 1985.

On May 6, 1985, the respondent, Acindar, requested that we extend the period of the final determination until September 16, 1985, 135 days after the date of publication of the preliminary determination and in accordance with section 735(a)(2)(A) of the Act. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. Acindar is qualified to make such a request since it accounts for all of the exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than September 16, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 24, 1985.

[FR Doc. 85-13800 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-407]

Barbed Wire and Barbless Fencing Wire From Brazil; Postponement of Final Antidumping Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that the Department of Commerce (the Department) has received a request from Belgo-Mineira and COSIGUA, the respondents in this investigation, that the final determination be postponed, as provided for in section 735(a)(2)(A), and, that we have determined to postpone our final determination as to whether sales of barbed wire and barbless fencing wire have occurred at less than fair value, until not later than September 16, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Adminsitration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-3965.

SUPPLEMENTARY INFORMATION: The Department of Commerce published on December 18, 1984, a notice in the **Federal Register** (49 FR 49126) that it was initiating an antidumping duty investigation to determine whether barbed wire and barbless fencing wire from Brazil were being, or were likely to be, sold at less than fair value. On May 3, 1985, we published a preliminary determination sales are at less than fair value with respect to this merchandise (50 FR 18903). The notice stated that if this investigation proceeded normally we would make our final determination by July 12, 1985.

On April 22, 1985, the respondents, Belgo-Mineira and COSIGUA, requested that we extend the period of the final determination until September 16, 1985, 135 days after the date of publication of the preliminary determination and in accordance with section 735(a)(2)(A) of theAct. Section 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published notice of its preliminary determination, if exporters who account for a significant proportion of exports of the merchandise request an extension after an affirmative preliminary determination. These respondents are qualified to make such a request since they account for all of

the exports of the merchandise under investigation. If an exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons ot the contrary, to grant the request.

Accordingly, the Department will issue a final determination in this case not later than September 16, 1985.

This notice is published pursuant to section 735(d) of the Act.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

May 24, 1985.

[FR Doc. 85-13801 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From India; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from India are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washinton, D.C. 20230; telephone: (202) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc., filing on behalf of the U.S. producers of certain iron construction castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of § 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based United States price on quota and sales invoices from Indian castings producers and importers for sales in the U.S. market.

The petitioners based foreign market value on the constructed value of Indian castings because they allege that due to the nature of the product and the home market, and precedent from the 1981 antidumping investigation, the most appropriate means to determine foreign market value is by using the constructed value. Petitioners derived the constructed value through use of a computer model of Indian foundries' production costs and sales. The source of information was primarily the 1981 antidumping investigation and the data were updated to reflect current costs and exchange rates.

Based on the comparison of these estimated values, petitioners' alleged dumping margins range from 37.0 percent for a 442-pound catch basin assembly (heavy construction castings) to 82.2 percent for a 68-pound valve box (light construction casting).

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating and antidumping duty investigation to determine whether castings from India are being, or are likely or be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandies covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States.*

Notification of ITC

Section 732(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. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of castings from India are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85-13802 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-502]

Certain Iron Construction Castings From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain iron construction castings (castings) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before June 27, 1985, and we will make ours on or before October 21, 1985.

EFFECTIVE DATE: June 7, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–2830.

SUPPLEMENTARY INFORMATION:

The Petition

On May 13, 1985, we received a petition in proper form filed by the Municipal Castings Fair Trade Council, a trade association representing domestic producers of castings and fifteen individually-named members of the association. Those producers are: Alhambra Foundry, Inc.; Allegheny Foundry Co.; Bingham & Taylor; Campbell Foundry Co.; Charlotte Pipe & Foundry Co.; Deeter Foundry Co.; East Jordan Iron Works, Inc.; E.L. Le Baron Foundry Co.; Municipal Castings Inc.; Neenah Foundry Co.; Opelika Foundry Co., Inc.; Pinkerton Foundry, Inc.; Tyler Pipe Corp.; U.S. Foundry and Manufacturing Co.; and Vulcan Foundry, Inc.; filing on behalf of the U.S. producers of castings. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioners based United States price on quotes and sales invoices from U.S. purchasers of castings.

Petitioners claim that the PRC is a state-controlled-economy country (within the meaning of the Act) and, therefore, a "surrogate" non-state-controlled-economy country's prices should be used as the basis for determining the foreign market value of the merchandise under investigation. Petitioners chose India as a surrogate country, and based foreign market value on a constructed value of castings because they allege that India lacks both home market and third country sales of castings.

Based on a comparison of the above values, petitioners alleged dumping margins range from 23.5 percent for a 442-pound catch basin assembly (heavy construction casting) to 51.0 percent for a 35-pound service box (light construction casting).

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on castings and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether castings from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 21, 1985.

Scope of Investigation

The merchandise covered by the petition consists of certain iron construction castings, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems; and valve, service and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable, and are currently classifiable under item number 657.09 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(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. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 27, 1985, whether there is a reasonable indication that imports of castings from the PRC are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 3, 1985.

[FR Doc. 85–13803 Filed 6–6–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Ocean Action, Inc.

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Ocean Action, Inc. (P238B).

b. Address: P.O. Box 3637, South Padre Island, Texas 78597.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*) 6.

4. Type of Take: Capture/Maintain.

5. Location of Activity: Matagorda Bay or Rockport, Texas.

6. Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of

such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: June 4, 1985.

Carmen J. Blondin,

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

[FR Doc. 85-13810 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Controls on Certain Man-Made Fiber Textile Products Produced or Manfactured in the Republic of Korea

June 3, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 7, 1985. For further information contact Ross Arnold International Trade Specialist (202) 377-4212.

Background

The Governments of the United States and the Republic of Korea have exchanged letters further amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1972, as amended, to establish specific limits for the duration of the agreement for parts of Category 614, produced or manufactured in Korea. The T.S.U.S.A. numbers for these specific limits for 1985 are as follows:

Category 614pt.-W (man-made fiber fabrics blended with wool in T.S.U.S.A. numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572).

Category 614pt.-O (man-made fiber fabrics, other than those blended with wool, in all other T.S.U.S.A. numbers in the category except those listed immediately above).

The specific limit for Category 614pt-W is 8,770,893 square yards, for Category 614pt-O, it is 11,787,500 square yards for goods exported during 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 3, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Korea and exported during the period January 1, 1985 to December 31, 1985.

Effective on June 7, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include restraint limits for man-made fiber textile products in parts of Category 614, as follows:

Category	12-mo restraint limit, (square yards)
614pt.[1]	8,770,893
614pt.[2]	11,787,500

[1] In Category 614 only TSUSA number 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572)

[2] In Category 614, all TSUSA numbers in the category, except those listed in footnote 1.

In carrying out this directive, entries of man-made fiber textile products in Category 614, produced or manufactured in Korea, which have been exported to the United States during 1984, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during 1984. In the event the limit established for 1984 has been exhausted by previous entries, such goods shall be subject to this directive. Inasmuch as Category 614 was controlled in 1984 as an entire category and not in the parts being established in this directive, the necessary charges will be provided.

Textile products in Category 614 which have been released from this custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreement has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13733 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With Korea to Review Trade in Categories 605pt. and 611

June 3, 1985.

On May 7, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea with respect to man-made fiber yarns, other than cordage, in Category 605-O (all TSUSA numbers in the Category except 316.5500 and 316.5800) and man-made fiber woven fabrics in Category 611, produced or manufactured in Korea. This request was made on the basis of the agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Republic of Korea, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 605-O and 611, produced or manufactured in Korea and exported in the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of these categories from Korea under the bilateral agreement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain,

comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13722 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Product Produced or Manufactured in Malaysia

June 4, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1982, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 10, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and Malaysia have exchanged notes extending their Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981 for six months beginning on January 1, 1985 and extending through June 30, 1985. The agreement, as amended and extended, provides specifics limits for Categories 331, 333/334/335, 341, 345, 338/339, 340, 347/348, 445/446, 604 and 638/639, among others, exported during the six-month period which began on January 1, 1985 and extends through June 30, 1985. The agreement, as extended, also contains a consultation mechanism for categories not subject to specific limits and for which levels may be established during the agreement period. The letter published below establishes the six-month limits for the foregoing categories. The limits have not been adjusted to account for any imports exported after December 31, 1984. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreeemnt, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

June 4, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5, 1980 and February 27, 1981, as extended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 10, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the six-month period which began on January 1, 1985 and extends through June 30, 1985, in excess of the indicated restraint limits:

Category	6-mo restraint limit [1]
331	306,940 dozen pairs.
333/334/335	40,115 dozen of which not more than 20,058 dozen shall be in Cat. 333; not more than 20,058 dozen shall be in Cat. 334 and not more than 20,058 dozen shall be Cat. 335.
338/339	234,512 dozen of which not more than 93,616 dozen shall be in Cat. 339.
340	163,475 dozen.
341	115,797 dozen.
345	33,489 dozen.
347/348	92,408 dozen of which not more than 48,318 dozen shall be in Cat. 348.
445/446	12,656 dozen.
604	662,699 pounds.
638/639	96,636 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984.

In carrying out this directive, entries of cotton, wool, and man-made fiber textiles and textile products in the foregoing categories, except Categories 341, 345, and 638/639, produced or manufactured in Malaysia, which have been exported to the United States during the period which began on January 1, 1984 and extended through December 31, 1984, (in the case of Category 341, exported to the United States during the period which began on April 27, 1984 and extended through December 31, 1984; in the case of Category 345, exported to the United States during the period which began on February 29, 1984 and extended through December 31, 1984; and in the case of Category 638/639, exported to the United States during the period which began on January 1, 1984 and extended through December 31, 1984), shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during those periods. In the event the limits so established have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 341, 345, and 638/639 which have been exported prior to the first day of the restraint periods noted shall not be subject to this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 6, 1980 and February 27, 1981, as extended, between the Governments of the United States and Malaysia which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than five percent, if a corresponding reduction is made in one or more other specific limits in the same group during the same agreement year; (2) specific limits may be adjusted for carryover; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-13734 Filed 6-6-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1985 a commodity and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: June 7, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 1 and February 15, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 4726 and 50 FR 6375) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and service listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1985:

Commodity

Holder, Card-Label: 9905-00-866-0334

Service

Commissary Shelf Stocking and Custodial, Elmendorf Air Force Base, Alaska

C.W. Fletcher,

Executive Director.

[FR Doc. 85-13740 Filed 6-6-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions and Deletion to Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1985 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: July 10, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Serverely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Belt, Aircraft Safety: 1680-00-407-5335
Fitting Kit: 4730-00-470-6625
Stay, Fence: 5660-00-943-9927, 5660-00-904-8023, 5660-00-607-0286, 5660-00-607-0287
Towel, Paper: 7920-00-823-9772
(Requirements for GSA National Capital Region (NCR) only)
Wood Container: 8115-LI-599-7220, 15" x 15" x 12"; 8115-LI-599-7320, 19" x 19" x 24"; 8115-LI-599-7820, 43" x 38" x 18"; 8115-LI-599-8020, 43" x 36" x 37"; 8115-LI-599-8120, 43" x 39" x 54"; 8115-LI-599-7920, 57" x 43" x 18"; 8115-LI-465-0920, 48" x 38" x 30"; 8115-LI-465-1020, 50" x 26" x 26"; 8115-LI-466-4120, 80" x 40" x 40";
(Requirements for Robbins Air Force Base, Georgia only)

Services

Commissary Shelf Stocking and Custodial, Altus Air Force Base, Oklahoma
Janitorial/Custodial, Army Materials and Mechanics Research Center, Buildings 36, 37, 39, 43, 97, 131, 292, 311, 312, 313 only, Watertown, Massachusetts
Janitorial/Custodial, National Institute for Occupational Safety & Health, 5555 Ridge Avenue, Cincinnati, Ohio
Janitorial/Custodial, Building 1293, Hill Air Force Base, Utah

Deletions

It is proposed to delete the following commodity from Procurement List 1985, October 19, 1984 (49 FR 41195):

Bag, Lunch: 8105-00-664-3715

C. W. Fletcher,

Executive Director.

[FR Doc. 85-13741 Filed 6-6-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Advisory Panel on ROTC Affairs; 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 panel meeting:

Name of panel: Army Advisory Panel on ROTC Affairs.

Date of meeting: July 9-11, 1985.

Place: Fort Bragg, North Carolina.

Time: 0900-1600, July 9, 1985, 0900-1600, July 10, 1985, 0900-1200, July 11, 1985.

Proposed agenda: The meeting will consist of briefings, discussion periods and visits to training sites of the ROTC Advanced Camp and Fort Bragg. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time and in the manner permitted by the Panel. First day of the meeting will consist of administrative matters to include introduction and swearing-in of new members and briefing on the standards of conduct required of members. A briefing is scheduled during the morning of July 9 on the Nursing and ROTC Curricula Study. Purpose of this study is to examine and compare general nursing curriculum with ROTC course curriculum in an effort to eliminate redundancies. Afternoon of

July 9 will be devoted to a visit to the ROTC Advanced Camp to observe training of ROTC cadets. Major business of the Panel will be transacted on July 10. There will be a briefing on the Army Academic Discipline Requirements, i.e., how many engineers, scientists, business or liberal arts commissionees the Army must have to meet its needs. Additionally, there will be a briefing on Viability Issues, i.e., factors demonstrating the success or failure of the ROTC detachments and adjustments made to the system to encourage success. The Panel will be updated on the status of recommendations stemming from previous meetings. During the final General Session, new Panel recommendations will be developed, a Chairman for 1985 will be elected, and initial plans made for the Autumn meeting of the Panel. Morning of July 11 will be devoted to visits to training sites at the ROTC Advanced Camp and Fort Bragg.

John P. Prillaman,

Major General, GS, Deputy Chief of Staff for ROTC.

[FR Doc. 85-13768 Filed 6-6-85; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Performance Review Board

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice of Membership of the Defense Logistics Agency Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Logistics Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Logistics Agency.

EFFECTIVE DATE: June 5, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert W. Johnson, Employee Development Specialist, Workforce Effectiveness Division, Defense Logistics Agency, Department of Defense, Cameron Station, Alexandria, Virginia 22304-6100 (202) 274-6049 or 274-6035.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names of the executives who have been appointed to serve as members of the Performance Review Board. Each will serve a one-year renewable term effective upon publication of this notice.

Mr. William J. Cassell
Mr. Thomas J. Knapp
Mr. Raymond W. Dellas

Anthony W. Hudson,

Staff Director, Civilian Personnel.

[FR Doc. 85-13695 Filed 6-6-85; 8:45 am]

BILLING CODE 3620-01-M

DEPARTMENT OF EDUCATION

Office of Management

Federal Education Data Acquisition Council

AGENCY: Department of Education.

ACTION: Notice of data acquisition activities approved prior to February 15, 1985.

SUMMARY: Under section 400A of the General Education Provisions Act (the Act), the Secretary publishes education-related data acquisition activities approved before February 15, 1985 that Federal agencies will use to collect data during school year 1985-86.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret B. Webster, Division of Education Information Management, Room 4074, Switzer Building, 400 Maryland Avenue, SW, Washington, D.C. 20202. Telephone: (202) 426-7304.

SUPPLEMENTARY INFORMATION: Under section 400A of the General Education Provisions Act, the Secretary of Education is responsible for reviewing and coordinating the collection of information and data acquisition activities of Federal Agencies—.

(a) Whenever the repondents are primarily educational agencies or institutions; or

(b) Whenever the purpose of the activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

Under section 400A the Secretary also publicly announces the data acquisition activities that were approved prior to February 15, 1985. These data acquisition activities are considered information collection requests under the Paperwork Reduction Act of 1980. The title of each information collection request approved before February 15, 1985 is published in this document with the Office of Management and Budget approval number for the request. These information collection requests are approved for use during school year 1985-86.

Dated: June 4, 1985.

William J. Bennett,

Secretary of Education.

OMB control No.	Title of information collection
	U.S. International Development Cooperation Agency
0412-0522	Historically black colleges and universities—Individual profile.
	Department of Agriculture
	Office of Grants and Program Systems
0525-0001	Research grant application kit.
0525-0002	Financial report, Morrill-Nelson funds for food and agricultural higher education.
	Food and Nutrition Service
0584-0005	7 CFR Part 215—Special milk program for children reporting.
0584-0006	7 CFR Part 210—National School Lunch Program.
0584-0012	7 CFR Part 220—School Breakfast Program.
0584-0026	7 CFR Part 245—Determining eligibility for free and reduced price meals and free milk in schools—Reporting.
0584-0046	Cash in lieu of donated foods.
0584-0062	Nutrition Education and Training Program regulations (7 CFR 227) (reporting).
0584-0067	7 CFR Part 235—State administrative expenses—reporting.
0584-0282	Nutrition Education and Training Program regulations (7 CFR-227) (recordkeeping).
0584-0319	7 CFR Part 235—State administrative expenses recordkeeping.
0584-0335	7 CFR Part 230—Food Service Equipment Assistance Program—Recordkeeping.
	Department of Commerce
	Bureau of the Census
0607-0	Survey of local government finances (school system).
0607-0459	School enrollment report.
	Department of Commerce
	National Oceanic and Atmospheric Administration
0648-0019	Sea grant project summary.
0648-0034	Sea grant budget.
0648-0147	Application for designation as a sea grant college of regional consortia.
	Department of Defense
	Department of the Air Force
0701-0063	Air Force Academy candidate activities record.
0701-0066	Air Force Academy request of secondary school transcript.
0701-0090	AFROTC preapplicant questionnaire.
	Department of the Army
0702-0013	Application for establishment of an Army senior reserve officers' training corps unit.
0702-0015	Information on application for U.S. Army Nurse Corps.
	Department of the Navy
0703-0011	Academic certification form for Marine Corps officers.
0703-0012	Personal information questionnaire.
0703-0016	Individual MCJROTC instructor evaluation summary
0703-0024	Drug statement for NROTC application.
0703-0026	Reference questionnaire—Reserve officers training corps.
0703-0028	NROTC Navy-Marine Corps scholarship application.

OMB control No.	Title of information collection
	Department and others
0704-0035	Professional evaluation.
0704-0052	Supplemental application for employment with DOD overseas dependents schools.
0704-0054	Application form, ROTC 4 year scholarship.
0704-0200	Annual report on uniform commutation fund.
	Department of Health and Human Services
	Health Services Adminstration
0915-0028	Application-scholarship program for first-year students of exceptional financial need.
0915-0033	Heal borrower status form.
0915-0034	Lender's manifest for Heal Program.
0915-0035	Health Education Assistance Loan Program loan transfer statement.
0915-0036	Lender's application for insurance claim on a health education assistance (HEAL) loan.
0915-0037	Lender's application for contract of Federal loan insurance (HEAL).
0915-0038	HEAL student loan application.
0915-0043	Repayment schedule and truth-in-lending disclosures for the Health Education Assistance Loan Program.
0915-0046	Quartely debt management report.
0915-0047	Financial aid transcript.
0915-0054	Health education assistance loan (HEAL) program school recordkeeping requirements.
0915-0056	Annual space utilization and enrollment report for nursing and health professions.
0915-0073	Nursing student loan (NSL) program promissory note
0915-0074	Health professions student loan (HPSL) program promissory note.
0915-0080	Indian health service scholarship application and progress reports.
0915-0084	HEAL call report—lender's annual report on HEAL student loans outstanding.
0915-0092	Assessment of training in geriatrics in health professions schools.
	National Institutes of Health.
0925-0008	Biomedical research support grant application and annual progress report.
0925-0022	National research service award research training, competing and noncompeting applications.
0925-0137	Protection of human subjects—certification and recordkeeping requirements.
	Social Security Administration
0960-0084	Report of individual with childhood impairment.
0960-0089	Report of student beneficiary at end of school year.
0960-0322	Report of black lung student beneficiary at end of school year.
	Department of the Interior
	United States Fish and Wildlife Service
1018-0036	Environmental education evaluations.
	Bureau of Mines
1032-0116	Mining and materials resources and research institutes program (MMRRI).
	Bureau of Indian Affairs
1076-0018	Subchapter E-Education 25 CFR parts 31-34 45 CFR, Part 121—Information collections.
	Department of Justice
	Immigration and Naturalization Service
1115-0119	Student status form.
	Department of Labor
	Employment Standards Administration
1215-0080	Application for authority for an institution of higher education to employ its full-time students at subminimum wages.
1215-0121	Work experience and career exploration program.
	Department of State
	Administration of Foreign Affairs
1405-0031	Approval of funding to support special education progress.
1405-0032	Overseas schools progress and evaluation report.
1405-0033	Ovarseas schools financial report.
	Department of the Treasury
	Internal Revenue Service
1545-0213	Annual certification of racial nondiscrimination for a private school exempt from Federal income tax.
1545-0244	Certification of youth participting in a qualified cooperative education program.
1545-0471	Student tax clinic pattern letter (application package).
1545-0779	Understanding taxes (teacher evaluation guide).
	Department of Education
	Office of Elementary and Secondary Education
1810-0003	Application for continuations for the follow through program.
1810-0020	Indian fellowship application (new and continuation).
1810-0021	Application for grants under Indian Education Act Program.
1810-0026	Nominations for the National Advisory Council on Indian Education.
1810-0027	Application for disaster assistance (Pub. L. 81-874 Sec. 7).
1810-0028	Application for grants under section 143: The Migrant Education Interstate and Intrastate Coordination Program.
1810-0030	Application for Civil Rights Technical Assistance and Training State Educational Agency Program.
1810-0031	Certification: Indian student enrollment.
1810-0036	School assistance in areas affected by Federal activity application.
1810-0037	State performance report (ECIA, Chapter 1).
1810-0051	High school equivalency and college assistance migrant programs, financial status and performance reports.
1810-0053	State application, chapter 2 of the Education Consolidation and Improvement Act of 1981.
1810-0060	Annual survey of children in institutions for neglected or delinquent children or in adult correctional institutions.
1810-0062	Application package: Women's Educational Equity Act (WEEA) Program.
1810-0502	Preapplication for Federal assistance (construction) Pub. L. 85-815 and application for Federal assistance.
1810-0503	Financial status and grant performance report—Indian Education Programs.
1810-0504	Recordkeeping requirement for LEA's and SEA's operating chapter 1, ECIA projects (34 CFR 200.56).
1810-0507	Law-related education grant application package.
1810-0510	Law-related education grant financial and performance reports.
1810-0511	Migrant education interstate and intrastate coordination program financial status and performance report.
1810-0512	State assessment of need, title II of the Education for Economic Security Act.
1810-0513	Performance/financial reports, postsecondary education programs, title II of the Education for Economic Security Act.
1810-0514	Performance/financial reports, elementary and secondary education, title II of the Education for Economic Security Act.
1810-0515	State application, title II of the Education for Economic Security Act.
1810-0516	Application for the Magnet Schools Assistance Program.
1810-0517	Application for civil rights technical assistance and training desegregation assistance center program.
1810-0518	Form for nomination of successful chapter I projects.
	Office of Special Education and Rehabilitative Services
1820-0002	Performance report for special education program discretionary grant programs.
1820-0014	Annual report on Post-Employment Services and case reviews for the Rehabilitation Services Administration.
1820-0017	Annual Vocational Rehabilitation Program/cost report.
1820-0018	RSA discretionary grant program.
1820-0027	Application for grants under Rehabilitation Research and Demonstration Program.
1820-0028	Grant applications under Education for the Handicapped Programs.
1820-0041	Performance report for Pub. L. 94-142 and Pub. L. 89-313.
1820-0043	Report of handicapped children and youth receiving special education.
1820-0508	Program impact reporting system (PIRS).
1820-0509	List of hearing officers recordkeeping.
1820-0512	Local educatinnal agency (LEA) project information recordkeeping.
1820-0513	Report of children transferring to local agency programs recordkeeping.
1820-0514	Captioned films for the deaf: Application for loan service, user response forms (2).
1820-0517	Implementation of least restrictive environment requirements.
1820-0518	Number of personnel employed to provide special education and related services to handicapped children and youth.
1820-0520	Client Assistance Program request for assistance.
1820-0521	Report of handicapped children and youth exiting the educational system.
1820-0522	Report of special education/related services in need of improvement.
1820-0523	Number of additional personnel needed to provide special education and related services to handicapped children and youth.
1820-0524	Report of Federal, State, and local funds expended for special education and related services.
1820-0526	Report of handicapped children and youth receiving related services.
	Office of Vocational and Adult Education
1830-0011	State-Administered Vocational Education Program improvement contracts: Abstracts.
1830-0013	Application for Vocational and Adult Education Direct Grant Programs.
1830-0501	Financial status and performance report for direct grants-OVAE.
1830-0503	Financial status reports for State administered vocational education.
	Office of Postsecondary Education
1840-0002	Guarantee agency quarterly/annual report.
1840-0005	Application for Fulbright-Hays training grants: Faculty research and doctoral dissertation research abroad programs.
1840-0008	Request for payment of Pell Grant award, notice of termination/leave of absence and Ads student report.
1840-0013	Pell Grant Program student validation roster.
1840-0017	Application for noncompleting continuation grants under the Special Services for Disadvantaged Students Program.
1840-0028	Physician's certification of borrower's total and permanent disability for student loan program.
1840-0034	Lender's request for interest and special allowance-GSL and plus programs.
1840-0041	Application for grants under the Law School Clinical Experience Program.
1840-0042	Financial status and Performance reports for Veteran's Cost-of-Instruction Payments Programs.
1840-0053	Performance/Financial status Report Forms for the Cooperative Education Program.
1840-0054	Application for grants and contracts under the Veteran's Cost-of-Instruction Payments Program (VCIP).
1840-0055	Pell Grant Program progress report.

OMB control No.	Title of information collection
1840-0056	Application for certification for participation in programs under title IV of the Higher Education Act of 1965, as Amend.
1840-0065	Application for the Educational Opportunity Centers Program.
1840-0068	Application for foreign language and area studies.
1840-0073	Fiscal operations report/application to participate in the Campus-Based Student Aid Programs.
1840-0077	Student confirmation report for guaranteed Student Loan Program Pub. L. 89-329.
1840-0079	Call report—Lender's annual report on guaranteed student loan and parent loans for undergraduate students outstanding.
1840-0082	Loan transfer statement Guaranteed Student Loan Program.
1840-0091	National direct (defense) student loan assignment form.
1840-0093	Lenders manifest for federally insured student loans.
1840-0095	Application for assistance under the College Housing Program.
1840-0096	Request for institutional eligibility for programs under the Higher Education Act of 1965, as amended.
1840-0099	Application for State Student Incentive Grant Program.
1840-0103	Request for designation as an eligible institution, title III, Higher Education Act of 1965, as amended.
1840-0108	Guarantee agency request for reimbursement for claims paid, agreements under reinsurance and on death/disability.
1840-0109	Application (program announcement) for grants and contracts under the Minority Institutions Science Improvement Program.
1840-0110	Application for Federal student aid.
1840-0111	Special condition application for Federal student aid.
1840-0112	Evaluation of training activities on the title IV Student Financial Assistance Programs.
1840-0114	Application for Strengthening Special Needs and Challenge Grant Programs.
1840-0125	Application for the training program for special programs staff and leadership personnel.
1840-0126	Cooperative Education Program application form.
1840-0128	LEEP-6, statement of LEEP account LEEP-6A participants certification statement Law Enforcement Education Program (LEEP).
1840-0129	Report of defaulted loans as of December 31.
1840-0130	Summary data sheet/listing form (national direct student loan.
1840-0132	Student aid report.
1840-0133	Request for collections assistance under Federally Insured Student Loan Program.
1840-0500	Federal loan transaction statement Federally Insured Student Loan Program.
1840-0501	Fulbright Seminars Abroad program application for seminar position abroad.
1840-0503	Performance/financial reports for the supplemental funds program for cooperative education.
1840-0504	Application for the supplemental funds program for cooperative education.
1840-0505	State student incentive grant performance report and financial status report.
1840-0508	Application for grants under the graduate and professional study fellowships program.
1840-0509	Application for grants under the Education for Public Service Fellowships Program.
1840-0514	Program announcement comprehensive program new awards and continuations.
1840-0515	Application for Mina Shaughnessy Scholars Program.
1840-0517	Lender's application for payment of insurance claim under the Federal Insured Student Loan Program.
1840-0528	Certification of project costs for college facilities.
1840-0529	Foreign language and area studies fellowship information reports.
1840-0530	Lender's request for interest and special allowance for loans made from tax exempt funds and related forms.
1840-0531	Application form for the Endowment Grant Program.
1840-0535	Recordkeeping requirement for the Campus-Based Student Aid Programs.
1840-0536	Deregulation of the Pell Grant Administration and technical regulations recordkeeping requirement.
1840-0537	Student assistance general provisions recordkeeping requirement.
1840-0538	Guaranteed Student Loan Program recordkeeping requirement.
1840-0540	Institutional payment summary (IPS) and IPS Batch report for Pell Grants.
1840-0544	State Student Incentive Grant Program recordkeeping requirement.
1840-0549	Application for grants under the Talent Search Program.
1840-0550	Continuation application for grants under Upward Bound Program.
1840-0551	Fiscal operations report and application to participate in the Campus-Based Student Aid Programs (electronic).
1840-0553	Certification form for the Endowment Grant Program.
1840-0555	Performance report under the Minority Institutions Science Improvement Program (MISIP).
	Office of Educational Research and Improvement
1850-0003	Salaries, tenure, and fringe benefits of full-time instructional faculty, 1984-85 and 1985-86.
1850-0035	Fall enrollment and compliance report, 1984 and recordkeeping requirements.
1850-0038	State-level personnel exchange (elementary-secondary).
1850-0053	Degrees and other formal awards conferred between July 1, 1983 and June 30, 1984.
1850-0054	Application for grants under the Strengthening Research Library Resources Program.
1850-0057	Common core of data (CCD).
1850-0072	Final financial status and performance report for College Library Resources Program.
1850-0086	Application for grants under the national diffusion network.
1850-0095	State-level personnel exchange (postsecondary).
1850-0502	Financial statistics of institutions of higher education, 1984 and 1985.
1850-0526	Institutional characteristics of colleges and universities, 1984-85.
1850-0527	Library Services and Construction Act (Pub. L. 84-597, as amended) financial status and performance reports—Title III.
1850-0535	Residence and migration of college students, fall 1984.
1850-0536	Public school survey.
1850-0537	Library Services and Construction Act (Pub. L. 84-597, as amended) financial status and performance report, title III.
1850-0547	Verification of the universe of postsecondary education providers (VUPEP) survey.
1850-0552	Application for planning and institutional grants for research and development centers.
1850-0555	National assessment of educational progress field test for 1985-86.
1850-0557	High school and beyond third follow-up and national longitudinal study of the class of 1972 fifth follow-up field test.
1850-0562	National assessment of educational progress-1985 Young adult literacy assessment.
	Office of Intergovernmental and Intergency Affairs
1860-0500	Application for waiver of the 2-year Foreign Residence Requirement of the Exchange Visitor Program.
1860-0501	Presidential Academic Fitness Award (PAFA) school participation order form.
	Office of Planning and Budget and Evaluation
1875-0005	Application for the Secretary's initiative to improve chapter 1 projects under Education Consolidation and Improvement Act.
1875-0006	National longitudinal evaluation of services to language minority and limited English proficient students.
1875-0007	Longitudinal study of immersion programs for language minority children.
1875-0008	National study of local operations under chapter 2 of the Education Consolidation and Improvement Act.
	Departmental Management
1880-0173	Computer generated "recipient cash advance request".
1880-0505	Application for the Secretary's Discretionary Program.
1880-0507	Student rights in research, experimental activities and testing information collections.
1880-0508	Recordkeeping requirement under the Family Educational Rights and Privacy Act.
1880-0509	Information collection requirements for cost principles for non-profit organizations.
	Office of Bilingual Education and Minority Languages Affairs
1885-0001	Application for New and Non-Competing Participation in Bilingual Education Fellowship Program.
1885-0002	Application for Grants Under Bilingual Vocational Training and Instructor Training Programs.
1885-0003	Application for grant under bilingual education.
1885-0004	Application for continuation grants under bilingual education.
1885-0005	Demonstration of Compliance with Terms and Conditions of the Bilingual Education Fellowship Program Contract.
1885-0503	Application for Grants Under Transition Program for Refugee Children.
1885-0504	Final Financial Status and Performance Report for Bilingual Vocational Training and Instructor Training Programs.
1885-0505	National Clearinghouse for Bilingual Education.
1885-0506	Recordkeeping under bilingual education.
	Office of Inspector General
1892-0002	Property system survey.
	Environmental Protection Agency
	Pesticides and Toxic Substances
2070-0082	Application for Loan/Grant under the Asbestos School Hazard Abatement Act of 1984.
	Department of Transportation
	U.S. Coast Guard
2115-0012	Application for appointment as cadet, U.S. Coast Guard.
2115-0111	Course approvals for merchant marine training schools.
	Veterans Administration
2900-0014	Authorization and certification of entrance or reentrance into rehabilitation and certification of status.
2900-0034	Trainee request for leave—Chapter 31, title 38, U.S. Code.
2900-0057	School attendance report.
2900-0073	Enrollment certification (under chapter 32, 34, or 35 title 38, U.S.C.).
2900-0099	Request for change of program or place of training survivors' and dependents' educational assistance.
2900-0156	Notice of change in student status.
2900-0180	Compliance report of propriety institutions.
2900-0189	Trainee interview sheet.
2900-0209	Veterans application for work-study allowance.
2900-0236	Application for education loan.
2900-0262	Designation of certifying official(s).
2900-0269	Application for Educational Assistance Under the Veterans Education Assistance Program.
2900-0352	Application for Participation in the Veterans Administration Health Professional Scholarship Program.
2900-0353	Certification of lessons completed.
2900-0354	Certification of attendance for courses not leading to a standard college degree and farm cooperative courses.
2900-0355	Verification of pursuit of course leading to a standard college degree.
2900-0358	Supplemental information for change of program or reenrollment after unsatisfactory progress or conduct.
2900-0368	Monthly statement of wages paid to trainee.
2900-0394	Certification of school enrollment.

OMB control No.	Title of information collection
2900-0414	Nondiscrimination on the basis of handicap in programs and activities, as required by 38 CFR 18.422(B).
	Commission on Civil Rights
3035-0019	Elementary and secondary school desegregation study.
	Equal Employment Opportunity Commission
3046-0003	Elementary-secondary staff information (EEO-5).
3046-0009	Higher education staff information (EEO-6).
	United States Information Agency
3116-0011	Update of Information on Exchange Visitor Program Sponsor.
3116-0168	President's International Youth Exchange Initiative Program Report.
3116-0170	Exchange Visitor Programs.
3116-0173	Bureau of Educational and Cultural Affairs Grant Application Cover Sheet.
3116-0179	University Affiliated Program.
	National Endowment for the Humanities
3136-0032	Reference works guidelines and applications instructions.
3136-0057	Summary report for institue participants.
3136-0058	Summary report on institute participants.
3136-0059	Application Instructions National Endowment for the Humanities Division of Education Programs.
3136-0060	Guidelines and application materials: high school humanities institutes for historically black colleges and universities.
3136-0062	NEH challenge grant guidelines and application instructions.
3136-0063	NEH challenge grants administrative regulations.
3136-0067	Humanities, science and technology guidelines.
3136-0069	NEH performance reporting requirements (enclosure 2).
3136-0077	Division of state programs: Interim progress report format.
3136-0080	Division of State programs: Criteria for review and proposal format.
3136-0081	NEH planning and assessment studies program grant application review process.
3136-0093	Guidelines and application form for directors in summer seminars for college teachers.
3136-0095	Guidelines and application forms for directors in the summer seminars for secondary school teachers program.
3136-0096	Applicationfor participants in NEH summer seminars for college teachers.
3136-0097	Application for participants in summer seminars for secondary school teachers.
3136-0100	NEH planning and assessment studies program grant application review process.
3136-0101	NEH financial status report.
3136-0103	Nondiscrimination on the basis of handicap in federally assisted programs and activities.
3136-0108	Guidelines and application for faculty graduate study program for historically black colleges and universities.
	National Science Foundation
3145-0009	Higher education statistical survey panel.
3145-0015	Survey of scientific and engineering expenditures at universities and colleges: Fiscal year 1984, 1985 and 1986.
3145-0019	Survey of earned doctorates in United States.
3145-0034	Conservation of Antarctic animals and plants.
3145-0035	National Science Foundation science awards.
3145-0062	Survey of graduate science students and postdoctorates, fall 1982 and fall 1983.
3145-0067	National survey of academic research instruments and instrumentation needs.
3145-0074	Survey of scientific and engineering personnel employed at universities and colleges, January 1984, 1985, 1986.
3145-0084	Patents.
3145-0087	Compliance information under 45 CFR part 611.
3145-0090	Survey of academic R&D facilities for science, engineering and medicine.

[FR Doc. 85-13760 Filed 6-6-85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council, Refinery Capability Task Group; Meeting

Notice is hereby given that the Refinery Capability Task Group will meet in June 1985. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Refinery Capability Task Group will address previous Council refining studies and evaluate future refinery operations and their impact on petroleum markets. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Refinery Capability Task Group will hold its seventhy meeting on Thursday, June 27, 1985, starting at 9:00 a.m., in the Board Room of the Mark Hopkins Intercontinental Hotel, One Nobhill, San Francisco, California.

The tentative agenda for the Refinery Capability Task Group meeting follows:

1. Opening remarks by Chairman and Government Cochairman.
2. Review the work of the Task Group.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Refinery Capability Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Refinery Capability Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Mrs. Carolyn Klym, Office of Fossil Energy, Department of Energy (DOE), 301/353-2709, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 29, 1985.

William A. Vaughan,

Assistant Secretary Fossil Energy.

[FR Doc. 85-13774 Filed 6-6-85; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-85-01; OFP Case Number 55118-9270-01-12]

Acceptance of Petition for Exemption by General Electric Company; Availability of Certification

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption by General Electric Company and Availability of Certification.

SUMMARY: On March 25, 1985, General Electric Company (GE) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) seeking a permanent site limitation exemption for a proposed major fuel burning installation (MFBI) to be located in Fitchburg, Massachusetts, from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in certain new MFBIs. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are published in the **Federal Register** at 46 FR 59872 (December 7, 1981). The site limitation exemption criteria is contained in 10 CFR 503.33 of the final rules.

GE requests a permanent site limitation exemption in order to burn natural gas or No. 6 low sulphur fuel oil in a Hitachi Zosen boiler to be operated at GE's engineering and manufacturing facility located in the town of Fitchburg, Worcester County, Massachusetts. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in section 701 (c) and (d) of FUA and 10 CFR 501.31(a) and 501.33(a), interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing the petition as well as other documents and supporting materials on this proceeding

is available at the Department of Energy Freedom of Informatin Reading Room, 1000 Independence Avenue, S.W., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period of public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the Federal Register.

DATES: Written comments or a request for public hearing on the acceptance of GE's petition for exemption are due on or before July 22, 1985.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Coal & Electricity Division, Case Control Unit, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW. Washington, D.C. 20585.

Docket Number ERA-FC-85-011 should be printed on the outside of the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Phone (202) 252-8233

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The General Electric Plant at Fitchburg is an engineering and manufacturing facility for mechanical drive turbines and compressors.

The facility is located in the town of Fitchburg, Worchester County, Massachusetts. the plant is bounded on the north by the city of Fitchburg, on the east, south and west by the Nashua River. The southern boundary of the plant is adjacent to railroad lines of Conrail.

The main products of the plant are mechanical drive turbines and compressors. A large function in the production of these items is the final test of the turbine generator sets or compressor. These tests are required prior to delivery of the items to a customer. For these tests a source of steam is needed. Steam is currently supplied to the plant testing facility by gas/oil fired boilers. Plant heating is by steam, supplied by a gas/oil fired boiler.

GE has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned new boiler were furnished.

The proposed plant upgrade would install an Hitachi Zosen HC type boiler with a rated output of 100,000 1b/hr steam at 850 psig/950 °F. This would become the primary boiler with an existing Erie City Boiler as back up. The existing Combustion Engineering boiler would be retired. The additional generating capacity at 850 pisg 950 °F, based on long range needs, would be deferred until the Hitachi Zosen boiler is installed and total department implementation costs are determined.

The physical limitations addressed by the petitioner are, coal fired boiler along with handling equipment, ash removal equipment and a coal pile must be located in the vicinity of the powerhouse. Coal fired boilers are larger than oil/gas fired boilers. Space in the boiler house is very limited. The oil/gas fired, Hitachi Zosen boiler, fits snugly between all existing piping and building supports. A coal fired boiler of the same capacity would be much taller and could not be fully enclosed by the building. Additional area would also be required to stockpile coal.

GE Certified That

1. The site limitation criteria contained in 10 CFR 503.33(a) are satisfied by the boiler for which exemption is sought and the plant where it will be installed:

2. The mixtures use criteria set forth in 10 CFR 503.9(a) are satisfied by the boiler for which exemption is sought and the plant where it will be installed.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

Pursuant to 10 CFR 501.3, ERA hereby accepts GE's petition for a permanent site limitation exemption for the proposed boiler. The acceptance of the petition by ERA does not constitute a determination that GE is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on May 28, 1985.

Robert L. Davies,

Director, Coal and Electricity Divison, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-13684 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-04; FC Case No. 66017-9266-01-23]

Acceptance of Petition for Exemption and Availability of Certification by Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Power Developers, Inc.

SUMMARY: On February 20., 1985, Power Developers, Inc. (PDI), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order exempting its proposed facility, the Alta Project (Alta), a new powerplant, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants and certain new MFBI's. The criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503 (46 FR 59872, December 7, 1981).

PDI is seeking a permanent exemption to burn natural gas and a mixture of refuse derived fuel (RDF) from municipal solid wastes (MSW) in an electric power production facility to be located near and east of Scottsdale, Arizona. The company has petitioned for a permanent exemption from the

prohibitions of Title II of FUA under 10 CRF 503.38(d) based upon the projected use in the unit of a fuels mixture containing the alternate (RDF) fuel and not more than 25 percent gas as the primary fuel source. ERA's decision in this proceeding will determine whether PDI will be granted the requested permanent exemption. The eligibility and evidentiary requirements governing the fuels mixtures exemption are set forth in 10 CFR 503.38.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before July 22, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. "Docket No. ERA-FC-85-04" should be printed on the outside of the envelop and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephine (202) 252-4523

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: It is expected that PDI's proposed Alta electric power production facility near and east of Scottsdale, Arizona, will include as its principal components RDF fueled boilers and a steam turbine generating set (CT) with a heat recovery unit. An adjacent facility also being constructed by the applicant, will handle and classify approximately 6,000 tons per week of MSW in order to produce the RDF that will be used in the powerplant and to separate recoverable metals for sale. The RDF produced will provide a gross heat input to the Alta facility of about 360 million Btus per hour. Based on this level of RDF heat input, the natural gas input to the Alta facility, which will not be greater than 25 percent of facility's total Btu input, is expected to be approximately 120 million Btus per hour. Depending upon refinement of the final process calculations, it is expected that the Alta facility will produce approximately 39 MW, gross.

Section 212(d) of FUA and 10 CFR 503.38 provide for a permanent exemption from the prohibitions of Title II of the Act for units in which certain fuel mixtures containing natural gas or petroleum will be used as the primary energy source.

In accordance with the requirements of 10 CFR 503.38(a) PDI has certified to ERA that:

1. It proposes to use a mixture of natural gas and a fuel derived from municipal solid wastes as a primary energy source.

2. The Alta facility will use an amount of natural gas in its fuel mixture that will not exceed the minimum percentage of the total annual Btu heat input of the primary energy sources needed to maintain operational reliability of the Alta facility consistent with maintaining a reasonable level of fuel efficiency.

3. As required by § 503.8 of the regulations, "no alternative power supply exists" as that term is applied to applicant's small power production facility.

Section 503.38(d) provides an expedited certification alternative for petitioning for an exemption to permit the use of a mixture that will contain less than 25 percent of the nonalternate fuels.

In accordance with the requirements of 10 CFR 503.38(d), PDI has certified to ERA that:

1. The amount of natural gas proposed to be used as a primary energy source in the mixture, after deduction of the minimum amount for unit ignition, startup, testing flame stabilization, and control, will not exceed 25 percent of the total annual Btu heat input to the Alta facility.

2. PDI will secure all applicable environmental permits and approvals prior to operating the Alta facility.

The latter certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, PDI submitted, certified as accurate, the information required by the environmental checklist in section 503.13(b)(2).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act (NEPA). Pursuant to the amended guidelines, the grant or denial of FUA permanent exemptions, including the permanent exemption for new electric powerplants using certain fuel use mixtures containing natural gas or petroleum, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly effect the quality of the human environment. PDI Alta has certified that it will secure all aplplicable permits and approvals prior to commencement of operation of the new unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental checklist submitted by PDI Alta pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on PDI's Alta exemption that the grant or denial will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), acceptance of this petition by ERA does not constitute a determination that except for the petitioners, PDI Alta is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on May 28, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Commission.

[FR Doc. 85-13683 Filed 6-6-85; 8:45 am]

BILLING BODE 6450-01-M

Office of Energy Research

Special Research Grants Program; Program Notice 85-1

AGENCY: Office of Energy Research, Energy.

ACTION: Notice Inviting Grant Applications.

SUMMARY: The Office of Energy Research of the Department of Energy hereby announces its interest in receiving applications for Special Research Grants supporting the Toroidal Support Experimental Program. The Catalog of Federal Domestic Assistance number is 81.049. Information about submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found in the **Federal Register** at 10 CFR Part 605 (50 FR 14856, April 15, 1985).

DATES: Selection will be made in early FY 86; therefore, submission of an application prior to September 1, 1985, is encouraged.

ADDRESSES: Applications should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, Room G-226, Washington, D.C. 20545; Program Notice 85-1.

FOR FURTHER INFORMATION CONTACT: Dr. Charles R. Finfgeld, U.S. Department of Energy, Office of Fusion Energy, ER-542, Washington, D.C. 20545, (301) 353-3421.

SUPPLEMENTARY INFORMATION: The objective of this Toroidal Support Experimental Program Initiative is to test concepts for the improvement of the Tokamak or similar toroidal approaches as plasma confinement devices for reactor applications. In order to assist DOE in carrying out the Program, applicants should propose a project that includes: Steady state operation, small size, improved heating efficiency, improved confinement (particularly during heating), increased beta, elimination or control or disruptions, or reduction of magnetic field requirements. New ideas that are innovative and creative, and are suitable for exploration and verification in small scale experiments, are especially desirable. A limited number of awards will be funded from an anticipated $2,000,000 that is expected to be available in FY 86. DOE reserves the right to support or not support any or all applications in whole or in part. Application kits and copies of 10 CFR Part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above for address). Instructions for the preparation of the application are included in the kit.

Issued in Washington, D.C., on June 3, 1985.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 85-13769 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-10-20-000, 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

May 31, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on May 24, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fifth Revised Sheet No. 211
Fourteenth Revised Sheet No. 213
Third Revised Sheet No. 405
Third Revised Sheet No. 425

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules STB and S-IS the effect of changes in Texas Eastern Transmission Corporation's ("Texas Eastern") underlying Rate Schedules SS-II and ISS-III.

Algonquin Gas requests that the Commission accept the revised tariff sheets filed herein to be effective June 3, 1985, to coincide with the proposed effective date of Texas Eastern's changes.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before June 10, 1985. Protest 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. 85-13789 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS76-448-001 et al.]

Roy G. Barton, Jr., and Norma J. Chanley, et al.; Applications for "Small Producer" Certificates [1]

June 3, 1985.

Take notice that each of the applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before June 17, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS76-448-001	[1] 3/18/85	Roy G. Barton, Jr., Norma J. Chanley, Oil and Gas Producer, P.O. Box 978, Hobbs, New Mexico 88240.
CS76-926-001	[2] 4/15/85	Kirby Exploration Company of Texas (KECT).

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-210-001	[1]4/15/85	Harriet J. Catron.
CS85-62-000	4/1/85	SMACKCO, Ltd., Coastal States Exploration, Inc., P.O. Drawer 649, Brewton, AL 36427.
CS85-65-000	4/15/85	Egret Energy Corporation, 3223 Smith Street, Suite 303, Houston, Texas 77006.
CS85-66-000	4/22/85	Tessin Energy Company, 1400 Post Oak Boulevard, Suite 710, Houston, Texas 77058.
CS85-67-000	4/22/85	Oilfield Salvage & Service Co., 910—15th Street, Suite 840, Denver, Colorado 80202.
CS85-68-000	4/24/85	GKM, Inc., P.O. Box 35583, Tulsa, Oklahoma 74153.
CS85-69-000	5/10/85	Dazet Oil & Gas Co., Inc., Ste. 1404 Pere Marquette Bldg., New Orleans, Louisiana 70112.
CS85-70-000	5/13/85	Trafalgar House Oil and Gas, Inc., 8584 Katy Freeway, Suite 222, Houston, Texas 77024.
CS85-71-000	5/13/85	Carroll L. Brewer, Box 54381, Oklahoma City, Oklahoma 73154.
CS85-72-000	5/13/85	Carl Reimers, III Agency, P.O. Box 2546, Fort Worth, Texas 76113.
CS85-74-000	5/15/85	South Louisiana Oil Venture, 7700 San Felipe, Suite 240, Houston, Texas 77063.
CS85-75-000	5/22/85	Oil Search Corporation, Suite 201, Bldg. 2, 7601 Academy Blvd., Albuquerque, New Mexico 87109.

[1] Letter dated March 14, 1985 requesting to include Norma J. Charley as small producer certificate co-holder.
[2] Letter requesting the inclusion of additional parties as certificate co-holders to Applicant's small producer certificate.
[3] Letter requesting redesignation of the small producer certificate.

[FR Doc. 85-13797 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-412-000]

Central and South West Services, Inc.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Denying Motion for Issuance of Deficiency Letter, Granting Waiver, Denying Motion for Consolidation, and Establishing Hearing Procedures

Issued: May 31, 1985.

On October 14, 1983, in Docket No. ER84-31-000, Central Power and Light Company (CPL), Public Service Company of Oklahoma (PSO), Southwestern Electric Power Company (SWEPCO), and West Texas Utilities Company (WTU) filed an initial operating agreement for the interconnected operation of their systems. The operating agreement, which became effective on December 14, 1984, was accepted for filing, suspended, and set for hearing by Commission order dated December 13, 1983. 25 FERC ¶ 61,381. The operating agreement provides that transmission losses occasioned by the transfer of power and energy among and between the companies shall be determined and accounted for in accordance with procedures to be developed.

On April 2, 1985, Central and Power West Services, Inc., (CSWS), on behalf of CPL, PSO, SWEPCO, and WTU, tendered for filing, under the abbreviated filing requirements provided for in § 35.13(a)(2) of the Commission's regulations, a proposed Interim Loss Compensation Procedure for the Central and South West System.[1] The procedure establishes a method for handling transmission losses resulting from energy transfers among the four operating companies. CSWS requests that its filing be made effective as of December 14, 1984, to coincide with the effective date of the operating agreement; accordingly, the company requests waiver of the notice requirements. CSWS further requests that the Commission waive the requirements of § 35.13 of the regulations to the extent that its submittal does not comply.

Notice of the filing was published in the **Federal Register**,[2] with comments due on or before April 23, 1985. On April 23, 1985, Brazos Electric Power Cooperative, Inc., Mid-Tex Electric Cooperative, Inc., and the Mid-Tex member systems (Cooperatives) filed a motion to intervene. They request that the filing be suspended for one day and set for hearing. In support, the Cooperatives contend that the proposed filing lacks certain explanations, including: (1) Whether transfers by WTU to CPL are to be accomplished by displacement or wheeling; and (2) whether the losses for WTU transfers to CPL include the effect of transmission over non-CSW companies. The Cooperatives contend that the proposed loss procedures should be consistent with the loss compensation under the CSW tariffs for transmission services using the DC tie (at issue in *Public Service Co. of Oklahoma*, Docket Nos. ER82-545-000, *et al.*). Lastly, the Cooperatives note that the proposed procedures are interim and are to be reviewed near the end of 1985. They therefore request that the companies be directed to file, prior to the hearing herein, whatever permanent procedures they expect to implement so that both interim and permanent procedures can be reviewed together.

On April 24, 1985 the Public Utilities Board of the City of Brownsville, Texas (Brownsville) filed an untimely motion to intervene [3] in which it requests a one day suspension and a hearing. Brownsville alleges that the proposed procedure is unduly discriminatory since it allows for a sharing of losses between the CSW companies while third party purchasers, such as itself, must pay full losses in their transactions with CSW. Brownsville objects to the proposed loss procedure in various respects, including: (1) Lack of definitive standards for the ERCOT loss matrix approach or ERCOT practices; (2) no definition of transaction path; (3) quarterly update of WTU's loss factor without a filing; and (4) no specification as to how long the interim procedure will be in effect. Additionally, Brownsville requests: (1) That the filing be made deficient since data showing all transactions and revenues among the CSW companies since December 14, 1984, were not provided; (2) denial of the request for waiver of the § 35.13 filing requirements; and (3) consolidation of this proceeding with Docket Nos. ER82-545-000, *et al.*, or alternatively with Docket No. ER84-31-000.

On May 13, 1985, CSWS filed an answer to the Cooperatives' and Brownsville's pleadings. While not opposing either motion to intervene, CSWS opposes suspension of its submittal. In each instance, CSWS asserts that the intervenors' objections to the filing are without merit.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make the Cooperatives parties to this proceeding. Furthermore, we find that good cause exists to grant Brownsville's untimely intervention, given its stated interests, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

Notwithstanding the intervenors' challenge to the sufficiency of the supporting data supplied by the company, we find that the filing is appropriate for submittal under and substantially complies with the Commission's abbreviated filing requirements. Therefore, we shall deny Brownsville's motion for issuance of a deficiency letter.[4]

[1] *See* Attachment for rate schedule designations. CPL, PSO, SWEPCO, and WTU are wholly-owned operating subsidiaries of Central and South West Corporation (CSW). CSWS, another subsidiary, acts as agent for the operating companies.
[2] 50 FR 14747 (1985).
[3] Brownsville states that its counsel were involved in other proceedings prior to the April 23, 1985 due date for interventions in this proceeding. Brownsville also contends that no party has been prejudiced by the delay in filing and that counsel for CSWS does not oppose Brownsville's motion to intervene out of time.
[4] CSWS' request for waiver of the § 35.13 requirements is unnecessary.

With respect to the Cooperatives' request that the CSW companies be directed to file, prior to hearing, their anticipated permanent procedures, we consider this request to be premature. The companies have stated that the interim procedures will be reviewed only at such time as they have implemented their "Energy Management System" toward the end of 1985. Further, any revisions to the procedures will have to be timely filed with the Commission, at which time specific comments may be addressed. Accordingly, we shall deny the Cooperatives' request.

Concerning Brownsville's allegations as to WTU's quarterly updates, we note that loss adjustments are a common component of the energy charges billed in interchange transactions. These charges represent formula rates which mirror the incremental costs of the seller and do not require a Part 35 filing. We shall, therefore, deny the request to require that the particular loss factor be filed as it is periodically revised.

Our preliminary review of CSWS' filing and the pleadings indicates that the proposed loss procedures have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept CSWS' submittal for filing and suspend its operation as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed loss procedures may not produce substantially excessive revenues. Further, the intervenors have requested only a one day suspension. We shall therefore suspend the submittal for one day. In addition, since the loss procedures apply to the operating agreement which has already been placed into effect subject to refund and which anticipates that a transmission loss mechanism would be established, we find that good cause exists to grant CSWS' request for waiver of the notice requirements. Accordingly, we shall suspend the filing to become effective on December 15, 1984, subject to refund.

In view of the relationship between the present filing and the CSW operating companies' interconnected operations agreement at issue in Docket No. ER84–31–000, we would normally consider it appropriate to consolidate the two proceedings. However, the hearings in Docket No. ER84–31–000 have concluded, and the parties are now awaiting the presiding judge's decision. With respect to Brownsville's alternative request to consolidate this docket with Docket Nos. ER82–545–000, *et al.*, that proceeding is also at an advanced stage and we do not find good cause for consolidation.[5]

The Commission orders:

(A) Brownsville's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Brownsville's motion for issuance of a deficiency letter is hereby denied.

(C) CSWS' request for waiver of the notice requirements is hereby granted.

(D) The Cooperatives' request that CSWS be directed to file, prior to the hearing ordered herein, permanent transmission loss procedures is hereby denied.

(E) CSWS' submittal is hereby accepted for filing and suspended for one day, to become effective, subject to refund, on December 15, 1984.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of CSWS' submittal.

(G) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days from the issuance of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates, including the filing of the companies' case-in-chief, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) Brownsville's motion to consolidate is hereby denied.

(I) The Secretary shall promptly publish this order in the Federal Register.

[5] We also note that the Commission has denied a previous request by Brownsville to consolidate Docket Nos. ER84–31–000 and ER82–545–000, *et al.* *See* 25 FERC at 61,635.

By the Commission.

Kenneth F. Plumb,

Secretary.

Rate Schedule Designations, Docket No. ER85–412–000

Central Power and Light Company

(1) Supplement No. 9 to Rate Schedule No. 68.

Public Service Company of Oklahoma

(2) Supplement No. 9 to Rate Schedule No. 228.

Southwestern Electric Power Company

(3) Supplement No. 9 to Rate Schedule No. 89.

West Texas Utilities Company

(4) Supplement No. 9 to Rate Schedule No. 47.

[FR Doc. 85–13790 Filed 6–6–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8821–000]

City of New York, Department of Environmental Protection; Notice Suspending 90-Day Period for Action on Small Hydro Exemption

June 3, 1985.

The City of New York, Department of Environmental Protection, filed an application for a conduit exemption for the West Delaware Tunnel Project No. 8821, to be located at Rondout Reservoir in Sullivan County, New York. The application was filed pursuant to section 30 of the Federal Power Act, 16 U.S.C. 823(a) (1982), and 18 CFR 4.90 *et seq.* (1984).

Additional time is necessary for action on the application in order to ensure full consideration of all filings and issues in this proceeding. The 90-day period for action is suspended pursuant to 18 CFR 4.93(e)(4).

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–13794 Filed 6–6–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–472–000]

Columbia Natural Resources, Inc.; Application

June 3, 1985.

Take notice that on May 24, 1985, Columbia Natural Resources, Inc. (CNR), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CI85–472–000, an application pursuant to section 7 of the Natural Gas

Act and Subpart B of Part 157 of the Commission's Regulations for the sale of natural gas from certain properties to be acquired from its affiliate Columbia Gas Transmission Corporation ("Columbia Transmission"), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNR states that the Columbia Gas System, which is comprised of The Columbia Gas System, Inc. and its subsidiaries, including Columbia Transmission, is realigning the Appalachian area production properties of its subsidiaries into CNR. As part of this restructuring, all of Columbia Transmission's oil and gas production properties will be assigned to CNR and all of the exploration, development, and production activities of the Columbia Gas System in the Appalachian and adjacent areas will be carried on by CNR.

CNR requests certificate authorization for the sale by CNR to Columbia Transmission of gas which is not removed from the Commission's Natural Gas Act jurisdiction by virtue of section 601(a)(1) of the Natural Gas Policy Act of 1978 (NGPA) and which is produced from the properties to be assigned to CNR by Columbia Transmission which were committed or dedicated to interstate commerce as of the day before the date of the enactment of the NGPA. CNR states that the contracts governing the sale of such gas by CNR to Columbia Transmission afford the same flexibility with respect to price and obligation to take as Columbia Transmission currently enjoys in producing the gas itself. Specifically, Columbia Transmission will retain the right to adjust the price for such gas at virtually any time in response to downstream price signals and will not be obligated to take any particular quantity of gas or to pay for gas not taken.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNR to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13795 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-473-000]

Columbia Natural Resources, Inc.; Application

June 3, 1985.

Take notice that on May 24, 1985, Columbia Natural Resources, Inc. (CNR), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CI85-473-000, an application pursuant to section 7 of the Natural Gas Act and Subpart B of Part 157 of the Commission's Regulations for the sale of natural gas from certain properties to be acquired from its affiliate The Inland Gas Company, Inc. (Inland), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNR states that the Columbia Gas System, which is comprised of The Columbia Gas System, Inc. and its subsidiaries, including Inland, is realigning the Appalachian area production properties of its subsidiaries into CNR. As part of this restructuring, all of Inland's oil and gas production properties will be assigned to CNR and all of the exploration, development, and production activities of the Columbia Gas System in the Appalachian and adjacent areas will be carried on by CNR.

CNR requests certificate authorization for the sale by CNR to Inland of gas which is not removed from the Commission's Natural Gas Act jurisdiction by virtue of section 601(a)(1) of the Natural Gas Policy Act of 1978 (NGPA) and which is produced from the properties to be assigned to CNR by Inland which were committed or dedicated to interstate commerce as of the day before the date of the enactment of the NGPA. CNR states that the contract governing the sale of such gas by CNR to Inland afford the same flexibility with respect to price and obligation to take as Inland currently enjoys in producing the gas itself. Specifically, Inland will retain the right to adjust the price for such gas at virtually any time in response to downstream price signals and will not be obligated to take any particular quantity of gas or to pay for gas not taken.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 17, 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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13796 Filed 6-6-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-406-000]

Sierra Pacific Power Co.; Order Accepting for Filing and Suspending Rates, Granting Interventions, Directing Summary Disposition, and Establishing Hearing Procedures

Issued: May 31, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On April 1, 1985, Sierra Pacific Power Company (Sierra) tendered for filing a two-phased increase in rates applicable to five wholesale customers.[1] Based upon the test year ending June 30, 1986, the Phase I rates would increase jurisdictional revenues by approximately $1.8 million (25%). The Phase II rates would increase revenues by an additional $190,000. The company proposes a June 1, 1985 effective date for both phases. However, in the event that the Commission accepts the Phase II rates or suspends them for only one day, Sierra requests that the Phase I rates be deemed withdrawn.

Notice of Sierra's filing was published in the **Federal Register**,[2] with responses

[1] See Attachment for rate schedule designations.

[2] 50 FR 14422 (1985).

due on or before April 23, 1985. Untimely motions to intervene were filed by the Secretary of the Army (Army) and, jointly, by Truckee-Donner Public Utility District (Truckee-Donner) and the City fo Fallon, Nevada (Fallon).

The Army, Truckee-Donner, and Fallon request that the Commission suspend Sierra's rates for five months. In support, various cost of service issues are raised.[3]

On May 8, 1985, Sierra filed an answer. While the company does not oppose intervention by the Army, Truckee-Donner, or Fallon, it does oppose their requests for a five month suspension. Sierra contends that a five month suspension is not supported by the allegations contained in the motions to intervene.

Discussion

We find that good cause exists to grant the late-filed motions to intervene of the Army, Truckee-Donner, and Fallon, in light of the interest of these parties as directly affected customers, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

We note that Sierra has included in its filing a purchased power adjustment clause (PPAC) like one that was accepted by the Commission as part of a settlement agreement in Docket No. ER82-105-000, a prior Sierra rate case. However, that settlement specified that the PPAC "shall terminate at such time as a general rate revision is filed under section 205(d) of the Federal Power Act and part 35 of the Commission's regulations after May 1, 1984." Because the present PPAC was adopted as part of this settlement package and because the contract specifically calls for its termination at this time, the proposed PPAC must now be evaluated anew under the Commission's general standards.

The Commission has traditionally disallowed automatic cost adjustment clauses which track only one cost component.[4] The Commission's practice has been to permit automatic clauses in only a few instances: fuel adjustment clauses, research and development cost adjustments, full cost of service formula tariffs, and interchange rates based on incremental costs. Automatic adjustment clauses are exceptions to the notice and review provisions of the Federal Power Act, and approval of such clauses as the rate is a departure from the traditional regulatory scheme.

Sierra states that purchased power constitutes 60% of its generation resources. However, the Commission has disallowed PPAC's on several occasions where the utility relied on similar amounts of purchased power. Sierra also supports its PPAC by comparing it to the experimental adjustment clause which was adopted as part of the bulk power market experiment in *Public Service Co. of New Mexico*, Opinion No. 203, 25 FERC ¶ 61,469 (1983). We find this comparison to be wholly inappropriate. The experimental adjustment clause represents only one component of a novel and limited experimental program. The company also advances arguments concerning its ability, by retention of the PPAC, to reduce the number of its rate filings and thereby its administrative costs. Again, we are unpersuaded that Sierra has presented a reason to provide exceptional treatment in its case. We shall, therefore, summarily reject Sierra's PPAC and direct the company to file revised rates reflecting the exclusion of this provision.

Our preliminary review of Sierra's filing and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified by summary disposition, and we shall suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we noted that rate filings would generally be suspended for the maximum period where preliminary review indicates that the proposed rates may be unjust and unreasonable, and may generate substantially excessive revenues, as defined in *West Texas*. Here, our examination indicates that both the Phase I and Phase II rates may yield substantially excessive revenues. Since Sierra requested the same effective date for Phase I and Phase II, each would, following suspension, become effective on November 1, 1985. We shall therefore deem the Phase I rates withdrawn, and suspend the Phase II rates, as modified, for five months, to become effective on November 1, 1985, subject to refund.[5]

The Commission orders:

(A) The untimely motions to intervene filed by the Army, Truckee-Donner, and Fallon are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Sierra's proposed purchased power adjustment clause is hereby rejected. Within thirty (30) days of the date of this order, Sierra shall refile its rates to reflect the exclusion of the clause.

(C) Sierra's Phase I rates are deemed withdrawn; the proposed Phase II rates, as modified by summary disposition, are hereby accepted for filing, and are suspended for five months, to become effective on November 1, 1985, subject to refund.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of Sierra's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

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[3] These issues include: (1) Allocation of transmission, administrative, and general expenses; (2) income tax calculations; (3) fuel inventories and cash working capital; and (4) return on common equity.

[4] *See Montaup Electric Co.*, 26 FERC ¶ 61,021 (1984); *Central Power & Light Co.*, 11 FERC ¶ 61,102 (1980); *Lockhart Power Co.*, Opinion No. 29, 4 FERC ¶ 61,337 (1978).

[5] This treatment is consistent with *West Texas Utilities Co.*, 25 FERC ¶ 61,114 (1983), and consistent with the treatment requested by Sierra for the rates under slightly different circumstances. Sierra indicated that if the Phase I and II rates were both accepted without suspension or suspended for a nominal period, then the Phase II rates should be put into effect, and the Phase I rates should be deemed withdrawn.

SIERRA PACIFIC POWER COMPANY—DOCKET NO. ER85-406-000 RATE SCHEDULE DESIGNATIONS

Designation	Description
(1) 22nd Revised Sheet No. 4 to FPC Electric Tariff, Original Volume No. 1 (Supersedes 21st Revised Sheet No. 4 and 11th Revised Sheet No. 6)	Tariff Customers.
(2) Supplement No. 9 to Supplement No. 9 to rate Schedule FPC No. 11 (Supersedes Supplement No. 8 to Supplement No. 9).	Mount Wheeler Power, Inc.

[FR Doc. 85-13791 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-2-8-000, 001]

South Georgia Natural Gas Co.; Proposed Changes FERC Gas Tariff

May 31, 1985.

Take notice that on May 24, 1985, South Georgia Natural Gas Company (South Georgia) tendered for filing Thirty-First Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1, and Thirty-Second Revised Sheet No. 4 to its FPC Gas Tariff, First Revised Volume No. 1. These tariff sheets and supporting information are being filed with a proposed effective date of May 1, 1985 and July 1, 1985, pursuant to the Purchased Gas Cost Adjustments provisions set out in Section 14 of South Georgia's tariff.

South Georgia states that its Thirty-First Revised Sheet No. 4 reflects a decrease of 31.93¢ per MMBtu in the Current Adjustment, and Thirty-Second Revised Sheet No. 4 reflects a decrease of 2.53¢ per MMBtu in the Surcharge Adjustment.

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, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (§§ 385.214, 385.211). All such motions or protests should be filed on or before June 10, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13792 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP78-490-006]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

May 31, 1985

Take notice that on May 22, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing the following sheets to Sixth Revised Volume No. 2 of its FERC Gas Tariff:

First Revised Sheet No. 299E-299E7
Substitute Third Revised Sheet No. 299E8-299E9
Second Revised Sheet No. 299E10-299E21

Tennessee states that the primary purpose of this filing is to change the amount by which gas purchase entitlements in a related sales agreement may be affected by the transportation agreement underlying Tennessee's Rate Schedule T-82.

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 20425, 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 June 7, 1985 Protests will 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, provided, however, that any person who has previously filed a motion to intervene in this proceeding is not required to file a further pleading. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-13793 Filed 6-6-85; 8:45 am]
BILLING CODE 6717-01-M

[6450-01]

Office of Hearings and Appeals

Cases Filed; Week of April 26 Through May 3, 1985

During the Week of April 26 through May 3, 1985, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 24, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Apr. 26 through May 3, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 26, 1985	Theodore M. Ragsdale, Gardenia, CA	HRZ-0244	Interlocutory order. If granted: The Proposed Remedial Order issued to Theodore M. Ragsdale d.b.a. Salem Ventures, Inc. (Case No. HRO-0270) would be dismissed.
Apr. 26, 1985	E.B. Brooks, Jr., Dallas, TX	HRA-0009	Appeal of a modified remedial order. If granted: The April 10, 1985 Modified Remedial Order issued to E.B. Brooks, Jr. (Brooks) by the Economic Regulatory Administration would be rescinded and Brooks would not be required to take further action to comply with the July 10, 1978 Remedial Order issued to it (Case No. FRA-1416).
Apr. 30, 1985	Busch Distributors, Pullman, WA	HEE-0147	Exception to the reporting requirements. If granted: Busch Distributors would not be required to file Form EIA-782B "Resellers/Retailers Monthly Petroleum Product Sales Report."
Do	Cooper Petroleum, Inc., Laurinburg, NC	HEE-0146	Exception to the reporting requirements. If granted: Cooper Petroleum, Inc. would not be required to file Form EIA-782B the "Resellers/Retailers Monthly Petroleum Product Sales Report."

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Apr. 26 through May 3, 1985]

Date	Name and location of applicant	Case No.	Type of submission
May 1, 1985	Ball Marketing, Inc., Washington, DC	HRD-0279, HRH-0279	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Ball Marketing, Inc. in response to a Proposed Remedial Order issued to it (Case No. HRO-0268).
May 3, 1985	United Independent Oil Company, Washington, DC	HRD-0280, HRH-0280	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened regarding the Statement of Objections submitted by United Independent Oil Company in response to a Proposed Remedial Order issued to it (Case No. HRO-0247).

REFUND APPLICATIONS RECEIVED

[Week of April 26 through May 3, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
04/29/85	Amoco/Jax Kar Wash, Inc	RF21-12393
04/29/85	Hertz/Air Products & Chemicals, Inc.	RF76-142
04/29/85	Hertz/TRW, Inc	RF76-143
04/29/85	Larco/Rogers Ford	RF112-10
04/29/85	Gulf Oil/Bennett's Service Station.	RF40-3020
04/30/85	Waller/Wooten Oil Company	RF78-9
04/30/85	Hertz/Chevron Corporation	RF76-144
04/30/85	Hertz/Lear Siegler	RF76-145
04/30/85	Hertz/National Intergroup	RF76-146
04/30/85	Amoco/Deluxe Service Station	RF21-12392
04/30/85	McCarty/Minster Farmers Cooperative Exchange, Inc.	RF143-1
04/30/85	Hertz/Exxon Corp	RF76-147
04/30/85	Hertz/Standard Oil Co. (Indiana)	RF76-148
04/30/85	Hertz/Ford Motor Company	RF76-149
04/30/85	Hertz/American Bar Association	RF76-150
04/30/85	Hertz/Hexcel Corporation	RF76-151
05/01/85	McCarty/Slattery Oil Company, Inc.	RF143-2
05/01/85	Kiesel/General Services Administration.	RF126-7
05/01/85	Hendel's/Lou's Enterprise, Inc	RF79-16
05/01/85	Nielsen Oil/Shortstop East	RF141-5
05/01/85	Hertz/Atlantic Richfield Company	RF76-152
05/01/85	Hertz/Northrup Corporation	RF76-153
05/01/85	Hertz/Warner Communications	RF76-154
05/01/85	Hertz/KVB, Inc	RF76-155
05/01/85	Hertz/Celanese Corporation	RF76-156
05/01/85	R.V. Whitmer/Pike-Delta-York Local Schools.	RF144-1
05/01/85	Gulf Oil/Freeway Gulf	RF40-3021
05/01/85	Gulf Oil/Palmer Gulf	RF40-3022
05/02/85	Gulf Oil/Lake City Gulf	RF40-3023
05/02/85	Union Texas Petroleum/American Propane Corp.	RF140-3
05/02/85	Consolidated Gas/American Propane Corp.	RF77-5
05/02/85	National Helium/District of Columbia.	RQ3-196
05/02/85	Bayou/Ids Gasoline/Howard Industries.	RF117-3
05/02/85	Union Texas Petroleum/Petroleum Supply.	RF140-4
05/02/85	Union Texas Petroleum/Consumers Supply.	RF140-5
05/02/85	Union Texas Petroleum/Moffitt Oil Co.	RF140-6
05/02/85	Union Texas Petroleum/Hubbard Oil Corp.	RF140-7
05/02/85	Union Texas Petroleum/Campbell Oil Company.	RF140-8
05/02/85	Union Texas Petroleum/Advance Petroleum Distributing Company.	RF140-9
05/02/85	Union Texas Petroleum/Hi-Lo Corporation.	RF140-10
05/02/85	Union Texas Petroleum/Nu Way Oil Company.	RF140-11
05/02/85	Union Texas Petroleum/Thrift Oil Company.	RF140-12
05/02/85	McCarty/Mays Oil, Inc	RF143-3
05/02/85	Union Texas Petroleum/Campbell Oil Company.	RF104-2
05/02/85	Union Texas Petroleum/Fuller Oil Co., Inc.	RF140-3

REFUND APPLICATIONS RECEIVED—Continued

[Week of April 26 through May 3, 1985]

Date	Name of refund proceeding/ name of refund applicant	Case No.
05/03/85	Union Texas Petroleum/Hillman Oil Company.	RF104-4
05/03/85	Union Texas Petroleum/Arrow Enterprises, Inc.	RF104-5
05/03/85	Union Texas Petroleum/Fuller Oil Company.	RF140-13
05/03/85	Union Texas Petroleum/Hillman Oil Company.	RF140-14
05/03/85	Union Texas Petroleum/Arrow Enterprises, Inc.	RF140-15
05/02/85	APCO Refund Applications	RF83-21 through RF83-127

[FR Doc. 85-13689 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of April 29 Through May 3, 1985

During the week of April 29 through May 3, 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.

May 21, 1985.

Spradling's Texaco Petroleum Products, Buhl, Idaho, HEE-0133 reporting requirements.

Spradling's Texaco Petroleum Products filed an Application for Exception from the provisions of the EIA reporting requirement. The exception request, if granted, would relieve Spradling's of its obligation to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Sales Report of Fuel Oil and Kerosene." On May 1, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-13688 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of May 3 Through May 10, 1985

During the Week of May 3 through May 10, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in

these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

May 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 3 through 10, 1985]

Date	Name and location of applicant	Case No.	Type of submission
May 6, 1985	Northeast Petroleum Industries, Washington, DC	HEF-0580	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V in connection with the August 15, 1983, Consent Order entered into with Northeast Petroleum Industries.
Do	Sigmor Corporation, Washington, DC	HEF-0581	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Consent Order entered into with Sigmor Corporation.
May 7, 1985	Palo Pinto, Belridge & Amoco/West Virginia, Charleston, WV	RM5-3, RM8-4, RM21-5	Request for modification/rescission. If granted: The July 13, 1984 and March 15, 1985, Decisions and Orders (Case Nos. RQ21-92, RQ8-93 and RO5-175) issued to West Virginia would be modified regarding the State's application for refund submitted in the Palo Pinto, Belridge and Amoco second stage refund proceedings.
May 8, 1985	Cranston Oil Service Co., Inc., Providence, RI	HRX-0121	Supplemental order. If granted: The trustee of the Cranston Oil Service Co., Inc. escrow account would be directed to remit the money in the account to the Department of Energy for distribution in a Subpart V proceeding.
May 9, 1985	Gerald Lawrence d/b/a Lawrence LP Gas, Oldsmar, FL	HRA-0010	Appeal of a modified remedial order. If granted: The April 10, 1985, Modified Remedial Order issued to Gerald Lawrence by the Economic Regulatory Administration would be modified regarding petroleum pricing violations.
Do	Government Sales Consultants, Annandale, VA	HFA-0288	Appeal of an information request denial. If granted: The April 17, 1985, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and the Government Sales Consultants would receive access to documents regarding Project Software Development, Inc.
Do	Southland Royalty Company, Washington, DC	HEF-0582	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR, Part 205, Subpart V in connection with the December 5, 1984 Court Order issued to Southland Royalty Company.

REFUND APPLICATIONS RECEIVED

[Week of May 3 through May 10, 1985]

Date	Name of refund Proceeding/ name of refund applicant	Case No.
04/22/85	Foster Oil Co./Norm Adamic Arrow Service.	RF146-1
04/26/85	C.C. Dillon Co./Crystal Clean Car Wash & Gas.	RF148-1
04/29/85	Cross Oil Co./Joseph J. Manfred	RF147-1
04/29/85	Point Landing/Peavey Grain Cos	RF122-6
05/02/85	Eddy Refining/Key Oil Co./Texas Gulf Gas Corp.	RF145-1
05/02/85	Eddy Refining/Key Oil Co./ Springer Oil Co.	RF145-2
05/06/85	APCO/Nebraskaland Petroleum, Inc.	RF83-128
05/06/85	Bayou State Oil/Ida Gasoline/ Ray Irby.	RF117-4
05/06/85	Bayou State Oil/Ida Gasoline/ Leon E. Mills.	RF117-5
05/06/85	Tenneco/Minute Man Fuels, Inc	RF7-127
05/06/85	Union Texas Pet. Corp./Mobil Oil Corp.	RF140-16
05/06/85	Union Texas Pet. Corp./Commercial Propane Corp.	RF140-17
05/06/85	Union Texas Petroleum Corp./ Empire, Inc.	RF104-8
05/07/85	Nielsen Oil & Propane, Inc./Soil Oil Co.	RF141-8
05/07/85	Gulf Oil/Almeda Gulf Service	RF40-3024
05/07/85	McCarty Oil/Mercer Landmark, Inc.	RF143-4
05/07/85	Seminole Refining/National Linen Service.	RF111-8
05/07/85	Kiesel Co./ACF Industries	RF126-8
05/08/85	Union Texas Pet. Corp./Chevron, USA.	RF140-18
05/08/85	Waller/Defense Logistics Agency	RF78-10
05/08/85	Bayou State Oil/Ida Gasoline/ Jack Chadick.	RF117-6
05/08/85	Kiesel Co./Turley Martin Co	RF126-9
05/08/85	McCarty Oil/G&L Oil co	RF143-5
05/09/85	Aminoil, USA/Hank's LP Gas & Midstate Propane	RF139-4
05/09/85	Little America Refining Co./Wiles Oil Co.	RF112-11
05/09/85	Ropet, Inc./Duquesne Light Co	RF149-1
05/10/85	Kiesel Co./St. Lucas Cemetery	RF125-10

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 3 through May 10, 1985]

Date	Name of refund Proceeding/ name of refund applicant	Case No.
05/10/85	Little America Refining Co./Metro Oil Products, Inc.	RF112-12
05/10/85	Union Texas Petroleum Corp./ Moss LP-Gas Co., Inc.	RF140-19

NOTICE OF OBJECTION RECEIVED

[Week of May 3-10, 1985]

Date	Name and Location of applicant	Case No.
05/09/85	U.S. Department of Interior Washington, DC	HEE-0083

[FR Doc. 85-13690 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

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 solicits comments concerning the appropriate procedures to be followed in refunding a $21,200 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Harris Enterprises, Inc. of Portland, Oregon (Case No. HEF-0087).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to Harris Enterprises Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case No. HEF-0087.

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(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Harris Enterprises, Inc. (Harris) of Portland, Oregon and the DOE which settled possible regulatory violations in the firm's sales of refined petroleum products during the consent order period, November 1, 1973 through August 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE

has tentatively formulated to distribute the escrow amount funded by Harris pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Harris refined petroleum products during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: May 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

May 23, 1985.

Name of Firm: Harris Enterprises, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0087.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged or adjudicated overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 83,553 at 85,284 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Harris Enterprises, Inc. (Harris) of Portland, Oregon.[1]

Harris sells refined petroleum products in the states of Oregon and Washington to other petroleum marketers (resellers) and to end-users in bulk sales and through 16 company-operated retail stations. Harris is therefore a "reseller-retailer" of refined petroleum products, as that term was defined in 10 CFR 212.31. An ERA audit of Harris' operations during the period November 1, 1973 through August 31, 1974 revealed possible violations of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputs between Harris and the DOE regarding the firm's compliance with the DOE price and allocation regulations during the audit period, the firm entered into a consent order with the DOE on June 11, 1979. The consent order covers Harris' sales of motor gasoline, No. 1 stove (heating) oil, and No. 2 fuel oil during the ten-month audit period (hereinafter the consent order period). The consent order refers to the ERA's allegations of overcharges, but notes that no findings of violations were made. Additionally, the consent order states that Harris does not admit that it committed any such violations. In executing the consent order, Harris agreed to refund $39,685 directly to the customers of its retail outlets through price rollbacks and $118,239 directly to its wholesale customers. *See* Consent Order ¶ 7. An Appendix to the consent order sets forth the names and addresses of the wholesale customers who were allegedly overcharged by Harris, along with the designated refund amounts.

Harris implemented a price rollback at its retail outlets and began making direct payments to wholesale customers pursuant to the consent order. However, in March 1980, Harris notified the DOE that, due to the fact that a number of its customers had changed addresses or gone out of business, it was impossible for it to complete its direct refund obligations to wholesale customers. Harris proposed that it sastisfy the $55,741 balance of its refund obligation by donating heating oil to various charities. The ERA rejected this proposal and, after further negotiations, on July 17, 1981, Harris and the ERA amended the June 11, 1979 consent order and agreed that Harris' obligations under the consent order would be satisfied if the firm remitted $21,200 to the DOE for deposit in an interest-bearing escrow account for later disbursement. In modifying the original consent order, the DOE and Harris agreed that the refund to Harris retail station customers had been completed and that only refunds to Harris' wholesale customers were outstanding. This Proposed Decision and Order concerns the distribution of the $21,200 that Harris remitted to the DOE, plus the interest which has accrued on that money.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA 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 identify readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Harris consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

As indicated above, an Appendix to the Harris consent order identifies the wholesale customers who were allegedly overcharged by Harris. These customers are listed in Appendices A and B of this Proposed Decision and Order. We believe that these were the parties who were most likely injured by the Harris pricing practices that were alleged to be in violation of the price regulations. These firms include both resellers (wholesalers and retailers) and end-users of the products purchased from Harris. In prior refund proceedings, we have required resellers of refined petroleum products purchased from a consent order firm to demonstrate that they did not pass on to their customers the price increases implemented by the firm. *See, e.g., Vickers.* In other words, resellers of a consent order firm's products are generally required to demonstrate that during the consent order period they would have maintained their prices for the petroleum products at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller

[1] Harris Enterprises, Inc. includes the following affiliated companies: Premium Oil Company, Harris Distributing Company, Harris Oil Company, Tiger Oil Company, and two Thrifty Rent-a-Car outlets. During the audit, the ERA did not have sufficient sales price data from Tiger and the Thrifty outlets to evaluate their compliance with the DOE regulations. Accordingly, their operations were not included in the Harris audit and are not covered by the consent order.

should generally demonstrate that at the time it purchased the product from the consent order firm market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. In addition, the reseller is generally required to show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank does not, however, automatically establish injury. *See, Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

In this case, however, as in many other refund proceedings, we propose to adopt a presumption of injury with respect to small claims filed by resellers. 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 praticable 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 presumption we propose to adopt in this case is used in an effort to permit reseller claimants to participate in the refund process without incurring disproportionate expenses, and to enable OHA to consider the refund applications in the most efficient way possible in view of the limitted resources available.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Harris consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in prior refund decisions, there may be considerable expense involved in gathering the data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants purchased covered products from Harris and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumption we propose to adopt, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the time period of the consent order was quite distant, we find that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[3] *See Texas Oil & Gas Corp.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the presumption we are proposing to adopt with respect to small claims, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject ot price controls during th econsent order period, and 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 alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 8,209 and cases cited therein. Therefore, end-users of Harris petroleum products will not be required to document the extent of injury incurred from the alleged overcharges.

IV. Distribution of Consent Order Funds

In many cases the ERA audit files may not provide conclusive evidence as to the eidentity of all eligible parties or the amount of money they should recieve in a Subpart V proceeding. However, we believe it is appropriate in the present case to use these files to determine eligibility for refunds. In relying on the information in the ERA files, we note that the ERA audit of Harris had been substantially completed, a Notice of Probable Violation (NOPV) had been issued, and the allegedly overcharged parties were well defined, as evidenced by the Appendix attached to the Harris consent order. Accordingly, we propose to limit eligibility for refunds in this proceeding to those firms identified in the Appendix to the Harris consent order. We further propose to use the

[2] We propose that resellers who made only spot purchases from Harris be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, in addition to the proof of injury required of those resellers claiming more than the threshold amount, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise discretion as to where and when it made the purchase(s) on which its refund claim is based.

[3] All of the potential refunds to resellers calculated in accordance with the methodology proposed in Part IV of this Proposed Decision fall below the $5,000 threshold amount (see Appendix A). Therefore, if the proposed methodology is implemented, no applicants will be required to submit detailed evidence of injury in order to qualify for a refund in the amount proposed.

informaiton provided in that Appendix in conjunction with the information in the March 13, 1980 report which Harris prepared showing the refunds it had already made to wholesale customers as of that date, to fashion a refund plan which will correspond closely to the injuries experienced. *Cf. Marion Corp.*, 12 DOE ¶ 85,014 (1984) (refunds to customers identified in NOPV).

According to the information we have in the ERA audit files concerning Harris' compliance with the June 11, 1979 consent order, Harris made direct refunds to its wholesale customers in unequal amounts. For example, the March 13, 1980 record indicates that Harris had refunded as much as 97 percent of one customer's total refund and none of another customer's designated refund. In the absence of any later documentation of additional payments from Harris to its customers, we are presuming that the information in the ERA audit file dated March 13, 1980, is a reliable measure of the amount of refunds disbursed by Harris.

In order to allocate the consent order fund of $21,200 plus interest equitably among Harris' wholesale customers, we have devised a plan which will allow every customer to receive approximately the same proportion of the amount designated for it in the consent order appendix. Specifically, we have allocated the principal of the escrowed consent order fund so that each of Harris' wholesale customers would be able to receive at least 81.24 percent of the amount which it was originally going to receive pursuant to the consent order.[4] We recognize that some purchasers have already received from Harris more than 81.24 percent of the refund amount specified for them in the consent order. While we do not believe that it is appropriate to make those firms relinquish a portion of their refunds, we do believe that equitable factors require that they not receive any additional refunds from the Harris consent order fund. The wholesale customers who will receive a refund under our proposal, along with the share of the settlement amount allotted to each to raise the refund to 81.24 percent of the original amount, are listed in Appendix A to this Decision and Order. Those Harris customers who received 81.24 percent or more of the original consent order amount attributable to them, and are thus considered ineligible for additional refunds based on Harris' alleged violations, are listed in Appendix B.

Finally, we propose 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 Uban Oil Co.; see also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process in the **Federal Register** and to notify all of the firms listed in Appendices A and B of this proceeding. In the event that money remains after all meritorious claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Harris Enterprises, Inc., pursuant to the consent order executed on June 11, 1979 and modified on July 17, 1981, will be distributed in accordance with the foregoing decision.

Appendix A

HARRIS ENTERPRISES, INC.—CUSTOMERS DUE REFUNDS

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 81.24 pct of consent order refund amount
Applegate Dairy, 6909 N. Lombard, Portland, OR 97304	$1,191	$1,374
Kenneth Bolton, 8100 NE Union, Portland, OR 97211	1,074	1,290
Joe Reese, 1 N. Fremont, Portland, OR 97227	250	1,272
Maurice Brooks, 3331 Franklin Blvd., Eugene, OR 97403	492	556
Ron Sigler, 16777 SE McLoughlin, Milwaukee, OR 97222	938	972

HARRIS ENTERPRISES, INC.—CUSTOMERS DUE REFUNDS—Continued

Firm	Refund received as of Mar. 13, 1980	Amount due to make refund equal to 81.24 pct of consent order refund amount
Ed Erskine, Frank Harding & Son, 4569 NE 81st St., Portland, OR 97218	3,910	1,711
Bill Audrain, Central Oregon Oil, 15th & Highland, P.O. Box 188, Redmond, OR 97756	1,111	3,430
Hillcrest Oil Company, 5214 SW Beaverton, Hillsdale Hwy., Portland, OR 97221	3,767	2,133

Firm	Refund received as of June 30, 1975	Amount due to make refund equal to 82 pct
Donald Mendenhall, P.O. Box 293, Sisters, OR 97759	174	[1] 5
Gray's Crane & Rigging, 3445 NW Front, Portland, OR 97210	209	245
Fill Up, 205 Columbia NE, Salem, OR 97303	1	84
A.L. Morris & Son, 6014 NE Garfield, Portland, OR 97211	4,058	2,654
Haley's Heating Oils, 1122 SW Grant, Tigard, OR 97223	791	129
Jack Maguire, 2844 Gales Way, Forest Grove, OR 97116	455	334
Paul Priest Heating Oils, 1140 SE 199th, Portland, OR 97233	2,185	965
Bazar, Inc., 4401 SW 110th, Beaverton, OR 97005	1,809	1,011
F.E. Stein, 485 River Road, Gladstone, OR 97027	262	353
Reinhard Oil, 5322 Dallas Hwy., Salem, OR 97304	31	[1] 3
McCall Oil, 2313 Lloyd Center, Portland, OR 97232	0	546
Widing Transportation, 10145 N. Portland Rd., Portland, OR 97217	661	87
Mac's Super Service, 4003 McKinley Ave., Tacoma, WA 98404	1,106	86
R.L. Barrett, 3317 Auburn Way North, Auburn, WA 98002	88	226
Thermco, Inc., P.O. Box 976, Tacoma, WA 98401	1,141	400
Earl Moore, 2107 NE 82nd, Portland, OR	473	96
Defiance Oil Co., Rt. 1, Box 147, Monmouth, OR	119	53
Ralph Lockrem, 1680 SW 3rd, Corvallis, OR 97330	2,519	176
Grace Oil Co., 5822 SE Santiam Hwy., Albany, OR	187	102
Total refunds due (exclusive of interest)		21,201

[1] Below $15 minimum.

Appendix B

Harris Enterprises, Inc., Wholesale Customers Who Recieved at Least 81.24% of Refund Due Under Consent Order

Firm

J. R. Bales, 1133 SW Oak Street, Hillsborough, OR 97123

Len Remington, 595 N. Pacific Hwy., Woodburn, OR 97071

Max Kleman, 4774 Franklin Blvd., Eugene, OR 97403

[4] The amounts set forth in Appendix A provide only an approximation of the refund each successful claimant would receive, exclusive of interest. Since the ERA audit files indicate that some of the firms in Appendix A may be out of business or difficult to locate, it is possible that some of those firms will not apply for refunds. If we do not receive applications from some of those firms, we propose to use the funds allocated to them to raise the minimum level of refunds above 81.24 percent to a level not in the excess of 100 percent of the amount which it was scheduled to receive pursuant to the consent order. We will not be in a position to calculate an exact refund allocation until after the close of the refund application period.

Powell Distributing Co., P.O. Box 17194, Kenton Station, Portland, OR 97200
Champion Oil Co., 9125 N. Burrage, Portland, OR 97217
Jack Gross, 3305 N. Hgwy 97, Bend, OR 97701
John Jersey & Son, 6845 NE 42nd Ave. Portland, OR 97218
Harold Cash, 9080 SE 82nd Portland, OR 97266
Gov-Mart, Inc., 705 Rainier Ave. South, Renton, WA 98055
Mike Heidt, 2070 Cascade Drive, Woodburn, OR
L&M Transportation, Box 519, Winston, OR
Fletcher Oil Company, 606 Alexander Street, Tacoma, WA 98421
Gull Oil, 3404 Fourth Avenue South, Seattle, WA 98124

[FR Doc 85-13685 Filed 6-6-85; 8:45 am]

BILLING CODE 6450-01-M

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 procedure for disbursement of $5,577.96 (plus accrued interest) obtained as the result of a Consent Order which the DOE entered into with Crystal Petroleum of Corpus Christi, Texas. The funds will be available to customers who purchased motor gasoline or No. 2 diesel fuel from Crystal during the period June 13, 1973 through March 31, 1980.

DATE AND ADDRESS: Applications for refund of a portion of the Crystal consent order funds must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Crystal 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-0059.

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 Consent Order entered into by Crystal Petroleum of Corpus Christi, Texas, which settled possible pricing and allocation violations with respect to the firm's sales of motor gasoline and No. 2 diesel fuel during the period June 13, 1973 through March 31, 1980. Under the terms of the Consent Order, $5,577.96 has been remitted by Crystal 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 Crystal consent order funds. The Proposed Decision and Order discussing the distribution of the Crystal consent order funds was issued on March 28, 1985. 50 FR 13964 (April 8, 1985).

As the Crystal Decision and Order indicates, applications for refunds from the consent order funds 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 or No. 2 diesel fuel from Crystal during the period June 13, 1973 through March 31, 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: May 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

May 23, 1985.

Name of Firm: Crystal Petroleum.

Date of Filing: October 13, 1983.

Case Number: HEF-0059.

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 on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Crystal Petroleum (Crystal) of Corpus Christi, Texas.

I. Background

Crystal is a "reseller-retailer" of "refined petroleum products," as these terms were defined in 10 CFR 212.31. An ERA audit of Crystal's operations during the period June 13, 1973 through March 31, 1980 (the audit period) revealed possible violations of the price regulations promulgated under the Economic Stabilization Act of 1970 and of the Mandatory Petroleum Price Regulations. In order to settle all claims and disputes between Crystal and the DOE regarding sales of motor gasoline and No. 2 diesel fuel during the audit period, the firm entered into a Consent Order with the DOE on September 29, 1981. Under the terms of the Consent Order, the firm agreed to refund $98,603.33 directly to its end-user customers by cash payments or credit memoranda and $4,998.01 to the DOE for deposit in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Crystal does not admit that it committed any such violations.

On March 28, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the Crystal consent order fund. 50 FR 13864 (April 8, 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 Crystal during the consent order period.[1] In the PD&O, we noted that all of the potential claimants in the present proceeding are likely to be petroleum product resellers, i.e., retailers and wholesalers, because the end-user customers who were injured by Crystal's alleged overcharges were to have received direct refunds from Crystal under the terms of the Consent Order.

A copy of the PD&O was published in the Federal Register on April 8, 1985, and comments were solicited regarding the proposed refund procedures. While none of Crystal's customers filed comments on the proposed procedures,

[1] In the present case, the consent order period is coterminous with the audit period (June 13, 1973 through March 31, 1980).

comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments, however, discuss the distribution of any residual funds that might remain after refunds have been made to first stage claimants. 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 or No. 2 diesel fuel from Crystal should submit in an Application for Refund in order to establish eligibiluty for a portion of the Crystal consent order fund. 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 use 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.[2] 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 identify readily persons who were 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 part of settlement agreements, *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 Crystal consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

[2] Furthermore, it is not clear that any of the commenting States have a direct interest in the present proceeding, since all of the sales involved were made in Texas.

III. Determination of Injury and Refund Amounts

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges on which the consent order fund is based were dispersed equally in all of Crystal's sales of motor gasoline and No. 2 diesel fuel to resellers during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

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 presumptions we will adopt in this case are used 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 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.[3]

In the present case, the ERA's audit records do not identify all of Crystal's reseller customers. Moreover, the audit records do not list any alleged overcharge amounts by customer. Consequently, the available information in this case is insufficient to base refunds on the amount each individual applicant was allegedly overcharged. We will therefore adopt our proposal to use the volumetric method to allocate the consent order fund. We have determined the volumetric refund factor by dividing the escrowed consent order fund ($5,577.96) by the estimated total volume of motor gasoline and No. 2 diesel fuel sold by Crystal to resellers during the audit period (6,955,444 gallons), resulting in a per gallon refund amount of $0.0008020.[4] 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.

As we stated in the PD&O, the second presumption we will establish involves small claims made by resellers. In general, resellers who file refund claims in Subpart V proceedings are required to demonstrate that they absorbed the alleged overcharges. *See, e.g., Vickers.* While there are a variety of ways to make this showing, they must generally demonstrate that at the time they purchased petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. *See Vickers Energy Corp./ Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./ Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982). However, in this case, as in prior refund proceedings, we will adopt a presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Order. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount.

[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Crystal's pricing practices during the audit period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984).

[4] Although the Consent Order required Crystal to pay $4,996.01 to the DOE, Crystal paid a total of $5,477.96 to the DOE escrow account as a result of interest which had accrued on that amount prior to payment. The volumetric factor has been calculated based on this figure. In addition, since the ERA audit files do not list the volumes of motor gasoline and No. 2 diesel fuel sold by Crystal to resellers during the entire consent order period, we have calculated that total sales volume figure by extrapolating sales figures from the available audit data.

Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered petroleum products from Crystal and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below $5,000.[5] *See Marion Corp.*, 12 DOE ¶ 85,014 (1984). In the PD&O, we noted that the entire consent order amount to be distributed in the present proceeding is only slightly more than $5,000. Accordingly, we believe that all reseller claimants are likely to fall within the threshold level.

We will 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.

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 Crystal consent order fund. Accordingly, we shall now accept applications for refund from customers who purchased motor gasoline or No. 2 diesel fuel from Crystal during the consent order period.

[5] Resellers who made only spot purchases from Crystal will be presumed to have suffered no injury. They will therefore be ineligible for any refund, even a refund below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and twhen to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase totheir own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that it was not injured, any reseller claimant who was a spot purchaser must submit additional evidence to establish that it was unable to exercise considerable discretion as to where and when it made the purchase(s) on which its refund claim is based.

In order to receive a refund, each applicant will be required to report the monthly volume of motor gasoline and No. 2 diesel fuel purchased from Crystal for which it is claiming a refund. The applicant must also state how it used the motor gasoline and No. 2 diesel fuel, i.e., whether it was a reseller or an ultimate consumer. If the applicant is an ultimate consumer, it must demonstrate that it did not receive a direct refund from Crystal under the terms of the Consent Order. Any reseller who requests a refund in excess of the $5,000 threshold amount must submit evidence to establish that it did not pass on the alleged overcharges to its customers. 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. Applicants should also report any past or present involvement as a party in DOE enforcement proceedings. If these proceedings have terminated, the applicant should furnish a copy of the final order issued in the matter and indicate the status of any remedial action required by the order. If the proceeding is ongoing, the applicant should briefly describe the proceeding and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its refund application is pending. *See* 10 CFR 205.9(d).

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 Crystal Consent Order Fund, Case No. HEF–0050. 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 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 informaiton 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 Crystal Petroleum pursuant to the Consent Order entered into on September 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: May 23, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–13686 Filed 6–6–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures and Solicitation of Comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $1,800,000 in consent order funds to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Oneok, Inc., formerly Oklahoma Natural Gas, Inc., an Oklahoma-based company that owned interests in five gas plants through its subsidiary Oneok Exploration (formerly ONG Exploration).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All

comments should conspicuously display a reference to case number HEF-0571.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearing, and Appeals, 1000 Independence Avenue, SW. Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Oneok, Inc., which settled possible violations of DOE price controls in the firm's sales of covered natural gas liquids and natural gas liquid products to its customers during the August 1973 through January 1981 period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of an escrow account funded by Oneok pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of covered products during the audit period may file claims for refunds from the consent order fund. Applications for Refund should *not* be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: May 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

May 28, 1985.

Name of Firm: Oneok, Inc.

Date of Filing: March 11, 1985.

Case Number: HEF-0571.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to make refunds in order to remedy the effects of actual or alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable readily to ascertain the persons who were injured or the amounts that such persons may be eligible to receive as a result of enforcement proceedings. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982).

I. Background

Oneok, Inc. (hereinafter referred to as Oneok), formerly known as Oklahoma Natural Gas, through its wholly owned subsidiary Oneok Exploration Company (formerly ONG Exploration), owned controlling interests in five gas processing plants in the state of Oklahoma.[1] A DOE audit of Oneok's records revealed possible regulatory violations with respect to the firm's pricing of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) during the period August 19, 1973 through January 27, 1981 (hereinafter referred to as the consent order period). In order to settle all claims and disputes between Oneok and the DOE regarding the firm's pricing of NGL's during the consent order period, Oneok and DOE entered into a consent order on May 31, 1984. Under the terms of the consent order, Oneok remitted $1,800,000 to the DOE on October 4, 1984. That sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution. As of April 30, 1985, the Oneok escrow account had earned $96,714 in interest. This Proposed Decision concerns the distribution of the $1,800,000 that was deposited into the escrow account, plus the accrued interest.

II. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Saber consent order fund. As we have stated in previous Decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. In the first stage, we will attempt to refund money to identifiable purchasers of petroleum products who may have been injured by Oneok's pricing practices during the period August 1973 through January 1981. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

III. Proposed Refund Procedures

A. Refunds to Identifiable Purchasers

We propose that the Oneok consent order funds be distributed to claimants who satisfactorily demonstrate that they were injured by Oneok's alleged pricing violations. The information available to us at this time regarding Oneok's operations during the audit period does not provide names and addresses of the firm's customers. However, from our experience we believe that the claimants in this proceeding will fall into the following categories: (1) Resellers of NGLs or NGLPs, (2) petroleum refiners that used NGLs or NGLPs as a fuel source or a raw material in refining crude oil, and (3) firms, individuals, or organizations that were consumers (end-users). The petroleum products purchased by these claimants were purchased either directly from Oneok or from other firms in a chain of distribution leading back to Oneok. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Oneok NGLs for the period August 1973 through January 1981. If the products were not purchased directly from Oneok, the claimant must include a statement setting forth its reasons for believing the product originated with Oneok. In addition, a reseller or retailer that files a claim will be required to establish that it was injured by the alleged overcharges. To make this showing, a reseller or retailer claimant will first be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its

[1] The five plants were located in Cimarron, El Reno, Garvin, Watonga, and Woodward, Oklahoma. Oneok also owned interests in, but did not operate or control, five other gas plants in Oklahoma. Sales from those plants are not subject to this refund proceeding. Oneok also sold large quantities of natural gas during the consent order period. Because natural gas was not subject to regulation by the DOE or its predecessors, these sales are also not subject to this proceeding.

prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (hereinafter cited as *ADA*). A reseller or refiner can establish that it was injured by showing that it experienced a competitive disadvantage because Oneok's prices were higher than the prevailing price for the same products in the market area. *National Helium Corp./Atlantic Richfield Corporation*, 12 DOE ¶ 85,257 (1984).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of products made by Oneok during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n 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 presumptions we will adopt in this case are used 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 pro rata, or volumetric, refund presumption assumes that alleged 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. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it bore a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984) and cases cited therein at 88,164.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Oneok consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Oneok and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[2] *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited therein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order 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 alleged 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 & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Oneok petroleum products need only document their purchase volumes from Oneok to make a sufficient showing that they were injured by the alleged overcharges.

However, crude oil refiners that purchased NGLs or NGLPs that were consumed as fuel or as raw material in a refining process will not be considered as "consumers" for this purpose. Rather, the exception from the requirement of a separate, detailed showing of injury for end-users or ultimate consumers will be limited to those whose business operations were unrelated to the petroleum industry and whose prices were therefore not subject to the DOE regulatory scheme. A refund applicant that was subject to the DOE regulatory program will be required to provide a detained demonstration of injury with respect to the purchase of NGL and NGLPs of which it was an end-user. *People's Energy Corporation*, 12 DOE ¶ 85,129 (1984).

We believe that if a reseller or retailer made only spot purchases from Oneok,

[2] Resellers whose monthly purchases during the period for which a refund is claimed result in a volumetric refund of greater than $5,000 but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund of the $5,000 threshold amount without being required to submit additional evidence of injury. *See Vickers* at 85,396; *see also Ada* at 88,122.

it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Office of Enforcement, 8 DOE ¶ 82,597 (1981) at 85,396–97 (hereinafter cited as *Vickers*). We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Oneok petroleum products. See Amoco at 88,200.

A successful refund applicant will receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.006863 per gallon,[3] exclusive of interest. As of April 30, 1985, accumulated interest increased the volumetric refund amount to $.007132.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage 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 $15.00 outweights the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

Detailed procedures for filing applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the consent order involved in this proceeding, we intend to publicize widely the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim. In addition to publishing notice in the **Federal Register**, notice will be provided to the National LP Gas Association and the National Council of Farmer Cooperatives. These organizations should be helpful in advising potential claimants of this proceeding.

B. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. For example, the funds may be distributed through plans formulated by state governments to benefit consumers who were likely injured by Oneok's alleged overcharges. *See, e.g., Northeast Petroleum Industries*, 11 DOE ¶ 85,199 (1983). However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission of comments containing proposals for alternative distribution schemes.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Oneok, Inc. pursuant to the consent order executed on May 31, 1984, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85–13687 Filed 6–6–85; 8:45 am]

BILLING CODE 6450–01–M

[3] According to information available to us, during the consent order period, Oneok sold 262,272,842 gallons of regulated NGL's. The volumetric refund amount is obtained by dividing the money remitted by Oneok by this volume amount $1,800,000 divided by 262,272,842 gallons = $.006863 per gallon).

ENVIRONMENTAL PROTECTION AGENCY

[PF–410; FRL–2829–6]

Pesticide Tolerance Petitions; Certain Companies

Correction

In FR Doc. 85–10798 beginning on page 19444 in the issue of Wednesday, May 8, 1985, make the following correrction:

On page 19445, the last four lines of the last paragraph in the first column should have read:

"fungicide beta-([1,1'-biphenyl]-4-ylox)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol in or on the following commodities:"

BILLING CODE 1505–01–M

[OPTS—51570; FRL—2833–3]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–11263 beginning on page 19798 in the issue of Friday, May 10, 1985, make the following corrections:

1. On page 19800, in the second column, under **P 85–881**, in the second line, "(gG)" should read "(G)".

2. On page 19801, in the second column, under **P 85–896**, in the eighth line, "(SP-3)-" should read "(SP-4-3)-".

3. On page 19801, in the third column (**P 85–897**), in the second line, "OXO-, ethyl" should read "OXO-, ethyl".

BILLING CODE 10505–01–M

[OPTS–000061; FRL–2831–3]

Health Effects Testing Guidelines

Correction

In FR Doc 85–10914 beginning on page 19087 in the issue of Monday, May 6, 1985, make the following correction: On page 19087, in the third column, in **SUPPLEMENTARY INFORMATION,** in the eighteenth line, "1705" should read "1750".

BILLING CODE 1505–01–M

[OPP–50632; PH–FRL 2834–8]

Issuance of an Experimental Use Permit to U.S. Department of the Interior

Correction

In FR Doc. 85–11594 beginning on page 20286 in the issue of Wednesday, May 15, 1985, make the following correction: On page 20286, in the second column, in the eighth line, "231,300" should read "291,300".

BILLING CODE 1505–01–M

[OPTS–51571; FRL–2837–3]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–11837 beginning on page 20596 in the issue of Friday, May 17, 1985, make the following corrections:

1. On page 20597, in the first column, under **P 85–901**, the second line of the **Exposure** paragraph, "4 hrs./da" should read "2 hrs./da".

2. On the same page, in the third column, in the next to last line of **P 85–913**, "1,5000 kg/yr" should read "1,500 kg/yr".

3. On page 20598, in the first column, under **P 85–916**, in the next to last line of the *Toxicity Data* paragraph, ">" should read ">".

BILLING CODE 1505–01–M

[OPP-240050; PH-FRL 2829-2]

Special Local Need Registrations; Voluntary Cancellations

Correction

In FR Doc. 85-10659 beginning on page 19445 in the issue of Wednesday, May 8, 1985, make the following corrections:

1. On page 19446, in the second column, in paragraph number 10, the zip code should read "97218".

2. On page 19448, in the column entitled "Product name" in the last entry, "10" should read "15".

3. On page 19449, in the first column, under Maryland, in the third entry, "77" should read "78"; and in the fourth entry, "77" should read "80".

4. On page 19450, in the first column, under New Jersey, in the first entry, "NV" should read "NJ".

5. On page 19451, in the first column, under Pennsylvania, in the fifth entry, "0004" should read "0044".

6. On page 19452, under West Virginia, the entire first line should be removed and inserted as the last entry under Washington.

BILLING CODE 1505-01-M

[OPP-240063; PH-FRL 2834-9]

State Registration of Pesticides; Arkansas et al.

Correction

In FR Doc. 85-11593 beginning on page 20284 in the issue of Wednesday, May 15, 1985, make the following corrections:

1. On page 20284, in the second and third columns, in the first, second, third and fourth entries under **California**, *"SPA"* should read *"EPA"*; also in the first entry under **California**, in the fifth line, "onion must" should read "onion smut".

2. On page 20285, in the first column, in the first entry under **South Carolina**, in the seventh line, the date should read "March 18, 1985."

3. On page 20285, in the first column, in the first entry under **Texas**, in the third line, "applies" should read "apples".

BILLING CODE 1505-01-M

[ER-FRL-2847-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed May 28, 1985 through May 31, 1985, pursuant to 40 CFR 1506.9.

EIS No. 850218, Draft, COE, NY, Limestone Creek Flood Damage Reduction Plan, Manlius Onondaga County, Due: July 22, 1985, Contact: Tod Smith, (716) 876-5454.

EIS No. 850219, Draft, BLM, ID, WA, MT, OR, WY, Northwest Area Noxious Weed Control Program, Due: July 31, 1985, Contact: Gregg Simmons, (503) 231-6272.

EIS No. 850220, Draft, COE, NY, Saw Mill River Basin Flood Control Project, Construction, Westchester County, Due: July 22, 1985, Contact: Peter Doukas, (212) 264-4662.

EIS No. 850221, FSuppl, BLM, OR, Josephine and Jackson-Klamath Sustained Yield Units, Ten Year Timber Management Plan, Due: July 8, 1985, Contact: Mike Walker, (503) 776-4604.

EIS No. 850222, DSuppl, COE, WI, State Road and Edner Coulees Flood Control Project, Modifications, La Crosse County, Due: July 22, 1985, Contact: Wayne Knott, (612) 725-7745.

EIS No. 850223, Final, FHW, PA, Exton Bypass Linkage, Coatesville-Downingtown Bypass and US 202, Construction, Chester County, Due: July 8, 1985, Contact: Louis Papet, (717) 782-2222.

EIS No. 850224, Final, BLM, WY, Buffalo Resource Area, Resource Management Plan, Campbell, Johnson, and Sheridan Counties, Due: July 8, 1985, Contact: Glenn Bessinger, (307) 684-5586.

EIS No. 850225, Final, FHW, HI, Huleia Bridge Replacement and Approaches, Kaumualii Highway (FAP 50) Construction, Lihue County, Due: July 8, 1985, Contact: H. Kusumoto, (808) 546-5150.

EIS No. 850226, Draft, FHW, TX, US 59/ Southwest Freeway Improvement and Widening, Beltway 8 to TX-288, Harris County, Due: July 22, 1985, Contact: Sam Herrera, (817) 334-3836.

EIS No. 850227, Draft, FWS, NY, Honeoye Creek Wetland Expansion and Enhancement Project, Funding, Ontario County, Due: August 15, 1985, Contact: Howard Larsen, (617) 965-5100.

EIS No. 850229, Draft, COE, MI, Great Lakes Connecting Channels and Harbors Study, Due: July 22, 1985, Contact: P. McCallister, (313) 226-6768.

Amended Notices

EIS No. 850090, Draft, AFS, FL, Florida National Forests, Land and Resource Management Plan, Due: July 15, 1985, Published FR 3-15-85 Review extended.

EIS No. 850186, Final, AFS, SC, Francis Marion National Forest, Land and Resource Management Plan, Berkeley and Charleston Counties, Due: June 6, 1985, Published FR 5-10-85—Incorrect review period.

Dated: June 4, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-13811 Filed 6-6-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2847-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 20, 1985 through May 24, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BIA-K64012-CA, Rating LO, Hoopa Valley Indian Reservation Fishing Regulations Modifications, Klamath River Drainage, CA. **SUMMARY:** EPA has no objection to the regulations as proposed.

ERP No. D-COE-K61084-HI, Rating 3, Waikoloa Beach Resort Anchialine Ponds, Construction and Development, Permit, HI. **SUMMARY:** EPA's concerns regarding this project include: (1) Inadequate assessment of potentially significant environmental impacts to anchialine ponds, including the possibility that some of the organisms in the ponds may qualify as rare or endangered species; (2) potential destruction of one-third of anchialine pond habitat on the island; (3) inadequate assessment of proposed project alternatives and practicable alternatives; (4) potential violation of section 404 of the Clean Water Act based on interpretation of section 404(b)(1) Guidelines; and (5) inadequate disclosure of all development proposals and ensuing environmental impacts for Waikoloa Beach Resort properties.

ERP No. D-MMS-A02197-AK, Rating EO2, 1986 Norton Basin, OCS Oil and Gas Sale No. 100 Lease Offering, Bering Sea, AK. **SUMMARY:** EPA is concerned with the scope and potential environmental impacts of the proposed action. Alternative 1, to offer for lease

1755 blocks in the Norton Basin Planning Area. Three deferral alternatives for tracts in the Northern and Western portions of the Planning Area and offshore of the Yukon Delta deserve special consideration. EPA believes effective implementation of mitigation measures as well as deferring the above 3 areas is required to resolve its environmental objections regarding the lease sale. EPA believes that the significance of impacts from the action are understated as a result of averaging impacts from various factors and across over species, directly linking the probability of an impact's occurrence with the significance level, and not fully accounting for ecosystem dynamics. EPA has suggested how the impacts assessment can be improved.

ERP No. D-SCS-G36128-LA, Rating LO, Bayou Mallet Watershed Flood Prevention Project, Mermentau River Basin, LA. **SUMMARY:** EPA has not identified any potential environmental impacts requiring changes to the proposal. EPA has requested additional information in the areas of alternative screening and impact assessment of section 404 jurisdictional wetlands.

Final EISs

ERP No. F-AFS-G82003-NM, Western Spruce Budworm Mgmt. Program, Carson Nat'l Forest, NM. **SUMMARY:** EPA has no objections to implementation of the program as proposed with the mitigation measures as described.

ERP No. FA-COE-F36006-MN, Chaska Flood Control Plan, Minnesota R., MN. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FS-COE-F36149-MN, East Grand Forks Flood Control Plan, Red and Red Lake Rivers, MN. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F-FHW-G40104-TX, Farm to Market Highway 734/Parmer Lane Highway Extension, Construction, Farm to Market Highway 1325 to Ranch to Market Highway 620, TX. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS. EPA has not identified any new issues of concern with regard to the proposed action.

Dated: June 4, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-13812 Filed 6-6-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing, Catherine Juanita Henry et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Catherine Juanita Henry, San Diego, CA.	BPH-831118AP	85-140.
B. Ann P. Butler, San Diego, CA.	BPH-831202AQ	(Dismissed.)
C. Radio Representatives, Inc., San Diego, CA.	BPH-831216AE	
D. Robert Owen Royster, San Diego, CA.	BPH-840723IE	
E. Harbor Communications, a California limited partnership, San Diego, CA.	BPH-840725IB	
F. Kimberly Ann Sniffen, San Diego, CA.	BPH-840725ID	
G. Arden Lawrence Sniffen, Jr., San Diego, CA.	BPH-840725IE	
H. California Women in Radio, A California limited partnership, San Diego, CA.	BPH-840725IF	
I. Michael J. Koleszar, San Diego, CA.	BPH-840725IG	
J. Juan Jose Escribano Miro, San Diego, CA.	BPH-840727IA	
K. FM Women, Inc., San Diego, CA.	BPH-840727IB	
L. Earnel Durden and June Durden d.b.a. Durden Broadcasting Company, San Diego, CA.	BPH-840727ID	
M. Roger Agnew and Jacqueline Sachs d.b.a. Agnew-Sachs Broadcasting (San Diego), San Diego, CA.	BPH-840727IE	
N. Minority Broadcasters of San Diego, San Diego, CA.	BPH-840727IF	(Dismissed.)
O. Simpson Communications LTD., a limited partnership, San Diego, CA.	BPH-840727IG	
P. National University, San Diego, CA.	BPH-840727IH	
Q. Evelyn Jackson, et al. d.b.a. Kaliedeacope Communications Committee, San Diego, CA.	BPH-840727II	
R. Echeverria Broadcasting Corporation, San Diego, CA.	BPH-840727IJ	
S. Esmeralda Broadcasting, Inc., San Diego, CA.	BPH-840727IK	
T. KLOK Radio, a limited partnership, San Diego, CA.	BPH-840727IL	(Dismissed.)
U. Amigos de San Diego, a California limited partnership, San Diego, CA.	BPH-840727IM	
V. M. Earlene Stebbins and Paul Stebbins d.b.a. Stebbins Communications, a partnership, San Diego, CA.	BPH-840727IN	
W. Catherine Flynn and Edward J. Flynn d.b.a. C&E Partners, San Diego, CA.	BPH-840727IO	
X. Representative Media, limited partnership, San Diego, CA.	BPH-840727IP	
Y. Radio Onda Fronteriza, Inc., San Diego, CA.	BPH-840727IQ	
Z. Jeannie P. Rivkin et al., d.b.a. Seacoast Broadcasting Co., San Diego, CA.	BPH-840727IR	
AA. Triple Bogey Broadcasting, a California limited partnership, San Diego, CA.	BPH-840727IT	
BB. New Sounds of San Diego, Inc., San Diego, CA.	BPH-840727IU	
CC. San Diego Broadcasting, a California limited partnership, San Diego, CA.	BPH-840727IV	
DD. American Media Group, limited partnership, San Diego, CA.	BPH-840727IW	
EE. Cheryle Ann Hangartner d.b.a. Axis Broadcasting Co., San Diego, CA.	BPH-840727IX	
FF. San Ysidro Communications, a limited partnership, San Diego, CA.	BPH-840727IY	
GG. HG Communications, a limited partnership, San Diego, CA.	BPH-840727IZ	
HH. Colom Communications Corporation, San Diego, CA.	BPH-840727JA	
II. Doris S.M. Yee, San Diego, CA.	BPH-840727JB	
JJ. Tri-Com Productions, Inc., San Diego, CA.	BPH-840727JC	
KK. San Diego ComTrends, Inc., San Diego, CA.	BPH-840727JD	
LL. Kerimax LTD. of California, a limited partnership, San Diego, CA.	BPH-840727JG	
MM. Warren Broadcasting, LTD., a limited partnership, San Diego, CA.	BPH-840727JH	
NN. Vista Grande Broadcasting, a California limited partnership, San Diego, CA.	BPH-840727JI	
OO. Diane Osequera, San Diego, CA.	BPH-840727JJ	
PP. Soledad Broadcasting Company, San Diego, CA.	BPH-840727JK	

Applicant, city, and State	File No.	MM Docket No.
QQ. Maria Elena Laso Bradley, San Diego, CA.	BPH-840727JL	
RR. Mission Valley Radio, a limited partnership, San Diego, CA.	BPH-840727JM	
SS. Louise Heifetz, San Diego, CA.	BPH-840727JN	
TT. Steve Virissimo and Cynthia Virissimo, San Diego, CA.	BPH-840727JO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 F.R. 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. See Appendix, I, Q, BB, EE
2. See Appendix, C
3. See Appendix, C
4. Air Hazard, MM, NN
5. Comparative, All Applicants
6. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 247, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,[1] the applicant(s) is financially qualified: (I) Koleszar, (Q) KCC, (BB) New Sounds, (EE) Axis.

2. To determine whether (C)RRI has failed to comply with the provisions of §§ 1.65 and 73.3514 of the Commission's Rules, requiring complete, up-to-date information in all applications and, if so, the effect of such noncompliance on the applicant's comparative qualifications.

3. To determine the facts and circumstances surrounding the conviction of Norwood J. Patterson for violation of Federal laws pertaining to the withholding of employees' income taxes, and the effect, if any, on the comparative or absolute qualifications of RRI to be a Commission licensee.

[FR Doc. 85-13700 Filed 6-6-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Paragraph 8 reads as follows:

[CC Docket No. 85-139 et al.]

Lett Electronics, Inc. and United Telespectrum, Inc.; Memorandum Opinion and Order Designating Applications for Hearing

Adopted May 2, 1985.

Released May 20, 1985.

By the Common Carrier Bureau.

In re Applications of Lett Electronics, Inc., for a construction permit for an additional facility for Station KTS250 to operate on frequency 158.10 MHz in the Public Land Mobile Service near Hutchinson, Kansas, CC Docket No. 85-139, File No. 24422-CD-P/L-84; and United Telespectrum, Inc., for a construction permit for new facilities to operate on frequency 158.10 MHz in the Public Land Mobile Service near Hutchinson and Newton, Kansas, File No. 24794-CD-P-(B)-84.

1. Before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned, mutually exclusive applications of Lett Electronics, Inc. (Lett) and United Telespectrum, Inc. (United). Lett's application was filed on July 25, 1984 and was accepted by Public Notice of August 15, 1984. United's application was filed on August 17, 1984 and was accepted by Public Notice of September 5, 1984. United filed a Petition to Deny Lett's application and Lett filed a reply. The applications of Lett and United were found to be mutually exclusive and were scheduled for disposition by lottery to be held February 22, 1985.[1] On February 18, 1985, United filed a letter requesting that its application be withdrawn from the scheduled lottery and be set for comparative consideration with Lett's application pursuant to § 22. 33(c) of the Commission's Rules.[2] The applications were withdrawn from the scheduled lottery. Lett filed its letter reply on March 8, 1985.

2. In support of its request, United argues that the applications should be scheduled for comparative hearing because it proposes to operate a wide area paging system and its proposed location at Newton, Kansas is located within 40 miles of its existing transmitter location in Wichita, Kansas that also operates on the proposed frequency 158.10 MHz. Accordingly, United has demonstrated that its proposal qualifies for a comparative consideration request under § 22.33(c)(2). We further find that the public interest would be served by designating the applications of United and Lett for comparative hearing. Accordingly, United's request for comparative hearing will be granted.

3. United's Petition to Deny challenges the legality of the Interim Procedures established by the Commission for applicants requesting waivers of the separate frequency allocation during the pendency of the "fence" rulemaking.[3] United also argues that Lett, a non-wireline carrier, has not established entitlement to a waiver of § 22.501 to operate on a frequency reserved for wireline carriers. United's first argument was disposed of by the Commission in its *Report and Order on Reconsideration* in CC Dockets 83-1146 and 80-57[4] where reconsideration of the Interim Procedures was denied. The Commission also there dropped the separate allocation structure for wireline and non-wireline carriers effective January 17, 1985. United's argument respecting the sufficiency of Lett's waiver request is, therefore, moot since a waiver is no longer required. *See: Lawrence Paging and Mobilphone*, Mimeo 2380, released February 5, 1985. Accordingly, United's Petition will be denied.

4. After careful examination of the applications, we find that both United and Lett are legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that Lett's application (File No. 24422-CD-P/L-84) and United's application (File No. 24794-CD-P-(B)-84) are electrically mutually exclusive and should be designated for

[1] Lottery Notice, Mimeo 2032, January 18, 1985. The Lottery Notice included United's application for a third facility at Emporia, Kansas. It was subsequently determined that United's Emporia application was not mutually exclusive with Lett's application. Accordingly, United's application was split with only the (B) portion respecting Hutchinson and Newton, Kansas involved herein.

[2] Section 22. 33(c) permits a mutually exclusive applicant proposing to expand an authorized station in certain described circumstances to request designation for a comparative hearing.

[3] *Report and Order*, CC Docket 80-57, *Revision of Part 22*, 95 FCC 2d 769, 825 (1983).

[4] FCC 84-485, mimeo 35146 (released December 11, 1984).

comparative hearing to determine which applicant would best serve the public interest.

5. Accordingly, it is ordered, that the Petition to Deny filed by United Telespectrum, Inc. is denied.

6. It is further ordered, that the request for comparative consideration filed by United Telespectrum, Inc. is granted.

7. It is further ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the application of Lett Electronics, Inc., File No. 24422-CD-P/L-84, and the application of United Telespectrum, Inc., File No. 24794-CD-P-(B)-84, to operate on frequency 158.10 MHz, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[5] based upon the standards set forth in § 22.504(a) of the Commission's Rules[6] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

8. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

9. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

10. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

11. This order is ussued under § 0.291 of the Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

12. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-13701 Filed 6-6-85; 8:45 am]

BILLING CODE 6712-01-M

[5] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 6.

[6] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

FEDERAL RESERVE SYSTEM

Hamptons Bancshares Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have 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.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Hamptons Bancshares Inc.*, East Hampton, New York; to engage *de novo* through its subsidiary, Hamptons Mortgage Corp., Riverhead, New York, in the activities of originating and servicing real estate mortgage loans.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Belmont Bancorp.*, Bridgeport, Ohio; to engage *de novo* through its subsidiary, Belmont Financial Network, Inc., St. Clairsville, Ohio, in the activities of leasing personal or real property, and management consulting to depository institutions.

Board of Governors of the Federal Reserve System, June 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13711 Filed 6-6-85; 8:45 am]

BILLING CODE 6210-01-M

Madison Bank Corp. 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 inlcude 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 July 1, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Madison Bank Corp.*, Madison, Georgia; to become a bank holding company by acquiring 96.35 percent of the voting shares of Bank of Madison, Madison, Georgia.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Citizens Bancorporation of New Ulm, Inc.*, New Ulm, Minnesota; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens Bank of New Ulm, New Ulm, Minnesota.

2. *Citizens State Bank at Mohall Employee Stock Ownership Plan*, Mohall, North Dakota; to acquire an additional 21.25 percent of the voting shares of CSB Bancshares, Inc., Mohall, North Dakota, thereby indirectly acquiring Citizens State Bank at Mohall, Mohall, North Dakota.

Board of Governors of the Federal Reserve System, June 1, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13709 Filed 6-6-85; 8:45 am]

BILLING CODE 6210-01-M

The Marine Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, The Marine Trust Company, N.A., Milwaukee, Wisconsin, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means.

Board of Governors of the Federal Reserve System, June 3, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-13710 Filed 6-6-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 31, 1985.

Health Care Financing Administration

Subject: Request for Termination of Premium Hospital and/or Supplementary Medical Insurance—HCFA-1763—Extension (0938-0025)
Respondents: Individuals or households
Subject: State Medicaid Quality Control Sampling Plans—HCFA-317—Revision (0938-0146)
Respondents: State/local governments
Subject: Applications for Federal Assistance-Research and Demonstration Grants—HCFA-P6-10 and 11—Extension (0938-0078)
Respondents: State/local governments, non-profit institutions
Subject: Nationwide Evaluation of Medicaid Competition Demonstrations-Medicaid Consumer Survey—New
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Program Inspection of Head Start Administrative Costs—New
Respondents: Head Start grantees
Subject: National Diagnosis Related Group (DRG) Validation Study—New
Respondents: Hospitals
OMB Desk Officer: Judy A. McIntosh

Social Security Administration

Subject: 1985 Supplemental Security Income Survey on Continuing Medicaid Eligibility for Selected Groups of Recipients—NEW
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, ATTN: (name of OMB Desk Officer).

Dated: May 31, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-13804 Filed 6-6-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 85F-0092]

Squirt & Co.; Filing of Food Additive

Correction

In the issue of Thursday, May 16, 1985, on page 20502 in the second column a correction to FR Doc. 85-7765 appeared. The correction was inaccurrate and is corrected as follows:

On page 20502, second column, the formula should read

"(1-methyl *N*-L-a-aspartyl-L-".

BILLING CODE 1505-01-M

[Docket No. 84V-0380]

Availability of Approved Variance for FluoroScan/TM Fluoroscopic Equipment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for fluoroscopic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the model FluoroScan/TM fluoroscopic equipment manufactured by Health Mate, Inc. The product is a small-format, low-intensity fluoroscopic system for real-time x-ray imaging in miniature C-arm configuration.

DATES: The variance became effective March 21, 1985, and ends March 21, 1990.

ADDRESS: Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Health Mate, Inc., 3175 MacArthur Blvd., Northbrook, IL 60062, a variance from § 1020.32(f) (21 CFR 1020.32(f)) of the performance standard for fluoroscopic equipment for the model FluoroScan/TM fluoroscopic equipment.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.32(f) that requires that the product be provided with a means to limit the source-to-skin distance to not less than 30 centimeters for mobile fluoroscopes and to not less than 20 centimeters for image-intensified fluoroscopes intended for specific surgical applications. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1020.32(f) is not appropriate for the product, and (2) suitable means of radiation safety and protection will be provided by (a) constraints on the existing equipment design, (b) conditions imposed by the terms of the variance, and (c) supplemental information provided to users. Therefore, on March 21, 1985, CDRH approved the requested variance by a letter from the Deputy Director of CDRH to the manufacturer.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-13716 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85V-0047]

Availability of Approved Variance for GYROSCAN Magnetic Resonance System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the GYROSCAN Magnetic Resonance System manufactured by Philips Medical Systems, Inc. The laser product, which incorporates a Class II helium-neon (HeNe) laser system, is used for patient alignment.

DATES: The variance became effective March 20, 1985, and ends March 20, 1990.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Philips Medical Systems, Inc., 710 Bridgeport Ave., Shelton, CT 06484, a variance from § 1040.10(f)(6) (21 CFR 1040.10(f)(6)) of the performance standard for laser products for the GYROSCAN Magnetic Resonance System.

The specific requirements of the standard for which a variance has been granted pertain to the provisions of § 1010.10(f)(6) that otherwise would require that the laser product be provided with one or more permanently attached means, other than laser energy source switches, electrical supply main connectors, or the key-actuated master control, capable of preventing access by any part of the human body to all laser and collateral radiation in excess of the accessible emission limits of Class I and Table III of § 1040.10. All other provisions of the performance standard remain applicable to the laser product.

CDRH has determined that (1) the requirement of § 1040.10(f)(6) is not appropriate for the product, and (2) suitable means of radiation safety and protection are provided by the existing equipment design and by conditions imposed by the terms of the variance. Therefore, on March 20, 1985, CDRH approved the requested variance by a

letter from the Deputy Director of CDRH to the manufacturer.

So that the product may show evidence of the variance approved for the manufacturer, the GYROSCAN Magnetic Resonance System shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-13718 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84V-0401]

Availability of Approved Variance for LOrad Mammographic System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for radiographic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the LOrad Mammographic System utilizing the Micronix microfocus x-ray tube. The system is manufactured by LOrad Medical Systems, Inc.

DATES: The variance became effective March 25, 1985, and ends March 25, 1990.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted LOrad Medical Systems, Inc., 98 Mill Plain Rd., Danbury, CN 06811, a variance from § 1020.31(h) (21 CFR 1020.31(h)) of the performance standard for radiographic equipment for the LOrad Mammographic System utilizing the Micronix microfocus x-ray tube.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.31(h)(2) requiring that a mobile or portable x-ray system other than dental be provided with a means to limit the source-to-skin distance to not less than 30 centimeters. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1020.31(h)(2) is not appropriate for the product, and (2) suitable means of radiation safety and protection will be provided by (a) constraint on the existing equipment design, (b) conditions imposed by the terms of the variance, and (c) supplemental information provided to the users. Therefore, on March 25, 1985, CDRH approved the requested variance by a letter from the Duputy Director of CDRH to the manufacturer.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85-13714 Filed 6-6-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 84V-0074, et al.]

Availability of Approved Variances for Sunlamp Products

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for certain specified sunlamps and sunlamp products manufactured or imported by six organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below.

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted each of the six organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted to allow the listed products to vary from that portion of § 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for nominally ultraviolet-A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at

wavelengths shorter than 320 nanometers. CDRH's experience with this kind of sunlamp product indicates that the relatively lengthy exposure recommended by the manufacturers of UVA sunlamp products does not result in severe, acute skin burns or corneal injury. Therefore, the time interval requirement of § 1040.20(c)(2)(ii) is not appropriate for these UVA products. However, CDRH notes that, even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unecessary risk to chemically sensitized lenses, of cornea damage, or of long-term development of lens opacities.

CDRH has determined that suitable or alternate means of radiation protection are provided by (1) constraints on the physical and optical design of the products and (2) warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, CDRH approved the requested variances by a letter from the Deputy Director of CDRH to each manufacturer or importer.

So that the product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the table below, and the effective date of the variance both of which are specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/termination date
84V-0074 (Amendment).	Eurotan International, 3701 Montrose Blvd., Houston, Texas 77006.	UVA sunlamp products manufactured or imported by Eurotan International.	Apr. 15, 1985–May 7, 1989.
85V-0005	SolTech USA, Inc., 1850 South Main, South Jacksonville, Illinois 62650.	UVA sunlamp products manufactured or imported by EHVAK Maschinen, GmbH.	Mar. 18, 1985–Mar. 18,1990.
85V-0027	Topsolo Ltd., Unit 33, Comet Road, Leyland, Lancs, United Kingdom.	UVA sunlamp products manufactured or imported by Topsolo, Ltd.	Feb. 21, 1985–Feb. 21, 1990.
85V-0069	Sun Health Systems Int., 7357–59 Washington Avenue, South Minneapolis, Minnesota 55435.	UVA sunlamp products manufactured or imported by Sun Health Systems Int.	Mar. 7, 1985–Mar. 7, 1990.
85V-0105	Sunmaker Tanning Systems, Ltd., Route 146 & Moe Road, P.O. Box 2219, Clifton Park, New York 12065.	UVA sunlamp products manufactured or imported by Sunmaker Tanning Systems Ltd.	Mar. 28, 1985–Mar. 28, 1990.
85V-0130	NovaSun USA, Inc., 310 Madison Avenue, Suite 2022, New York, New York 10017.	UVA sunlamp products manufactured or imported by NovaSun USA, Inc.	Apr. 10, 1985–Apr. 10, 1990.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: May 31, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–13713 Filed 6–6–85; 8:45 am]

BILLING CODE 4160–01–M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and date:

June 24, 1985, 5:00 P.M.–7:00 P.M.

June 25, 1985, 9:00 A.M.–5:00 P.M.

June 26, 1985, 9:00 A.M.–5:00 P.M.

Place: Capitol Holiday Inn, 550 C Street, SW. Washington, D.C. 20024.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: Reports by the Steering Committee of the President's Committee on Mental Retardation (PCMR) will be given. The PCMR plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact person for more information: Jim F. Young, 330 Independence Ave., SW, Room 4061—North, Washington, D.C. 20201, (202) 245–7634.

Dated: June 4, 1985.

Jim F. Young,

Acting Executive Director, PCMR.

[FR Doc. 85–13787 Filed 6–6–85; 8:45 am]

BILLING CODE 4130–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[5–00262–GP5–073]

Alaska Native Claims Selection; Sealaska Corp.

Correction

In FR Doc. 85–11855, appearing on page 20505 in the issue of Thursday, May 16, 1985, make the following correction: In the second line of the first paragraph, "32 CFR" should have read "43 CFR."

BILLING CODE 1505–01–M

Rosewell District, NM; Intent To Prepare a Management Framework Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare a Management Framework Plan Amendment.

SUMMARY: The Bureau of Land Management, Roswell Resource Area, New Mexico will begin preparation of an Environmental Assessment (EA) to amend the Fort Stanton Management Framework Plan (MFP). The EA will address a proposal to modify an existing MFP decision which limits uses on the Fort Stanton Reservation to research and recreational purpose only. Expanding regional, economic and population demands have created the

need to open the area for the consideration of other land use authorizations.

DATE: The public is invited to express their comments on the proposal to amend the MFP. Written comments must be received by July 12, 1985. An additional public comment period will be provided at the time the EA is completed.

ADDRESS: Send comments to: BLM, Roswell Resource Area, P.O. Drawer 1857, Roswell, NM 88201.

SUPPLEMENTARY INFORMATION: The Fort Stanton Reservation encompasses 26,381 acres located approximately 70 miles west of Roswell adjacent to the Lincoln National Forest in Lincoln County. Fort Stanton was withdrawn by Executive Order in 1899 for use as a military hospital. It was used for that purpose until 1953 when the hospital was closed. In 1956, administrative jurisdiction of the area was transferred to the Bureau of Land Management. New Mexico State University, under an agreement with the BLM, has utilized the reservation for range and wildlife research purposes since 1963. The area is also used extensively for recreational purposes including caving, hiking and hunting.

FOR FURTHER INFORMATION CONTACT: Phil Kirk, Resource Area Manager, P.O. Drawer 1857, Roswell, NM 88201 (505) 624–1790.

Dated: May 30, 1985.

Monte G. Jordan,

Acting State Director.

[FR Doc. 85–13665 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–FB–M

[AA–6661–A]

Alaska Native Claims Selection; Eklutna, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Eklutna, Inc. for approximately 560 acres. The lands involved are:

Sward Meridian, Alaska

T. 16 N., R. 1 E. (Surveyed),
Sec. 29, S2NE4, W2, SE4.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until July 8, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–13755 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–JA–M

[F–84711]

Realty Action; Fairbanks District, Alaska

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action, Leasing of Public Lands near Coldfoot, Alaska.

SUMMARY: The Bureau of Land Management is proposing an application program for the competitive leasing of approximately 20 acres of public land near Coldfoot, Alaska, under authority of section 302(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732). This land would be used for commercially operated facilities to support organized, small-group tours within the Utility Corridor, north of the Yukon River.

ADDRESS: Additional information may be obtained by calling William Clithero at (907) 356–5134 or by writing to him at the Yukon Resource Area, Bureau of Land Management, 1541 Gaffnery Road, Fairbanks, Alaska 99703. An information packet for interested applicants is available at the Yukon Resource Area office, which is located on Fort Wainwright.

SUPPLEMENTARY INFORMATION: 1. Interested applicants may select a site of approximately 20 acres within the following described federal lands:

T. 28 N., R. 12 W., Fairbanks Meridan (protracted)
All of Sections 3, 10, 15, 21, and 22 and
Those portions of Sections 4, 9, 16, and 20 lying to the east of the Middle Fork Koyukuk.
T. 29 N., R. 12 W., Fairbanks Meridan (protracted)
All of Sections 23, 24, and 26 and
Those portions of Sections 27, 34, and 35 lying to the east of the Middle Fork Koyukuk.

2. Interested parties may submit comments to the Yukon Resource Area, Area Manager, 1541 Gaffney Road, Fairbanks, Alaska 99703, for a period of 45 days from the publication of this Notice in the **Federal Register.** Comments will be reviewed by the Fairbanks District Manager, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

3. Applications for the proposed lease may be submittited to the Area Manager, at the above address, after the 45-day period.

4. If it is determined that a lease will be issued, all applicants will required to reimburse the BLM for the cost of processing the applications.

5. The successful applicant will be required to pay fair market value rental for the use of the land.

Donald E. Runberg,

Acting District Manager.

[FR Doc. 85–13620 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–JA–M

Minerals Management Service

National Outer Continental Shelf Advisory Board, Pacific States Regional Technical Working Group Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Pacific OCS Region, Interior.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463.

The Pacific Regional Technical Working Group Committee of the National OCS Advisory Board is scheduled to meet July 9, 1985 from 8:00 a.m. to 4:00 p.m., at the Biltmore Hotel, Roman Room, 515 South Olive Street, Los Angeles, California.

The Agenda for the meeting covers the following topics:

Update: Draft Proposed 5-Year Oil & Gas Leasing Program/Lease sale 95
Joint Interagency Modeling Study
South Central Coastal Cooperative Air Modeling Project
Draft Fiscal Year 1987 Pacific OCS Regional Environmental Studies Plan
Update: Strategic & International Minerals Program

Probabilistic Resource Estimates—OCS
Status/Issues for Exploration/
Development on the Pacific OCS:
Santa Ynez
Point Arguello
Point Pedernales
San Miguel
Drilling Operations and Safety
Inspections on the Pacific OCS

Minutes of the meeting will be available for public inspection and copying at the following locations:

Pacific OCS Region, 1340 West Sixth Street, Room 275, Los Angeles, CA 90017
Office of Offshore Information Service, Minerals Management Service, Department of the Interior, Washington, DC 20240

Dated: May 30, 1985.

Cyril V. Bird,

Acting Director, Pacific OCS Region.

[FR Doc. 85-13609 Filed 6-6-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-250X)]

Burlington Northern Railroad Co.; Abandonment in Clatsop County, OR; Exemption

Burlington Nothern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6.67-mile line of railroad between milepost 101.92 near Astoria and milepost 108.59 near Camp Clatsop, in Clatsop County, OR.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that any overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State of local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period preceding this notice. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on July 7, 1985, (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by July 17, 1985, and petition for reconsideration, including environmental, energy and public use concerns, must be filed by July 27, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to Applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 3, 1985.

By the Commission, Richard Lewis, Associate Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13608 Filed 6-6-85; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide an updated notice as required by 49 U.S.C. 10524(b) (1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b)

1. Parent Corporation and address of principal office: Dawn Food Products, Inc., 2021 Micor Drive, Jackson, MI. 49203

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) Dawn/Baker Boy, Inc.—Indiana.
(ii) Dawn/Baker Boy, Inc.—(Denver,) *Colorado.*
(iii) Dawn/Baker Boy, Inc.—(Kansas City), *Missouri.*
(iiii) Dawn/Baker Boy, Inc.—(Glendale,) *Arizona.*
(iiiii) Dawn/Baker Boy, Inc.—(Albuquerque,), *New Mexico.*
(iiiiii) Daybreak Distributors, Ltd.—(Des Moines,) *Iowa.*

1. Parent corporation and address of principal office: LADD Furniture, Inc., #1 Plaza Center, P.O. Box HP3, High Point, North Carolina 27261.

2. Wholly-owned subsidiaries which will participate in the operation and states of incorporation:

	State of incorporation
LADD Transportation, Inc., #1 Plaza Center, P.O. Box HP3, High Point, North Carolina 27261	North Carolina
Clayton-Marcus Company, Inc., Route 5, Hwy 127-N, Hickory, North Carolina 28601	North Carolina
Barclay Furniture Co., P.O. Box 208, 8th Avenue, Sherman, Mississippi 38869	Mississippi

3. Wholly-owned divisions which will participate in the operation:

Lea Industries, #1 Plaza Center, P.O. Box HP3, High Point, North Carolona 27261
Daystrom Furniture, P.O. Box 130, South Boston, Virginia 24592
Lea Lumber & Plywood Co., Route #3, Box 57, Windsor, North Carolina 27983
American Drew, #1 Plaza Center, P.O. Box HP3, High Point, NC 27261

James H. Bayne,

Secretary.

[FR Doc. 85-13807 Filed 6-6-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30664]

Colorado and Eastern Railroad Company—Purchase (Portion)—Chicago, Milwaukee, St. Paul and Pacific Railorad Company, Debtor at Ottumwa, IA

AGENCY: Interstate Commerce Commission.

ACTION: Purchase proposal accepted for consideration.

SUMMARY: The Commission accepts for consideration the proposal by the Colorado and Eastern Railroad Company (C&E) to purchase approximately 2.82 miles of main line and 1.82 miles of side track in Ottumwa, IA from Richard B. Ogilvie, Trustee of the Property of the Chicago, Milwaukee, St. Paul Railroad Company, (Debtor).

DATES: An original and 10 copies of verified statements supporting or opposing the proposal must be filed by June 15, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30664 to:

(1) Office of the Secretary, CCase Control Branch, Interstate Commerce Commission, Washington, D.C. 20423.
(2) Applicant's representative: Gary W. Flanders, Colorado and Eastern Railroad Company, 76 South Sierre Madre, Suite 230, Colorado Springs, CO 80903.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: This proceeding is governed by section 5(b) of the Milwaukee Railroad Restructuring Act (MRR), 45 U.S.C. 904(b) and the procedures in 49 CFR Part 1180, Subpart B. In Order No. 808, Debtor's

Recorganization Court directed us to act on C&E's application by June 27, 1985.

C&S petitioned for waiver of the information requirements of 49 CFR Part 1180, Subpart B. It contends that the proposed purchase is a minor transaction involkving terminal track that would be exempt from Commission jurisdiction under 49 U.S.C. 10907. However, the exemption is not available because the transaction is governed by the MRR. C&E requests that we treat its proposal as if it were an exemption request and waive the information requirements of our regulations.

I will grant the waiver petition. C&E's petition contains the information required by our regulations.

A copy of verified statements must be served on the Attorney General of the United States and the United States Secretary of Transportation.

It is ordered:

1. C&E's petition for waiver is grnated, and the proposal is accepted for consideration.

1. C&E's petition for waiver is granted, and the proposl is accepted for consideration.

2. Parties must comply with all provisions stated above.

3. This decision will be effective on date it is served.

Decided:June 5, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-13982 Filed 6-6-85; 10:37 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Attorney General's Guidelines on Seized and Forfeited Property

AGENCY: Office of the Attorney General, Justice.

ACTION: Notice of Department of Procedures for Seized and Forfeited Property.

SUMMARY: This document sets forth the Department's policy under 21 U.S.C. 881(e) regarding the handling of seized and forfeited property. It is exempt from the notice and comment requirements of the Administration Procedure Act, 5 U.S.C. 553(b) by virtue of 5 U.S.C. 553(a)(2). The Department of Justice has determined that it is not a "major rule" within the meaning of Executive Order No. 12291 or a rule within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(1).

FOR FURTHER INFORMATION CONTACT: Director, Asset Forfeiture Office, Criminal Division, Room 916, Federal Triangle Building, 315 9th Street, NW., Washington, D.C. 20530. (202) 272-6420.

ATTORNEY GENERAL'S GUIDELINES ON SEIZED AND FORFEITED PROPERTY

I. Statement of Policy

The following guidelines are designed to implement certain asset forfeiture provisions of the Comprehensive Crime Control Act of 1984 pertaining to the disposition of forfeited property, the management and use of the Department of Justice Assets Forfeiture Fund, and the discontinuance of federal forfeiture actions to permit forfeiture by State or local procedures.

The statute directs, "The Attorney General shall ensure the equitable transfer . . . of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property."

This authority is consistent with the Department of Justice's purpose of promoting cooperative law enforcement efforts in drug trafficking and other investigations. The Department intends to manage its asset forfeiture program in a manner designed to enhance this Federal, State and local cooperation.

Title 21, United States Code (U.S.C.), section 881(e), authorizes the Attorney General to dispose of forfeited property by (1) retaining the property for official use; (2) transferring custody or ownership of the property to any Federal, State or local agency pursuant to the Tariff Act of 1930, Title 19, USC, Section 1616; or (3) placing the forfeited cash or proceeds of sale of forfeited property in an appropriation called the Department of Justice Assets Forfeiture Fund (hereinafter "the Fund"). A decision of the Attorney General regarding placing the forfeited property into official use or transferred the property to another agency is not subject to judicial review.

The Law Enforcement Coordinating Committee program will inform State and local law enforcement agencies as to the procedures for requesting an equitable transfer of forfeited property, help facilities the application for transfer of such property, and see that the spirit and letter of the forfeiture provisions of the Comprehensive Crime Control Act of 1984 are implemented in each Federal district.

II. Definitions

A. "Department of Justice investigative bureau" refers to the investigative unit within the Department of Justice that participated in the investigation and seizure of property and is responsible for the precessing of the forfeiture arising from the seizure.

B. "Head of the Department of Justice investigative bureau" means the head of that bureau or his headquarters-level designee.

C' "Placing property into official use" means use of forfeited property by a Department of Justice bureau for any official purpose.

D. "Property" means tangible property and cash.

E. "Cash" means currency, negotiable instruments and securities.

F. "State and local agencies" means State and local law enforcement agencies.

G. "Appraised value" means fair market value.

III. Use and Transfer of Forfeited Property

A. Retention of Property for Official Use

a. The Attorney General has the authority to retain any civilly or criminally forfeited tangible property for official use by any Department of Justice bureau.

2. No forfeited cash, nor any proceeds from sales of forfeited property may be transferred to, or retained by, federal law enforcement agencies under the provisions of 21 U.S.C. 881(e) for disposition of forfeited property.

3. Payment of liens and mortgages pursuant to an authorization to place property into official use.

a. Liens and mortgages cumulatively amounting to less than one third of the appraised value of the asset and totalling less than $50,000 will be paid from the Fund at the request of the head of the Department investigative bureau.

b. Payments of liens or mortgages that, in the aggregate, total $50,000 or greater or exceed one third of the appraised value of the asset, will be paid from the Fund at the request of the Department of Justice investigative bureau subject to the concurrence of the Deputy Attorney General.

B. Official Use by Department of Justice Investigative Bureau

1. The Attorney General's authority to place tangible property into official use is delegated to the head of the Department of Justice investigative bureau.

a. In making a decision concerning placing forfeited property into official

use, the head of the Department investigative bureau must consider the financial status of the Department of Justice Assets Forfeiture Fund.

b. Exercise of this delegation of authority is subject to concurrence by the Deputy Attorney General for all property appraised at $750,000 or more.

C. Official Use by Other Department of Justice Bureaus

1. If the Department investigative bureau does not choose to place the forfeited property into official use, the Director, United States Marshals Service will determine appropriate disposal, including screening any remaining property suitable for official use by other Department of Justice bureaus.

a. A decision to place such property into official use is subject to concurrence by the Deputy Attorney General for all property appraised at $750,000 or more.

2. If more than one Department of Justice component wants to retain for official use the same piece of seized and forfeited property, the Deputy Attorney General will determine which component may place such property in official use.

D. Transfer of Property to State or Local Law Enforcement Agencies

1. Attorney General's Authority for Equitable Transfer of Seized Property

a. The Act authorizes the Attorney General to transfer forfeited property to state or local law enforcement agencies that directly participated in the acts which led to the seizure or forfeiture.

b. Tangible property not retained for official use by the Department of Justice investigative bureau is eligible for equitable transfer.

c. Where a participating law enforcement agency petitions for a share in the forfeited property, the Attorney General shall determine an equitable transfer of the property that generally reflects the relative contribution of the participating agencies.

2. Procedure for Determining Equitable Transfer

a. Any state or local law enforcement agency that participates in the acts leading to a Department of Justice seizure for forfeiture may file a request for an equitable transfer of the property.

b. The criteria for determining the equitable transfer of the property will be the same for all requests.

c. In all cases the final decision-making authority rests with the Attorney General or his designee.

3. Requests from Participating Law Enforcement Agencies

a. Within thirty days following the seizure for forfeiture, a state or local agency should submit a written request for an equitable transfer of the property subject to forfeiture.

b. This request must be filed with the local or regional office of the Department investigative bureau responsible for processing the forfeiture.

c. The request must include the following information:

(1) Identification of the property against which the claim is made;

(2) Details regarding the requesting agency's participation, including the amount of money and manpower expended by the state or local agency in pursuing the case;

(3) A statement of the intended use for the property;

(4) A designation of the proper fiscal officer to whom cash or check disbursements can be made;

(5) A designation of the proper official to whom transfer documents should be delivered by the United States;

(6) A designation of the proper party to whom possession should be delivered;

(7) A statement indicating that the transfer is not prohibited under the applicable state or local law;

(8) In instances of a joint application by several state or local agencies, the relative share of each state or local agency; and

(9) A statement that all fees and expenses necessary to effect transfer of title will be paid by or on behalf of the requesting agency not later than the time of transfer.

d. The requesting agency must certify that the information contained in 3(c)(4-7) above is true and correct.

e. Property will be transferred only in cases where the tangible property or cash will be credited to the budget of the state or local agency that directly participated in the seizure or forfeiture, resulting in an increase of law enforcement resources for that specific state or local agency.

f. An information copy of any request will be forwarded to the United States Attorney in the district where the transfer request originated.

4. Procedure for Processing Requests for Equitable Transfer

a. In all cases, the Department investigative bureau field unit receiving the request will prepare a written report that will evaluate the degree of assistance provided by the requesting agency or agencies in the underlying investigation.

b. The equitable share for a participating state or local agency should generally reflect the contribution of the agency participating directly in any of the acts which led to the seizure or forfeiture of the property, including, but not limited to, the following factors:

(1) Which agency initiated the case;

(2) Which agency identified the asset;

(3) The amount of money and manpower expended by the state or local agency in pursuing the case;

(4) Whether or not the state or local agency seized other assets during the course of the same investigation and whether such seizures were made pursuant to state or local law; and

(5) Whether or not the state or local agency could have achieved forfeiture under state law, with favorable consideration given to a state or local agency which could have forfeited the asset(s) on its own but joined forces with the United States to make a more effective investigation.

c. The head of the Department investigative bureau may place tangible property forfeited administratively or judicially into official use in cases in which a state or local agency has filed a request for an equitable share of that property.

(1) In making this decision, the head of the Department investigative bureau must consider the following factors:

(a) The relative needs of both the requesting law enforcement agency and the Department investigative bureau for the particular asset;

(b) The uniqueness of the asset and the likely ability to secure such an asset by other seizures in the near future;

(c) The relative significance of the requesting law enforcement agency's participation in the case, as well as all the other factors pertinent to the determination of equitable distribution as set forth in Part III.B.4.c. above;

(d) The potential of, or likelihood that, the requesting agency will be eligible for an equitable share of property from additional seizures arising from the same investigation or from other seizures in the near future; and

(e) The impact that a decision to place the property into official use might have on Federal, state and local relations in that District.

5. Decision-Making Authority for Determining Equitable Transfer

a. The equitable distribution of an asset forfeited administratively with an appraised value of $100,000 or less will be determined by the head of the Department investigative bureau.

(1) The Department investigative bureau's field unit shall forward its report and recommendation to the bureau head for decision.

(2) In making this decision, the head of the Department investigative bureau will consider the report and recommendation forwarded by the field

unit and issue to the requesting agency a written ruling on the request.

(3) A copy of the decision document will be forwarded to the United States Attorney, or to the Criminal Division section chief in a Criminal Division case, and to the Director, United States Marshals Service.

(4) A copy of the decision document will be made available upon request to the Director, Asset Forfeiture Office.

b. In the case of all administratively forfeited property with an appraised value greater than $100,000 and with all judicially forfeited property, the evaluation and recommendation will be forwarded to the appropriate United States Attorney or to the Criminal Division section chief in a Criminal Division case.

(1) The equitable distribution of an asset forfeited judicially with an appraised value of $100,000 or less will be determined by the United States Attorney or the Criminal Division section chief.

(2) In making this decision, the United States Attorney or section chief will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and will consult with the United States Marshals Service.

(3) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the Director, United States Marshals Service and the Director, Asset Forfeiture Office.

c. In the case of all property with an appraised value greater than $100,000, the United States Attorney or section chief will forward the evaluation and recommendation of the Department investigative bureau, along with his own recommendation, to the Director, Asset Forfeiture Office, who will determine the equitable distribution of those assets.

(1) In making this decision, the Director will consider the reports and recommendations forwarded by the head of the Department of Justice investigative bureau and the United States Attorney or section chief and will consult with the United States Marshals Service.

(2) A copy of the decision document will be forwarded to the Department of Justice investigative bureau, the United States Marshals Service and the United States Attorney or section chief.

d. The Deputy Attorney General will make the final determination of equitable distribution of any asset with an appraised value of $750,000 or greater.

(1) The request will be processed as in 5 c. above.

(2) A copy of the decision document will be forwarded to the Director, Asset Forfeiture Office, the Director, United States Marshals Service, the United States Attorney or section chief and the Department of Justice investigative bureau.

e. In all cases in which judicially forfeited property is located in a judicial district other than where the judicial proceedings are taking place, the party determining the equitable distribution must consult with the respective United States Attorney prior to determining equitable distribution.

6. Proceeds Placed in the Department of Justice Assets Forfeiture Fund

a. If the federal forfeiture action is not deferred, and the property is not placed into official use or transferred to a state or local agency, it will be sold and the net proceeds of sale will be placed in the Assets Forfeiture Fund.

b. Forfeited cash will be placed in the Assets Forfeiture Fund.

c. All Department of Justice bureaus will promptly notify the United States Marshals Service of any facts affecting seized property. Some relevant facts would include bills, invoices, orders of mitigation and remission, orders of sharing with state or local agencies, orders of designation for official use by Department of Justice components, and appraisals. Based upon these and other factors, the United States Marshals Service should appropriately dispose of the property.

7. Disposition of Forfeited Property

a. State or local agencies may share in seized and forfeited tangible property, and seized and forfeited cash.

b. Any property that cannot be used for law enforcement purposes must be liquidated.

c. Where tangible property is transferred to qualifying state or local agencies, monies from the Assets Forfeiture Fund will not be used to pay liens or mortgages on the property, to equip the property for law enforcement purposes, or to pay salaries.

d. The recipient state or local agency must pay the valid liens and mortgages on the forfeited tangible property prior to the transfer of such property.

e. The recipient state or local agency may be required to pay direct expenses pertaining to the seizure prior to the transfer of tangible property.

f. In the event of an interlocutory sale of property pending forfeiture, the Director, United States Marshals Service first must consult with the United States Attorney, Criminal Division section chief or the Director of the Asset Forfeiture Office in the case of judicially forfeited property, or the head of the pertinent Department investigative bureau in the case of administrative forfeitures, to determine the status of any state or local law enforcement agency requests for equitable sharing.

IV. Department of Justice Assets Forfeiture Fund

A. Administration of the Fund

1. The Attorney General delegates the administration of the Department of Justice Assets Forfeiture Fund to the United States Marshals Service. It will operate under guidelines developed by the Subcommittee on Asset Forfeiture of the Department's Forum for Cooperative Strategy and in accordance with Department of Justice financial management policy.

2. The United States Marshals Service will submit to the Deputy Attorney General on a quarterly basis a financial statement as to the current status of the fund.

3. Copies of the quarterly United States Marshals Service statement will be provided to the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service and the Asset Forfeiture Office to assist the recipients in making decisions as to the use and transfer of forfeited property.

B. Payments Allowable Under Department of Justice Assets Forfeiture Fund

1. Forfeiture cash and proceeds from the sale of forfeited property are to be deposited in the Department of Justice Assets Forfeiture Fund.

2. Money from the Fund may be used for the following:

a. Payment of liens and mortgages pursuant to an order of remission or mitigation;

b. Payment of liens and mortgages pursuant to an order to place into official use.

c. Payment of liens and mortgages pursuant to court order.

d. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration, and the Immigration and Naturalization Service.

e. Payment of awards;

f. Purchase of evidence; and

g. Reversion to the United States Treasury at the end of the fiscal year of all amounts in excess of $5,000,000.

C. The Following, in Order of Priority, Will Be the Uses of the Forfeited Cash and the Proceeds of Sale of Forfeited Property

1. Payment of expenses incurred by the Department of Justice for the care,

custody and disposal of the seized and forfeited property;

2. Payment of expenses incurred by the Department of Justice in the seizure and forfeiture of the property;

3. Payment of expenses relative to the detention, inventory, safeguarding, maintenance, or disposal of the seized and forfeited property incurred by state and local agencies which assist in the seizure and forfeiture of the property;

4. Payments of orders of mitigation or remission;

5. Payments for orders of equitable sharing with state or local law enforcement agencies;

6. Payments for liens on vehicles placed into official use;

7. Payment of awards;

8. Payment to equip, for law enforcement purposes, conveyances placed into official use by the Drug Enforcement Administration Immigration and Naturalization Service; and

9. Purchase of evidence.

D. Limitation on Use of the Fund

1. The Department of Justice Assets Forfeiture Fund cannot be used to pay any of the following:

a. Salaries; and

b. Where property is transferred to state or local law enforcement agencies,

(1) Liens or mortgages on the property; and

(2) Payments to equip the property for law enforcement purposes.

2. Liens and mortgages shall be paid from the Fund only pursuant to an order of remission or mitigation, an order of the court, or an order to place the property into official use.

V. Discontinuance of Federal Forfeiture Actions

A. Deferral of Federal Judicial Forfeiture Proceedings

1. A decision to forego an federal judicial forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the personal approval of the United States Attorney after review of the evaluation and recommendation of the concerned investigative bureau.

2. In making this decision, the United States Attorney must consider the status of the Department of Justice Assets Forfeiture Fund.

3. Judicial forfeitures foregone in favor of state or local proceedings are to be reported by the United States Attorney in writing, within five days, to the Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, D.C. 20530.

B. Deferral of Federal Administrative Forfeiture Proceedings

1. A decision to forego a federal administrative forfeiture proceeding against any seized asset in favor of a state or local forfeiture proceeding requires the approval of the head of the Department investigative bureau.

2. In making this decision, the head of the Department investigative bureau must consider the status of the Assets Forfeiture Fund and, where appropriate, consult with the United States Marshals Service.

3. Department of Justice investigative bureaus must develop procedures for recording these decisions and providing reports as required.

VI. United States Customs Service Forfeitures

A. Pursuant to Title 28 United States Code, section 524(c), all proceeds from the forfeiture of property under any law enforced or administered by the Department of Justice remaining after payment of expenses for forfeiture and sale authorized by law are to be deposited in the Department of Justice Assets Forfeiture Fund, except to the extent that the seizure was effected by a United States Customs Service officer or that custody was maintaned by the Customs Service, in which case the provisions of 19 U.S.C. 1613a (Customs Forfeiture Fund) shall apply.

B. To the extent that the United States Marshals Service may have the capacity to do so, it may store and maintain seized property for the Customs Service.

1. Where the United States Marshals Service maintains custody of property seized by a Customs officer, the Customs Service will reimburse the Marshals Service for the expenses of such custody prior to the deposit of the net proceeds into the Customs Forfeiture Fund.

2. In instances where proceeds are to be deposited in the Department of Justice Assets Forfeiture Fund and the Customs Service, as a substitute custodian, has maintaned custody of property seized by the Department of Justice, the Department of Justice will reimburse the Customs Service for the expenses of such custody.

C. Requests for transfers of forfeited property by participating state and local law enforcement agencies in forfeitures where the seizure was effected by a Customs officer of custody was maintained by the Customs Service should be directed pursuant to 19 U.S.C. 1616 to the Customs Service for evaluation and forwarding to the Assistant Secretary of Treasury for Enforcement and Operations with an information copy to the United States Attorney in the district of seizure.

D. In the event of an unresolved dispute concerning whether a given forfeiture constitutes a Customs or Department of Justice forfeiture for purposes of cash or proceeds disposition, or for state and local transfers, the Deputy Attorney General and the Assistant Secretary of Treasury for Enforcement and Operations shall resolve the issue. Where appropriate, they may submit the issue to the Organized Crime Drug Enforcement Task Force Working Group for recommendation.

Dated: May 24, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-13641 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-01-M

[Order No. 1095-85]

President's Commission on Organized Crime; Meetings

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces four forthcoming meetings of the President's Commission on Organized Crime. This notice also sets forth a summary of the agenda for the four meetings, together with an explanation of why the first meeting will be closed to the public. Notice of these meetings is required by the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(a)(2).

DATES:

June 24, 25, and 26, 1985, 10:00 a.m. to 12:00 noon; 1:00 p.m. to 3:00 p.m. (public hearing).

June 23, 1985, 4:00 p.m. to 6:00 p.m. (closed meeting).

ADDRESS:

Appellate Courtroom, U.S. Court of International Trade, Second Floor, 1 Federal Plaza, New York, New York 10007 (public hearing);

Empire Room B, New York Penta Hotel, 401 Seventh Avenue, New York, New York 10007 (closed meeting).

FOR FURTHER INFORMATION CONTACT:

James D. Harmon, Jr., Executive Director and Chief Counsel, President's Commission on Organized Crime, 1425 K Street, NW., Suite 700, Washington, D.C. 20005; (202) 786-3500.

SUPPLEMENTARY INFORMATION: The closed meeting on June 23 will be conducted to discuss several matters. The Commission will be briefed concerning the investigation by the Commission staff of the organized

criminal groups whose illegal activities are to be described at the public hearings. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearing. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that these discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552b(c)(5) and (7)(C), (D), and (F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. Pursuant to the authority vested in him by section 8 of Pub. L. 98–368, the Chairman of the Commission has determined that this discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

The public hearings on June 24, 25, and 26 are to be open to both the public and press, and are for the purpose of receiving testimony concerning organized criminal groups in the United States involved in illegal gambling activities. The Commission will solicit testimony concerning the scope of activities of such groups, the manner in which their operation are conducted, and the effectiveness of Federal and state statutes and agencies in dealing with such groups. In particular, the Commission will solicit testimony from persons believed to be involved in gambling activities, and law enforcement and other public officials with knowledge of and experience in gambling investigations. Members of the public who wish to present written statements to the Commission are invited to send such statements to the President's Commission on Organized Crime, 1425 K Street NW., Suite 700, Washington, D.C. 20005.

Dated: June 3, 1985.

Edwin Meese III,

Attorney General.

Determination on Closed Meeting

President's Commission on Organized Crime

The President's Commission on Organized Crime will hold a meeting at Empire Room–B, New York Penta Hotel, 401 Seventh Avenue, New York, New York 10007 on June 23, 1985, at 4:00 p.m.

Pursuant to the authority vested in me by section 8 of Pub. L. 98–368, I hereby determime that this meeting may be closed to the public, on the ground that each portion of the meeting is exempt from the disclosure requirements of the Federal Advisory Committee Act.

The Commission will be briefed concerning the investigation by the Commission staff of the organized criminal groups whose illegal activities are to be described at the public hearings of the Commission scheduled for June 24, 25, and 26, 1985. This briefing is likely to include repeated references to specific individuals who are confidential sources for the Commission, or who are alleged to be direct participants in illegal activities but whose participation will not specifically be discussed by witnesses at the public hearings. The physical safety of these individuals could be placed in jeopardy if the identities of the witnesses and the time and place of their testimony were to be made public in advance of the public hearings. The discussions are exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C. 552(c)(5) and (7)(C), (D), and (F), which is incorporated by reference into the Federal Advisory Committee Act.

The Commission will also discuss at the closed meeting a number of issues specifically concerning the Commission's issuance of subpoenas. It will discuss, for example, issues relating to certain individuals who have already been, or may be, served with subpoenas by the Commission, and who are to testify in depositions conducted by the staff of the Commission or in public hearings conducted by the Commission. This discussion is exempted from the public meeting requirements of the Federal Advisory Committee Act by 5 U.S.C 552b(c)(10), which is incorporated by reference into the Federal Advisory Committee Act.

Dated: May 21, 1985.

Irving R. Kaufman,

Chairman of the Commission.

[FR Doc. 85–13640 Filed 6–5–85; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Proposed Termination of Final Judgment; Radio Corp. of America

Notice is hereby given that RCA Corporation ("RCA") has filed with the United States District Court for the Southern District of New York a motion to modify the consent decree in *United States* v. *Radio Corporation of America*, Civil No. 97–38; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to modification of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case, filed on November 19, 1954, charged RCA with a conspiracy to restrain trade in the manufacture, distribution, and sale of radio and television products and monopolization of radio-television patent licensing, as well as other anticompetitive patent licensing practices.

The decree, entered October 28, 1958, applies to equipment used in the radio and television industries, together with other transmitting or receiving equipment, and parts, systems, or circuits used in the equipment. It prohibits, among other things, agreements dividing markets or limiting production and agreements not to compete. It also bars RCA from engaging in certain patent licensing practices, including package licensing, grant backs of patent licenses, and price, quantity, or customer restrictions. RCA may not acquire any exclusive patent license or sublicensing rights without court approval. Finally, the decree mandates licenses of a specific group of domestic patents and establishes the terms of those licenses. The proposed modification of the decree would terminate all but the compulsory licensing provisions.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that modification of the decree would serve the public interest. Copies of the complaint, consent decree, RCA's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in

connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Room 18, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed modification of the decree to the Department. Such comments must be received within sixty days and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 724–7966).

Dated: May 22, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–13726 Filed 6–6–85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment; Radio Corporation of America

Notice is hereby given that RCA Corporation ("RCA") has filed with the United States District Court for the District of Delaware a motion to terminate the consent decree in *United States* v. *Radio Corporation of America*, In Equity No. 793; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The petition in this case (filed on May 13, 1930) alleged that RCA, General Electric Company, and Westinghouse Electric Company, together with two other firms later dismissed from the suit, violated sections 1 and 2 of the Sherman Act. The petition alleged that these five firms conspired to restrain trade in and monopolize the radio communication and radio apparatus fields through patent pooling, market division agreements and restrictive licensing practices. The Government amended the petition in 1931 to challenge RCA's foreign radio traffic agreements.

The consent decree, entered on November 21, 1932 and amended July 2, 1935, required General Electric and Westinghouse to sell all RCA stockholdings and to obtain court approval for further purchases. In addition, the decree prohibits RCA from preventing other firms from establishing radio circuits to or from the United States. The decree also prohibits market division agreements and agreements that would limit a defendant's freedom to license its radio patents. Finally, the decree prohibits agreements that would restrict any party from using radio technology in any field.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the petition and consent decree, RCA's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the District of Delaware, U.S. Courthouse, 844 King Street, Wilmington, Delaware 19801. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 724–7966).

Dated: May 23, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–13724 Filed 6–6–85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment; Victor Talking Machine Co.

Notice is hereby given that RCA Corporation ("RCA") has filed with the United States District Court for the Southern District of New York a motion to terminate the consent decree in *United States* v. *Victor Talking Machine Co.*, In Equity No. 15–110; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the decree, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The petition in this case (filed on May 3, 1918) alleged that Victor Talking Machine Co. (later acquired by RCA) had violated Section 1 of the Sherman Act by restricting the prices at which, the persons to whom, and the territories in which Victor's wholesalers and dealers could sell its "talking machines", records, and other products used with the "talking machines."

The decree, entered on the same day the petition was filed, enjoins RCA in perpetuity from imposing any resale restrictions on customers, territories, or prices of "talking machines," records, or other products used with "talking machines." In addition, the decree prohibits RCA from requiring that its dealers sell only such products produced by RCA.

The Department has filed with the Court a memorandum setting forth the reasons why the Department believes that termination of the decree would serve the public interest. Copies of the Petition, consent decree, RCA's motion papers, the stipulation containing the Government's consent, the Department's memorandum, and all further papers filed with the Court in connection with this motion will be available for inspection in the legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (Telephone: (202) 633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Room 18, United States Courthouse, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days and will be filed with the Court. Comments should be addressed to P. Terry Lubeck, Chief, Intellectual Property Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (Telephone: (202) 724–7966).

Dated: May 22, 1985.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–13725 Filed 6–6–85; 8:45 am]

BILLING CODE 4410-01-M

United States v. Rocky Mountain Motor Tariff Bureau, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that the proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the District of Colorado in Civ. No. 84–F–1737, *United States* v. *Rocky Mountain Motor Tariff Bureau, Inc.* The Complaint in this cae alleges that the defendant engaged in a combination and conspiracy to fix, raise, and maintain, in violation of section 1 of the Sherman Act (15 U.S.C. 1), motor carrier rates for the transportation between points in the United States of certain commodities that are exempt from Interstate Commerce Commission jurisdiction.

The proposed Final Judgment prohibits the defendant from submitting to, or allowing any of its rate committees or subcommittees to vote on or consider, any proposal for the transportation of exempt commodities. The defendant is required by the proposed Final Judgment to take certain affirmative steps to assure compliance with the Sherman Act and the terms of the Final Judgment, including purging its tariffs of all rates for the transportation of exempt commodities and sending copies of the Final Judgment to its officers, directors, certain employees, agents, and members. The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant, to examine such records for compliance or noncompliance with the Final Judgment.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (Telephone 415–556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Colorado

[Civil Action No. 84–F–1737]

United States of America, plaintiff, v. Rocky Mountain Motor Tariff Bureau, Inc., defendant. Filed: May 10, 1985.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures & Penalties Act (15 U.S.C. § 16), and without further notice to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. Defendant waives any claims under 28 U.S.C. 2412(d) for attorney fees or expenses in this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to either party in this or any other proceeding.

Dated:

For the Plaintiff: Charles F. Rule, *Acting Assistant Attorney General.* Mark Leddy, and Gary R. Spratling, *Attorneys, U.S. Department of Justice.* Robert N. Miller, *United States Attorney, District of Colorado.*

For the Defendant: William E. Kenworthy, Rocky Mountain Motor Tariff Bureau, Inc., P.O. Box 5746, 4045 Pecos Street, Denver, Colorado 80217, (303) 433–6731; Richard B. Cohen, Bernard H. Meyers; and Barbara J. Nelson, *Attorneys,* U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, CA. 94102, (415) 556–6300.

In the United States District Court for the District of Colorado

[Civil Action No. 84–F–1737]

United States of America, plaintiff, v. Rocky Mountain Motor Tariff Bureau, Inc., defendant.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint herein on August 28, 1984, and plaintiff and defendant, by their respective attorneys, having each consented to the entry of this Final Judgment without trial adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence against, an admission by, or an estoppel against either party with respect to any such issue;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of both of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

As used in this Final Judgment:

(A) "Carrier" means any person authorized pursuant to 49 U.S.C. 10922(b)(1) to provide transportation subject to the jurisdiction of the I.C.C. as a motor carrier of property;

(B) "Commodity group" means specific commodities listed together under a single heading in a tariff;

(C) "Docket bulletin" means a RMB publication which includes public notice of proposed tariff changes to be considered by one or more RMB rate committees or subcommittees;

(D) "Exempt commodity" means any commodity specified in 49 U.S.C. 10526, as amended, as more specifically identified in Appendix A hereto, the transportation of which is not subject to I.C.C. jurisdiction;

(E) "I.C.C." means the Interstate Commerce Commission;

(F) "Person" means any individual, firm, partnership, association, corporation, or any other business or legal entity;

(G) "Proposal" means any request submitted to the RMB to establish a rate, or to change, modify, or revise provisions in an existing rate;

(H) "Rate or rates" means specific rates or rate levels; allowances or charges; rules which solely affect or apply to rates for the transportation of exempt commodities; and the formulation, development, establishment, implementation, application, or maintenance of specific rates, rate levels, allowances, or charges, and procedures or policies pertaining thereto;

(I) "RMB" means the defendant, Rocky Mountain Motor Tariff Bureau, Inc. and any successor thereof;

(J) "RMB rate committee or subcommittee" means any group of persons that includes at least two or more motor carriers that considers rates under procedures authorized by 49 U.S.C. 10706, Agreement No. 60;

(K) "Tariff" means rates, fares, and charges filed with the I.C.C. for the

transportation and handling of commodities; and

(L) "To serve a copy upon the plaintiff" means to mail one copy to Chief, Legal Procedure Unit, Antitrust Division, U.S. Department of Justice, Room 7416, Main Justice Building, Washington, D.C. 20530 and to mail a second copy to Chief, San Francisco Field Office, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102.

III

This Final Judgment applies to the defendant, its successors and assigns, and to its subsidiaries, officers, directors, agents, employees, and members, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from:

(A) Allowing any of its rate committees or subcommittees to vote on or consider any proposal for the establishment or changes of rates for the transportation of exempt commodities;

(B) Processing any proposal, for consideration by a rate committee or subcommittee, that includes rates for the transportation of exempt commodities;

(C) Publishing in its docket bulletin any proposal for the establishment or changes of rates for the transportation of exempt commodities;

(D) Publishing rates for the transportation of exempt commodities in any of its tariffs, except rates submitted by a single carrier or joint-line rates submitted by carriers who can participate in the joint route, and that have requested that such rates be published for informational purposes only pursuant to 49 CFR 1312.1(e);

(E) Setting, fixing, maintaining or establishing rates for the transportation of exempt commodities in any of its tariffs;

(F) Taking any other action which has the purpose or effect of setting, fixing, maintaining, or establishing rates for the transportation of exempt commodities between or among competing carriers; and

(G) Recommending to any carrier a rate for the transportation of exempt commodities.

Provided, however, that nothing in paragraphs IV (A), (B), or (C) shall prohibit defendant from complying with paragraph V (A).

Provided further that nothing in this Final Judgment shall prohibit RMB from engaging in action on intrastate rates which is immune from the operations of the antitrust laws under the state action doctrine as set forth in the holding of the United States Supreme Court in *Southern Motor Carriers Rate Conference, Inc.* v. *United States* (March 27, 1985).

V

Defendant is ordered and directed:

(A) To purge from each of its tariffs within ninety (90) days after the entry of this Final Judgment all rates for the transportation of exempt commodities, including but not limited to rates for the transportation of (1) specific exempt commodities, and (2) exempt commodities included within commodity groups; but excluding any rates submitted by a single carrier or joint-line rates submitted by carriers who can participate in the joint route, published in defendant's tariffs pursuant to 49 CFR 1312.1(e) and which are clearly marked as rates which are being published only for informational purposes;

(B) To mail or otherwise furnish, within sixty (60) days after the entry of this Final Judgment, a copy of this Final Judgment to each of (1) its officers and directors; (2) its agents and employees with supervisory or management responsibility, or with responsibility for dockets, docket bulletins, or rates; and (3) its member carriers that participate in one or more of defendant's tariffs; and

(C) To file with the Clerk of the Court and to serve a copy upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit setting forth the fact and manner of compliance with paragraphs V (A) and (B).

VI

Defendant is further ordered and directed:

(A) To establish a reasonable program for dissemination of, education as to, and compliance with this Final Judgment, involving each employee, officer, director, agent, and every rate committee or subcommittee member having responsibility in connection with or authority over dockets, docket bulletins, or rates, and advising them of their obligations under this Final Judgment. This program shall include, but is not limited to, the inclusion, in an appropriate RMB manual or internal document, of a copy of this Final Judgment, in whole or in part or an explanation thereof, and a statement of RMB compliance policy thereunder;

(B) To designate by name, title, and address an individual whom the plaintiff may contact regarding any aspect of compliance by the defendant with any of the obligations imposed by this Final Judgment or regarding any rights of visitation granted by Section VIII of this Final Judgment;

(C) To file with the Clerk of the Court and to serve a copy upon the plaintiff within one-hundred and twenty (120) days after the entry of this Final Judgment, an affidavit setting forth the fact and manner of compliance with paragraphs VI (A) and (B); and

(D) On or about the first year anniversary of the entry of this Final Judgment and annually thereafter for a period of five (5) consecutive years from the date of entry of this Final Judgment, to file with the Clerk of the Court and to serve a copy upon the plaintiff an affidavit setting forth the following information:

(1) The fact and manner of compliance with paragraph VI (A) during the preceding year, and

(2) Any changes in defendant's name, ownership, location, attorney of record or individual designated pursuant to paragraph VI (B) during the preceding year.

VII

Defendant shall require, as a condition of the sale or other disposition of all, or substantially all, of the total assets of its business, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court and serve on the plaintiff its consent to be bound by this Final Judgment.

VIII

(A) For the purpose of determining or securing compliance with this Final Judgment, upon receipt of a written request from the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, defendant shall, within sixty (60) days afer receiving the request, subject to any legally recognized privilege:

(1) Permit any duly authorized representative of the Department of Justice access, during the office hours of defendant, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, records, and documents in the possession or in the control of the defendant relating to any of the matters covered by this Final Judgment.

(2) Provide to the Department of Justice copies of any books, ledgers, accounts, correspondence, memoranda, and other documents or records in the possession or under the control of the defendant relating to any of the matters covered by this Final Judgment.

(3) Submit written reports, under oath if requested, with respect to its compliance with this Final Judgment as may, from time to time, be requested, and

(4) Permit any duly authorized representative of the Department of Justice, subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of defendant, who have counsel present, regarding any subject covered by this Final Judgment.

(B) No information or document obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law, provided however, that any representative of the Department of Justice may divulge to the Office of Compliance and Consumer Assistance of the I.C.C. the existence of any practice which is discovered by the means described in this Section VIII and which is believed to violate any of the provisions of the Interstate Commerce Act.

(C) If at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

IX

Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for such further orders and direction as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

X

This Final Judgment shall expire ten (10) years from the date of entry or, with respect to any particular provision, on any earlier date specified.

XI

This Court finds that the entry of this Final Judgment is in the public interest.

So Ordered this _____ day of _____, 1985.

United States District Judge

In the United States District Court for The District of Colorado

[Civil Case No. 84–F–1737]

United States of America, plaintiff, v. Rocky Mountain Motor Tariff Bureau, Inc., defendant.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On August 28, 1984, the United States filed a civil antitrust complaint alleging that the Rocky Mountain Motor Tariff Bureau, Inc. ("RMB") conspired with member carriers to restrain trade in the transportation of commodities specified in 49 U.S.C. 10526 as being exempt from Interstate Commerce Commission (I.C.C.) jurisdiction (hereinafter "exempt commodities") in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint requests the Court to find that the RMB has violated Section 1 of the Sherman Act and further requests the Court to enjoin the continuance of the conspiracy.

II

Practices Giving Rise to the Alleged Violation

The Reed-Bulwinkle Act, which was passed in 1948, authorizes two or more motor carriers to apply to the I.C.C. for approval of an agreement to establish a rate bureau to set certain rates collectively (49 U.S.C. 5b, currently codified at 49 U.S.C. 10706(b)(2)). Upon I.C.C. approval of a rate bureau agreement, a rate bureau may set rates for transportation of commodities subject to the jurisdiction of the I.C.C. Such rate setting activities are not subject to the operation of the antitrust laws, provided that the rate bureau's actions conform to the procedural requirements set forth in the approved agreement. Every rate bureau agreement must reserve to each of the rate bureau's members the right to take a rate action independent of the rates set collectively by the rate bureau (49 U.S.C. 5b(6), currently codified at 49 U.S.C. 10706(b)(2)(B)(ii)). Once a rate is published in a tariff, motor carriers who participate in the tariff are required to charge the rates specified in that tariff (49 U.S.C. 10762).

On July 1, 1980, the Motor Carrier Act of 1980 went into effect. Under the Act, after July 1, 1984, no rate bureau agreement approved pursuant to 49 U.S.C. 10706(b) may provide for discussion of or voting upon single-line rates. (49 U.S.C. 10706(b)(3)(D)). A single-line rate is a rate, charge or allowance proposed by a single motor common carrier of property that is applicable only over its line and for which the transportation can be provided by that carrier. Agreements between competing motor carriers on single-line rates therefore constitute price fixing, a *per se* violation of section 1 of the Sherman Act (15 U.S.C. 1).

Also under the Motor Carrier Act, as of July 1, 1980, the I.C.C. has had no jurisdiction over, and has not been empowered to authorize, collective rate action for the transportation of exempt commodities, whether carried in loads comprised exclusively of exempt commodities or carried in mixed loads, *i.e.*, loads comprised in part of exempt commodities and in part of regulated commodities (49 U.S.C. 10526, 10528). Agreements between competing motor carriers on rates for the transportation of exempt commodities therefore constitute price fixing, a *per se* violation of Section 1 of the Sherman Act (15 U.S.C. 1).

The RMB, which was incorporated in Denver, Colorado, in 1939, had its original operating agreement approved by the I.C.C. in 1958. That agreement was recently amended pursuant to requirements of the Motor Carrier Act of 1980. During all or part of the time covered by the Complaint, RMB's Rules of Procedure Governing Additions, Changes and Eliminations in Tariffs Published by Rocky Mountain Motor Tariff Bureau, Inc. ("Rules") governed the procedure for modification of RMB tariffs. The Rules require, with some exceptions, that all proposals for modification of rates in RMB tariffs be submitted to one of various RMB rate committees for consideration. The RMB By-Laws require that the membership of each rate committee be derived from RMB member motor carriers participating in tariffs under the jurisdiction of each such committee. Committee members, who are competitors of each other, consider each

rate proposal and vote to approve, disapprove, or defer action on the proposal.

The Government contends and was prepared to show at trial that, on numerous occasions following July 1, 1980, RMB rate committees, organized and funded by the RMB and assisted by RMB employees, approved proposals to raise, establish, or extend rates for transportation of exempt commodities. RMB then published all such rates in its tariffs. A representative sample of such collective action wss attached as Exhibit A to the Government's Opposition to Defendant's Motion to Dismiss filed March 7, 1985. Exhibit A was based on minutes of only one of the ten RMB rate committees that were in existence during the period 1980 to 1984.

The Government contends that this conspiracy between Defendant RMB and member carriers fixed, raised, or maintained at artificial and noncompetitive levels, rates for the transportation by motor carriers of various exempt commodities between points in the United States. As a result, competition between and among the co-conspirators engaged in the motor carrier transportation of various exempt commodities between points in the United States has been restrained.

Explanation of the Proposed Final Judgment

The United States and RMB have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h). The proposed Final Judgment provides that its entry does not constitute and evidence against, admission by, or an estoppel against either party with respect to any issue of fact or law.

Under the provisions of 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final judgment may not be entered unless the Court finds that entry is in the public interest. Section XI of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the RMB and its members discontinue all unauthorized practices which have the purpose or effect of restraining competition among motor carriers for the transportation of exempt commodities.

A. *Prohibitions and Obligations.* Under Section IV of the proposed Final Judgment, RMB is enjoined and restrained from allowing any of its rate committees or subcommittees to vote on or consider proposals, defined as requests to establish a rate, or to change, modify or revise provisions in an existing rate, for the transportation of exempt commodities. Rates include specific rates or rate levels, allowances or charges, rules which solely affect or apply to rates for the transportation of exempt commodities, and procedures or policies pertaining thereto. The RMB may not submit a proposal for consideration by a rate committee or subcommittee that includes rates for the transportation of exempt commodities. Section IV also enjoins the RMB from publishing in its docket bulletins proposals for the transportation of exempt commodities. The RMB is further enjoined from publishing rates for the transportation of exempt commodities in any of its tariffs, except rates submitted by individual carriers pursuant to 49 CFR 1312.1(e), that is, rates submitted and published for informational purposes only. In addition, the RMB is enjoined from setting, fixing, maintaining, or establishing rates for transportation of exempt commodities in any of its tariffs and from taking any other action which has the purpose or effect of setting, fixing, maintaining, or establishing rates for the transportation of exempt commodities between or among competing carriers. Finally, the RMB is enjoined from recommending to any of its member carriers any rate for the transportation of exempt commodities.

Section IV permits the RMB and its members to take action on intrastate rates for the transportation of exempt commodities, as long as such action is immune from the operation of the antitrust laws under the state action doctrine as set forth in the holding of the United States Supreme Court in *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, ___ U.S. ___ (1985).

Section V of the proposed Final Judgment requires the RMB to purge from each of its tarriffs within 90 days after the entry of the proposed Final Judgment all rates for the transportation of exempt commodities including, but not limited to, rates for the transportation of (1) specific exempt commodities and (2) exempt commodities included within a commodity group, unless the exempt commodity rate is being published pursuant to 49 CFR 1312.1(e) and the RMB has clearly marked in its tariff that such rate is being published for informational purposes only. The RMB is obligated to mail or otherwise furnish within 60 days after entry of the Final Judgment a copy of the Final Judgment to each of (1) its officers and directors, (2) its agents and employees with supervisory or management responsibility, or with responsibility for dockets, docket bulletins, or rates and (3) member motor carriers that participate in one or more of the RMB tariffs. Under this section, the RMB is obligated to file with the Clerk of the Court and to serve a copy upon the United States within 90 days after the date of entry of the Final Judgment an affidavit setting forth the fact and manner of compliance with this Section.

To ensure understanding of the Final Judgment, Section VI of the proposed Final Judgment directs the RMB to establish a reasonable program for dissemination of, education as to, and compliance with the Final Judgment, involving each corporate employee, officer, director, agent, and every rate committee or subcommittee member having responsibility in connection with or authority over dockets, docket bulletins, or rates, and advising them of their obligation under the Final Judgment. The program shall include, but is not limited to, the inclusion in an appropriate RMB manual or internal document of a copy of the Final Judgment, in whole or in part, or an explanation thereof, and a statement of RMB compliance policy thereunder.

B. *Scope of the Proposed Final Judgment.* Section X of the proposed Final Judgment provides that the Final Judgment shall remain in effect for ten (10) years.

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to the RMB and to the RMB's officers, directors, agents, employees, or members and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

Section VII of the proposed Final Judgment requires that the RMB shall require any purchaser or successor of all, or substantially all, of its assets to agree to be bound by the provisions of the Final Judgment.

Section VI (B) of the proposed Final Judgment requires the RMB to maintain for the effective period of the Final Judgment an agent for service of process in connection with any proceedings relating to the construction, modification, or enforcement of the Final Judgment.

C. *Effect of the Proposed Final Judgment on Competition.* The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment provisions are intended to ensure that neither the RMB nor any of its members take any collective action with respect to rates

for the transportation of exempt commodities.

IV

Alternatives to the Proposed Final Judgment

The only alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the United States and is not warranted since the proposed Final Judgment provides all the relief that the United States sought in its Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages it has suffered as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the Final Judgement has no *Prima Facie* effect in any lawsuit which may be brought against the RMB.

VI

Procedures Available for Comment on the Proposed Final Judgement

As provided by the Antittrust Procedures and Penalties Act, any person may submit written comments on the proposed Final Judgment to Gary R. Spratling, Chief, San Francisco Field Office, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, within the sixty day period provided by the Act. The comments and the government's responses to them will be filed with the Court and published in the Federal Register. All comments will be given consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry. The proposed Final Judgment itself provides that the Court will retain jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the Final Judgment.

VII

Determinative Materials and Documents

No materials and documents of the type described in section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) were considered in formulating this proposal Final Judgment. Consequently, none are filed herewith.

Dated: _____

Gary R. Spratling, Richard B. Cohen, Bernard H. Meyers, Barbara J. Nelson, *Attorneys, U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102, (415) 556-6300.*

[FR Doc. 85-13727 Filed 6-6-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-15,665 et al.]

Globe Refractories, Inc., et al.; Dismissals of Applications for Reconsideration

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Globe Refractories, Inc., Newell, West Virginia; LTV Steel Corporation, Greenwich, Connecticut; Anamax Mining Company, Sahiarita, Arizona; Fairfield Garment Company, Fairfield, Illinois and Harris Graphics Corporation, Newspaper Press Division, Cleveland, Ohio. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissals of the applications were issued.

TA-W-15,665: Globe Refractories, Inc., Newell, West Virginia (May 24, 1985)

TA-W-15,715: LTV Steel Corporation, Greenwich, Connecticut (May 21, 1985)

TA-W-15,626: Anamax Mining Company, Sahuarita, Arizona (May 7, 1985)

TA-W-15,528: Fairfield Garment Company, Fairfield, Illinois (May 1, 1985)

TA-W-15,540: Harris Graphics Corporation, Newspaper Press Division, Cleveland, Ohio (March 15, 1985)

Signed at Washington, D.C. this 31st day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-13773 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Tubular Corporation of America, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 31st day of May 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Tubular Corporation of America, Inc. (company)	Muskogee, OK	5/29/85	5/21/85	TA-W-16,050	Oil country tubular goods.
Thomson Company (company)	Parsons, TN	5/30/85	5/25/85	TA-W-16,051	Men's slacks.
Thomson Company (workers)	Lexington, TN	5/29/85	5/20/85	TA-W-16,052	Men's slacks.
Thomson Company (company)	Eloy, AZ	5/30/85	5/25/85	TA-W-16,053	Men's slacks.
Ingersoll Rand Co., Foundry Div. (IUE)	Painted Post, NY	5/28/85	5/20/85	TA-W-16,054	Compressors.
Transport, Inc. (workers)	Grand Forks, ND	5/29/85	5/20/85	TA-W-16,055	Petroleum carriers.
Western Nuclear, Inc., Jeffrey City Operation (wkrs)	Jeffrey City, WY	5/29/85	5/24/85	TA-W-16,056	Mine and mill uranium.
D B Industries, Inc., (workers)	Lisbon, ME	5/29/85	5/16/85	TA-W-16,057	Shoe sole compound.
DAL Specialties, Inc. (workers)	Ransomville, NY	5/29/85	5/22/85	TA-W-16,058	Hydroxis aluminum chloride.
Warner & Swasey—Wiedermann Div. (United Electrical)	King of Prussia, PA	5/30/85	5/23/85	TA-W-16,059	C & c punch press.
Centralab, Inc. (workers)	El Paso, Texas	5/28/85	5/15/85	TA-W-16,060	Electronic components.
Great Western Sugar (Teamsters)	Loveland, CO	5/28/85	5/21/85	TA-W-16,061	Process raw sugar beets.
Great Western Sugar (Teamsters)	Denver, CO	5/28/85	5/21/85	TA-W-16,062	Process raw sugar beets.
Modulus Corporation (USWA)	Mt Pleasant, PA	5/23/85	5/22/85	TA-W-16,063	Nuts, bolts, industrial fasteners.
Automation Components, Inc. (workers)	Peckville, PA	5/29/85	5/14/85	TA-W-16,064	Fixed ceramic capacitors.
Corona Shirt Mfg Co. (ACTWU)	Corona, NY	4/29/85	4/24/85	TA-W-16,065	Blouses.

[FR Doc. 85-13772 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the **Federal Register** (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision. The Plan provides for the adoption of Federal Standards as State Standards by:

1. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

2. Commission order adopting and designating an effective date.

OSHA regulations (29 CFR 1953.22 and .23) require that states respond to the adoption of new or revised permanent federal standards by state promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted state standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated July 20, 1984, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the state submitted rules and regulations in response to federal OSHA's Occupational Noise Exposure; Hearing Conservation Amendment Provisions of General Industry Standards (29 CFR 1910.95 Occupational Noise Exposure; Hearing Conservation Amendment, 48 FR 9738, March 8, 1983).

The above adoptions of federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, section 27-11-105(a)(viii). In addition, the standards were published in newspapers of general/major circulation throughout the State pursuant to the Wyoming Administrative Procedures Act 1977, section 16-3-103(a).

State standards for 29 CFR Part 1910: Occupational Noise Exposure; Hearing Conservation Amendment was adopted by the Health and Safety Commission of Wyoming on June 24, 1983 (effective July 15, 1983) pursuant to Wyoming statute 1977, section 27-11-105. The state standard on Occupational Noise Exposure; Hearing Conservation Amendment is identical to the federal standard action, with the only exception being omission of non-mandatory provisions of the federal standards.

2. Decision

The above state standard has been reviewed and compared with the relevant federal standard and OSHA has determined that the state standard is identical to the federal standard and accordingly should be approved.

3. Location of Supplement for Inspection and Copying

A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building; 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of state law which permitted public comments, and further public participation would be repetitious.

This decision is effective June 7, 1985.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed in Denver, Colorado, this 1st day of May, 1985.

Byron R. Chadwick,

Regional Administrator.

[FR Doc. 85-13771 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-26-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-102; Exemption Application No. D-3509 et. al.]

Grant of Individual Exemptions; Peoples Bank & Trust, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The Notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Peoples Bank and Trust (Peoples) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 85-102; Exemption Application No. D-3509]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply effective March 19, 1976, to the commitment and subsequent acquisition by Alaska Electrical Pension Fund (the Electrical Fund) of a participation interest (the NOWESCO Participation) in a commercial loan from Peoples provided that: (1) The sale or exchange of the NOWESCO Participation was expressly approved by a fiduciary independent of Peoples who had authority to manage or control the Electrical Fund assets committed to and invested in the NOWESCO Participation; (2) the terms of the NOWESCO Participation were no less favorable to the Electrical Fund than the terms generally available in arm's-length transactions between unrelated parties; (3) no investment management, advisory, underwriting fee or sales commission or similar compensation was paid to Peoples with regard to such sale or exchange; (4) the decision to invest in the NOWESCO Participation was not part of an arrangement under which a fiduciary of the Electrical Fund, acting with the knowledge of Peoples, caused the transaction to be made with or for the benefit of a party in interest (as defined in section 3(14) of the Act) with respect to the Electrical Fund; and (5) Peoples will maintain for the duration of the NOWESCO Participation records necessary to determine whether the conditions of this exemption have been met. The records referred to must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Electrical Fund, during normal business hours by: any trustee, investment manager, employer of plan participants, employee organization whose employees are covered by such plan, participant or beneficiary of the Electrical Fund.

EFFECTIVE DATE: This exemption is effective March 19, 1976.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 20, 1985 at 50 FR 11269.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, Telephone (202) 523-8753. (This is not a toll-free number)

The Prudential Property Investment Separate Account (PRISA) Located in Newark, New Jersey

[Prohibited Transaction Exemption 85-103; Exemption Application No. D-5400]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to, effective August 31, 1981, (1) the continuation of a mortgage loan with respect to property owned by 745 Property Investments (the Trust), a real estate investment trust owned by PRISA, where the general account of the Prudential Insurance Company of America (Prudential) is the mortgagee; and (2) the continuation of a wraparound mortgage loan where the Trust is the mortgagee on the wraparound mortgage loan and Prudential's general account is the lender on the underlying or "wrapped" mortgage as described in the notice of pendency; provided that the terms and conditions of the transactions are not less favorable to the Trust than those available in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 2, 1985 at 50 FR 13095.

Effective Date: This exemption is effective August 31, 1981.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Contractors' Equipment Company Employees Profit Sharing Plan (the Plan), Located in El Paso, Texas

[Prohibited Transaction Exemption 85-104; Exemption Application No. D-5666]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan to Contractor's Equipment Company of certain real property (the Real Property) for the cash consideration of $19,000, provided the price paid for the Real Property is not

less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 9, 1985 at 50 FR 14046.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408 (a) of the Act and/or section 4975 (c) (2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404 (a) (1) (B) of the Act; nor does it affect the requirement of section 401 (a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of June, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-13749 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-5229 et al.]

Proposed Exemptions; Peter W. Burk Employee Pension Plan et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the Proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1979) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Peter W. Burk Employee Pension Benefit Plan for Sole Proprietorship (the Plan) Located in Waterloo, Iowa

[Application No. D-5229]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1985). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the loan by the Plan to Peter W. Burk (Mr. Burk) of $22,000, under the terms described in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party. Section 408(d)(1) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the lending of any part of the corpus or the income of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject loan. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a Keogh plan established by the Peter W. Burk Law Firm (the Employer). Mr. Burk is the owner and sole proprietor of the Employer, and the administrator of the Plan. The Plan's trustee is the National Bank of Waterloo (the Bank). One other employee of the Employer, Eula S. Martin, participates in the Plan, but her funds are kept separate and maintained separately by the Bank. Therefore Mr. Burk is the only Plan participant to be affected by the subject transaction. As of April 8, 1985, the Plan had total assets credited to Mr. Burk's segregated

account having a market value of approximately $99,825.

2. Mr. Burk plans on purchasing for the Employer an IBM XT Personal Computer and supporting hardware and software, and a teleconnect phone system. The total cost for the equipment and software will be $22,000. Mr. Burk wishes to borrow that amount from his account in the Plan. The proposed loan calls for interest at a rate of 12 percent per annum. The loan would be repaid over a 5 year period of time. Equal monthly payments of principal and interest will be made to the Plan by Mr. Burk.

3. The subject loan will be collateralized by a first security interest in the equipment and software to be purchased. Mr. Burk has represented that he will file a Uniform Commercial Code financing statement at the time of the loan evidencing the Plan's security interest in the equipment and software. In addition, the Plan will hold as security a second mortgage on Mr. Burk's residence (the Property). The second mortgage will be recorded with the county recorder for Black Hawk County, Iowa. The Property has been appraised by Ms. Alice Rutland of Winninger Realtors, Waterloo, Iowa, an independent realtor, as having a fair market value of approximately $70,000 as of March 29, 1985. The Property has an outstanding first mortgage with a principal balance of $8,979 as of December 31, 1984. Regular payments have been made since that date, further reducing the principal balance. The first mortgage is held by the First Federal Savings Bank of Walterloo, Iowa.

4. The Bank which is the Plan's independent trustee, has reviewed the terms of the proposed loan and determined that they are appropriate for the Plan and in the Plan's best interest. The Bank represents that, as of April 10, 1985, its commercial department would make the loan to Mr. Burk at an interest rate of 11¼ percent per annum. The Bank also represents that the proposal to secure the loan with a security interest in the equipment to be purchased and with a second mortgage on Mr. Burk's home will result in oversecuring the loan to the Plan's benefit. The Bank will monitor the loan and take whatever action is necessary to enforce the Plan's rights under the loan.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (1) The interest rate is more favorable to the Plan than that required by a third party lender; (2) the loan will be collateralized by a first security interest in the equipment to be purchased and by a second mortgage on Mr. Burk's residence, which has been appraised as having a fair market value more than $60,000 greater than the principal amount outstanding on the first mortgage; (3) Mr. Burk is the only participant in the Plan to be affected by the transaction, and he desires that it be consummated; and (4) the Bank has determined that the transaction is in the Plan's best interest, and it will monitor the loan and take whatever action is necessary to enforce the Plan's rights under the loan.

Notice to Interested Persons: Because Mr. Burk is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute this notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Atkinson Trading Co., Inc. Pension Plan (the Plan) Located in Gallup, New Mexico

[Application No. D-5805]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease beyond June 30, 1984 of certain real property by the Plan to Atkinson Trading Co., Inc., (the Employer) provided the terms and conditions of such lease are as favorable to the Plan as those obtainable in a similar transaction with an unrelated party.

Effective Date: July 26, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit retirement plan with 60 participants. The Plan Administrator is the Pension Committee, which is composed of Joe Atkinson, Joyce Atkinson, and Leroy Atkinson. The Trustee of the Plan is Joe Atkinson. Mr. Atkinson is the trustee for all of the assets of the Plan, except for certain real property which is the subject of the proposed transaction. The Plan had total assets of $1,789,527 as of September 30, 1984. The Employer is an Indian arts and jewelry manufacturer, wholesaler, and retailer operating principally in Gallup, New Mexico.

2. The Plan owns certain real property known as Lot 1, Block F, Burke George Heights Addition to the City of Gallup, New Mexico (the Property). The Property was acquired by the Plan on November 30, 1973 from an unrelated party. The Property represents approximately 10 percent of the total assets of the Plan. The Property was leased to the Employer pursuant to a lease which became effective on September 1, 1974. The Old Lease was for a ten-year period at a rental rate of $1,500 per month.[1]

3. The applicant proposes that the Plan lease the Property to the Employer pursuant to a lease which will have an effective date of July 26, 1984 (the New Lease). The terms of the New Lease are as follows: The New Lease will be for a 10 year period, with two options to renew for additional periods of five years each. The initial monthly rental will be $1,900. This rental amount exceeds the fair market rental value of the Property as determined by an independent appraisal. An independent appraisal (the Appraisal) performed by Kauzlaric-High Realtors, Inc. determined the fair market value of the Property at $188,000 and the fair market rental value of the Property at $1,566 per month as of August 31, 1984.

4. The New Lease provides for a review of the monthly rental every five years on the anniversary date of the commencement of the New Lease to provide for increases in annual rental

[1] The Applicant previously sought exemptive relief from the Department for a proposed transaction which involved the Old Lease, see Exemption Application No. D-2066. By letter of December 4, 1981, the Department closed Exemption Application No. D-2066, indicating that the Old Lease did not meet the requirements of Section 414 of the Act. In that letter, the Department noted that the specific details of the rights and obligations of the parties to the Old Lease were not agreed upon until after July 1, 1974. The Department also noted that the applicant had not complied with the provision of the Old Lease regarding rental increases beginning in 1979.

By letter of February 6, 1985, the Internal Revenue Service, Dallas Appeals Office, informed the applicant that no further action need be taken regarding excise tax liability for the period September 30, 1974 through September 30, 1983. Therefore, the applicant represents that any excise tax which may be due as a result of the Old Lease from October 1, 1983 through June 30, 1984 will be paid within 60 days of the granting of this proposed exemption or the assessment of such tax, which ever is later. With respect to any excise tax which may be due from the period beginning July 1, 1984 through the granting of this exemption, the applicant represents that any such excise taxes will be paid within 60 days of the grant of this exemption.

commensurate with any increases in the fair market rental value of the Property. Such review will be conducted by the Appraiser or another independent real estate appraiser selected by an independent trustee.

5. The New Lease requires the Employer to pay all repair and maintenance costs of the Property, to pay all real estate taxes on the Property, and to carry fire insurance, extended coverage and public liability insurance on the Property to the full extent of the insurable value of the Property, with the Plan as a named insured to the extent of its interest.

6. Mr. W. Wesley Green has been appointed independent fiduciary for the Property (the Independent Fiduciary). The Independent Fiduciary is currently the President of the Western Bank in Gallup, New Mexico. By affidavit of July 26, 1984, he represents that he is experienced in the administration of qualified plans under the Act and in the administration of real property leases. The Independent Fiduciary is unrelated to the Employer and any Plan participant.

7. The Independent Fiduciary represents that the New Lease fits within the general investment scheme of Plan assets. He also states that, in his opinion, were the Property not leased to the Plan Sponsor, it could not be leased to an unrelated party for a rent rate approaching that which the Plan Sponsor will pay.

8. The Independent Fiduciary will review any renewals of the New Lease and will approve such renewals only if they are in the best interests of the Plan. The Independent Fiduciary will also exercise his independent judgment in selecting an appraiser to determine the fair market value of the Property and adjusting the rental rate.

9. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408 of the Act because:

(1) The Independent Fiduciary has determined that the terms of the New Lease are arm's-length terms;

(2) The Independent Fiduciary will monitor all of the terms of the New Lease;

(3) The rental rate received by the Plan for the Property will be adjusted every five years to assure that the Plan receives fair market rental value; and

(4) The Independent Fiduciary has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Watkins Master Trust (the Trust) Located in Atlanta, Georgia

[Application No. D-5838]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code shall not apply to (1) the leasing of certain improved real property (the Property) by the Trust to Watkins Associated Industries, Inc. (Watkins), a party in interest with respect to the plans particpating in the Trust; and (2) the possible cash purchase of the Trust's interest in the Property by Watkins, provided that the terms and conditions of the lease and any subsequent purchase are not less favorable to the Trust than those obtainable in like transactions between unrelated parties.

Effective Date: If granted, the exemption will be effective March 29, 1985.

Summary of Facts of Representations

1. The Trust was established on October 3, 1984, to hold all investments for the profit sharing plans of corporations related to Watkins. As of October 23, 1983, the Trust had net assets of approximately $5,300,000 and the participating plans had, in the aggregate, approximately 1,595 participants. The assets of all the plans in the Trust are commingled for investment purposes. The trustee (the Trustee) of the Trust is the Citizens and Southern National Bank, a national bank which has its principal place of business in Atlanta, Georgia. While the Trustee has some commercial relationships with Watkins, these involve loans and deposits accounting for less than one-half of one percent of its total loans and deposits. Investment decisions for the Trust are generally made by an investment committee appointed by Watkins (the Committee), in conjunction with the Trustee. On December 11, 1984, however, the Committee confirmed in writing that the Trustee will have full discretionary authority to act on the Trust's behalf with respect to the Property which is the subject of this exemption request.

2. The Trust is the owner of a ground lease (the Ground Lease) in the Property, which is located at 1958 Monroe Drive, Atlanta, Georgia.[2] The fee simple owner of the Property is unrelated to the Plans and the Trust. The Ground Lease was originally acquired by the McDonough Construction Company and Affiliated Companies Profit Sharing Plan (the McDonough Plan) in 1958. At the time of the acquisition of the Ground Lease by the McDonough Plan, the Property had been improved with an office building and was being leased to McDonough Construction Company (McDonough), the sponsor of the McDonough Plan. McDonough was subsequently purchased by the Atlantic States Construction Company (Atlantic States), a corporation wholly owned by Watkins. On January 1, 1971, McDonough assigned its interest as the tenant of the McDonough Plan to Watkins. On December 31, 1981, the McDonough Plan was merged into the Atlantic States Profit Sharing Plan (the Atlantic States Plan), which subsequently became one of the Plans participating in the Trust.

As a result of these transactions, the Trust, which is now the owner of the Ground Lease and the improvements, has been leasing the Property to Watkins. The applicants represent that the leasing of the Property to Watkins by the McDonough Plan and later, by the Atlantic States Plan was statutorily exempt from the prohibitions of sections 406 and 407 of the Act and section 4975 of the Code, until June 30, 1984, by virtue of section 414(c)(2) of the Act.[3]

On July 1, 1984, Watkins increased its rental payments to $69,000 per annum, which is the fair market rental value of the Property as of March 15, 1984, as determined by a qualified, independent appraiser (see below). The applicants acknowledge however, that the leasing of the Property to Watkins by the Atlantic States Plan, and later, by the Trust, constituted a prohibited transaction after June 30, 1984, and represent that they will pay any excise taxes if due under section 4975 of the

[2] The Trust is also the owner of a ground lease in improved real property located at 1940 Monroe Drive, Atlanta, Georgia. In Prohibited Transaction Exemption 83-27 (48 FR 8613), the Department granted exemptive relief to the Atlantic States Profit Sharing Plan, a plan now participating in the Trust, to permit the leasing of that property to certain susidiaries of Watkins. The applicants state that the leases of 1940 and 1958 Monroe Drive to Watkins and its subsidiaries are not covered by the statutory exemption of section 408(e) of the Act because of the geographic proximity of the properties.

[3] The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act to these leasing arrangements.

Code within sixty days of a grant of this exemption.

3. The Ground Lease expires on December 31, 1988, with the Trust having options to extend the lease for two ten-year periods, through December 31, 2008, at which time the Trust has the right to purchase the Property for $16,000. The Trust pays rental under the Ground Lease as follows:

Period	Annual rent
Through Dec. 31, 1993	$3,600
Jan. 1, 1994 through Dec. 31, 2003	4,000
Jan. 1, 2004 through Dec. 31, 2008	4,400

The Ground Lease, as unencumbered by the lease to Watkins, was appraised by John W. Booth, M.A.I. of Atlanta, Georgia, as having a fair market value of $797,000 as of March 15, 1984. Mr. Booth also determined the fair market rental value of the Property, as of the same date and on a net basis, to be $69,000 per annum. Mr. Booth is completely independent of both Watkins and Atlantic States. The fair market value of the Ground Lease as appraised by Mr. Booth represents approximately fifteen percent of the trust's net assets.

4. The applicants request an exemption for the leasing of the Property, including all improvements thereon, by the Trust to Watkins pursuant to a revised lease (the New Lease), executed on March 29, 1985. If an exemption for the New Lease is granted, approximately 19.5% of the trust's portfolio will be invested in interests in properties which are leased to Watkins or its affiliates. The New Lease, like the Ground Lease, terminates on December 31, 1988, with Watkins having options to extend the lease for two ten-year periods, subject to the approval of the trustee, as landlord on behalf of the Trust. Watkins, as the lessee, is responsible for all taxes, insurance, utilities and other expenses with respect to the Property. The initial annual rental under the New Lease is $79,700, payable in monthly installments of $6,641.67. On January 1, 1987, and every three years thereafter, the monthly rental will be adjusted to reflect the then-current fair market rental value of the Property as determined by a qualified and independent appraiser selected by the Trustee. In no event, however, will the rental rate be less than $79,700 per annum. Upon termination of the New Lease, all improvements on the Property will belong to the Trust, provided that the Trust exercises its purchase option under the Ground Lease. The New Lease gives Watkins an option to purchase the Trust's leasehold estate and all improvements thereon at the end of the initial lease term and each renewal term. The option to purchase specifies that Watkins must pay the fair market value of the leasehold estate and improvements as determined by a qualified and independent appraiser selected by the Trustee. The option to purchase is subject to the approval of the Trustee and the purchase price must be paid in cash.

5. The Trustee, as an independent fiduciary for the Trust, states that it has reviewed the needs and investment strategies of the trust, the appraisals made by Mr. Booth, the terms and conditions of the New Lease, including the purchase option and the condition and marketability of the Property and has determiend that the New Lease is protective of, appropriate for, and in the best interest of the Trust and of the participants and beneficiaries of the Plans participating in the Trust. The Trustee states that it made this review and determination prior to the execution of the New Lease on March 29, 1985. The Trustee concluded that the portfolio of the Trust is sufficiently liquid and diversified, that it would not be in the trust's best interest to attempt to sell its interest in the Property at this time, and that the terms and conditions of the New Lease, which is triple net, are favorable to the trust. The Trustee states that it will monitor Watkin's compliance with the terms and conditions of the New Lease, make a physical inspection of the Property at least annually, determine whether any renewal or purchase option may be exercised, select appraisers as required under the New Lease, and take any steps necessary to enforce and protect the rights of the Trust with respect to the Property.

6. In summary, the applicants represent that the subject transactions satisfy the criteria of section 408(a) of the Act because (a) the current rental under the New Lease is not less than the fair market rental value of the Property as determined by a qualified and independent appraiser; (b) the rental rate will be adjusted to an amount not less than the fair market rental value of the Property as determined every three years over the term of the New Lease by a qualified and independent appraiser selected by the Trustee; (c) any exercise of the purchase option is subject to the approval of the Trustee, and must be for cash in an amount not less than the fair market value of the trust's leasehold interest in the Property, including all improvements on the Property, as determined by a qualified, independent appraiser selected by the Trustee; (d) the Trustee has reviewed the terms and conditions of the New Lease, including the purchase option, and has determined that the New Lease is appropriate for, protective of, and in the best interest of the participants and beneficiaries of the Plans participating in the trust; and (e) the Trustee will monitor all terms and conditions of the New Lease and will take any steps necessary to protect and enforce the rights of the trust with respect to the Property.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

The Citizens and Southern Corporation Pension Plan (the Plan) Located in Columbia, South Carolina

[Application No. D-6093]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of several parcels of real property (the Property) to a joint venture comprised of Edens & Avant (E&A) and third parties, for $2,075,000 in cash, provided such amount is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with approximately 2,500 participants. As of February 5, 1985, the Plan had approximately $22,000,000 in assets. The Citizens and Southern Corporation (the Employer), the Plan's sponsor, is the parent corporation of the Citizens and Southern National Bank of South Carolina (C&S Bank).

2. E&A, a real estate firm based in Columbia, South Carolina, has from time to time functioned in the role of real estate agent for the Plan. In this role, E&A has primarily performed the function of obtaining leases for the Plan on various parcels of the Property. Other than filling the role of a servicing agent on this real estate, E&A has provided no other services to the Plan. The applicants represent that E&A is not a fiduciary with respect to the Plan.

3. The Property consists of 3.18 acres of land. It is composed of several separate parcels, which are rented to a variety of tenants. The Plan has acquired the parcels composing the Property from various parties over a period ranging from 1971 to 1981. Some of the parcels are improved, and some are not. None of the tenants who are leasing any of the parcels are parties in interest with respect to the Plan.

4. The applicants have requested an exemption to permit the sale of the Property by the Plan to a joint venture comprised of E&A and third parties. The sale will be for $2,075,000 in cash, and no real estate commission will be paid in connection with the sale. Mr. O. Marshall Dodds, M.A.I., an independent real estate appraiser in Columbia, South Carolina, has appraised the Property as having a fair market value of $2,075,000 as of September 7, 1984. It is contemplated that the Employer and its wholly-owned subsidiary, C&S Bank, will be major tenants in an office complex to be developed on the Property. However, C&S Bank will not finance the acquisition of the Property nor the subsequent construction of the proposed office and hotel complex.

5. NCNB National Bank of North Carolina (NCNB), located in Charlotte, N.C., has been retained to serve as an independent fiduciary for the Plan for purposes of the subject transaction. NCNB in its fiduciary capacity currently serves as trustee, co-trustee and/or investment manager for over $5 billion in discretionary assets held by employee benefit, institutional, charitable and personal trusts. NCNB currently manages over $400 million in real estate assets for employee benefit and institutional clients. Therefore, NCNB has considerable experience in the management of employee benefit funds and real estate investments for such funds. Neither NCNB nor any of its affiliates has any present or contemplated interest in the proposed transaction. NCNB and C&S Bank do not have any common officers or directors.

6. NCNB has reviewed the proposed transaction and determined that it is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. NCNB states that there are apparently no other offers to purchase the Property at a net price equal to or greater than the proposal, or on terms more favorable to the Plan. Although the Property may continue to appreciate in the future, NCNB believes there are considerable risks involved in the Plan's continued investment in the Property, and that the timing of the proposed sale may be opportune. NCNB represents that there is no certainty that another developer capable of executing such a large project will appear in the foreseeable future. The Property is located five blocks away from the center of the area which experienced the majority of the office, hotel and retail development in downtown Columbia in the last few years. NCNB believes that only a limited number of major projects will be undertaken in downtown Columbia over the next 10 to 15 years, and given the location of the Property, it may be less attractive than alternate sites for this type of use. Competing developments closer to the center of town will almost certainly affect the value of the Property. NCNB also represents that the Property currently produces minimal current income when compared with the amount of income which could be earned by investing the proposed sales proceeds in substantially less risky short-term investments. Finally, NCNB states that the proposed transaction affords the Plan the immediate opportunity to dispose of an illiquid investment which now represents almost 10% of the total Plan assets at market value.

7. In summary, the applicants represent that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash, and no commission will be paid in connection with the transaction; (2) the sales price was determined by an appraisal performed by a qualified, independent appraiser; and (3) NCNB, the Plan's independent fiduciary, has reviewed the proposed transaction and determined that it is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 4th day of June, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-13748 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-29-M

LEGAL SERVICES CORPORATION

Voucher Project; Grant Award to San Antonio Bar Association

AGENCY: Legal Services Corporation.

ACTION: Announcement of Intention to Award A Grant.

SUMMARY: The Legal Services Corporation (LSC) announces it's intention to award a grant for the provision of civil legal services under the Legal Services Corporation's Voucher Project. The grant will be awarded pursuant to LSC's Voucher Project to the San Antonio Bar Association. Grant funds will be used to locally administer the Voucher Project whereby LSC-eligible clients will receive vouchers for particular legal

services redeemable at the offices of participating private law firms. The legal services to be provided in San Antonio, Texas include the following case types: (1) Uncontested divorces; (2) contested divorces involving no domestic violence; and (3) contested divorces involving some domestic violence. Some cases in case types (2) and (3) may present additional contested or disputed issues, however, in no event shall any of these cases involve a child custody issue either separate from, or in conjunction with, the divorce action.

The grant award of $102,500 will be for a project term of one year beginning on July 1, 1985. As a research project, the grant is awarded pursuant to authority conferred by sections 1006(a)(1)(B), 1006(a)(3)(A) and 1007(g) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of this Act, with a request for comments and recommendations within a period of thirty (30) days from date of publication of this notice. The grant award will not become effective and grant funds will not be distributed prior to expiration of this thirty-day period.

SUPPLEMENTARY INFORMATION: The purpose of this research project is to determine the ability of private law firms and the local bar association to augment existing direct service delivery provided by current LSC grantees. The research involves testing the workability, cost-effectiveness, and quality of service of vouchers in providing civil legal services to poor individuals. It is also anticipated that this project will encourage lawyers to become interested in the provision of legal services to poor persons, acting either as legal aid attorneys or through *pro bono* or reduced fee efforts. The project may also serve to increase the cooperation between established bar associations, local LSC-funded programs and all segments of the legal community.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development & Substantive Support Unit of the Legal Sevices Corporation within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Keith Osterhage, Legal Services Corporation, Office of Field Services, Program Development & Substantive Support Unit, 733 Fifeenth Street, NW., Washington, D.C. 20005, (202) 272–4356.

Thomas J. Opsut,

Interim President.

[FR Doc. 85–13809 Filed 6–6–85; 8:45 am]

BILLING CODE 6820–35–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Company Grants Section) to the National Council on the Arts will be held on June 24–27, 1985, from 9:00 a.m.–9:00 p.m.; and on June 28, 1985, from 9:00 a.m.–5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

If time permits, a portion of this meeting will be open to the public on June 28, from 4:00–5:00 p.m. to discuss policy issues.

The remaining sessions of this meeting on June 24–27, 1985, from 9:00 a.m.–9:00 p.m. and on June 28, from 9:00 a.m.–4:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552d of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: June 4, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–13737 Filed 6–6–85; 8:45 am]

BILLING CODE 7537–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Production Planning Advisory Committee; Meeting

AGENCY: Production Planning Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Subbasins definition
- Methods for estimating production
- Stock selection policy
- Forest Service management plans
- Other
- Public comment.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee.

DATE: June 12, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's hearing rom in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–13691 Filed 6–6–85; 8:45 am]

BILLING CODE 000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–23716; 70–5943]

American Electric Power Company, Inc., Proposed Issuance and Sale of Common Stock Pursuant to Dividend Reinvestment and Stock Purchase Plan and Exception From Competitive Bidding

June 3, 1985.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed with this Commission a post-effective amendment to its declaration in this proceeding pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulated thereunder.

By orders in this proceeding dated February 8, 1977, April 19, 1978, March 29, 1979, August 8, 1979, May 1, 1980, June 30, 1981, June 15, 1982, June 29, 1983, and June 29, 1984 (HCAR Nos. 19879, 20506, 20979, 21180, 21544, 22113, 22539, 22989, and 22353), AEP was authorized to issue and sell, from time to time through June 30, 1985, up to 44,000,000 shares of its authorized but unissued common stock, $6.50 par value, pursuant to its Dividend Reinvestment and Stock Purchase Plan ("Plan").

AEP now proposes that the period during which the shares of common stock previously authorized may be issued and sold pursuant to the Plan be extended from June 30, 1985, to June 30, 1986.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 27, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13785 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23714; 70-7111]

Northeast Utilities et al.; Capital Contributions to Subsidiaries, Short-Term Borrowings and Creation of a Money Pool

June 3, 1985.

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company ("WMECO"), The Quinnehtuk Company ("Quinnehtuk"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, Connecticut Light and Power Company ("CL&P"), Northeast Utilities Service Company ("NUSCO"), Northeast Nuclear Energy Company ("NNECO"), The Rocky River Realty Company (RRR), Selden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company ("HWP"), Canal Street, Holyoke, Massachusetts 01040, wholly owned subsidiaries of NU, ("applicant" or collectively "applicants"), have filed an application-declaration pursuant to sections 6, 7, 9, 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 45 and 50 thereunder.

The proposal includes a request for authorization through December 31, 1986 of short term borrowings in the form of bank notes ("Bank Notes") pursuant to open lines of credit and commercial paper ("Commercial Paper"), capital contributions and open account advances by NU to its subsidiaries, and the establishment of a Money Pool ("Pool").

The aggregate amount of all notes outstanding, whether issued to banks or to a dealer in commercial paper will not exceed $75,000,000 in the case of NU, $400,000,000 in the case of CL&P, $105,000,000 in the case of WMECO, $10,000,000 in the case of HWP, $50,000,000 in the case of NNECO, $5,000,000 in the case of RRR, and $25,000,000 in the case of NUSCO.

Additionally, CL&P and WMECO can borrow up to $200,000,000, and $60,000,000, respectively, up to a maximum of $200,000,000 together, on a short-term, revolving credit basis under the Amended and Restated Credit Agreement dated as of October 1, 1982 (HCAR No. 22689, November 2, 1982), and $150,000,000 and $45,000,000, respectively, up to a maximum of $150,000,000 together, on a short-term, revolving credit basis under the Credit Agreement dated as of December 14, 1984 (HCAR No. 23520, December 5, 1984). CL&P can borrow up to $50,000,000 on a short-term, revolving credit basis under a revolving Euronote issuance facility ("RUF") entered into on April 26, 1985 (HCAR No. 23667, April 19, 1985).

The total amount of short-term borrowings through December 31, 1986, will not exceed $400,000,000 for CL&P and $105,000,000 for WMECO.

Each Bank Note will bear interest at such rate as should be negotiated by the lending bank and the applicant issuing such Bank Note. In issuing Bank Notes, the applicants will negotiate the lowest effective interest cost for short-term borrowings, taking into account the proposed amount and maturity of each borrowing period. Before reaching agreement with lending banks as to the interest rate on borrowing, the applicants will assess then prevailing short-term interest rates, such as prime rate, libor, federal funds rates and certificate of deposit rates. Based on an assumed prime rate of 10% as of May 31, 1985, the effective cost of borrowings under the open-credit lines would be 10.53%. The notes will be issued no later than December 31, 1986 subject to prepayment at any time at the applicant's option. Applicants other than Quinnehtuk, NUSCO and RRR have credit lines with a number of banks, subject to compensating balance requirements.

The applicants propose to establish a Pool to be administered by NUSCO. The Pool will consist solely of surplus funds that may be available from day to day, and loaned on a short-term basis to those applicants which have a need for short-term funds, other than NU.

Those applicants without access to the commercial paper market will have priority as borrowers from the Pool. NU will be a participant not as a borrower but only insofar as it has funds available for lending through the Pool. After satisfaction of the borrowing needs of the applicants, and after any possible prepayments of outstanding indebtedness, NUSCO, as agent of the Pool, will invest excess funds and allocate the earnings among those applicants providing such excess funds.

The proceeds derived from the issuance and sale of Bank Notes and Commercial Paper will be used to make capital contributions of up to $30,000,000 to CL&P and $10,000 to WMECO, to make open account advances to Quinnehtuk, a wholly owned real estate subsidiary of NU, not to exceed in the aggregate, $275,000, to supply funds as needed to other subsidiary companies as hereafter authorized by the Commission and to meet other corporate needs.

The application-declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by June 25, 1985, to the Secretary, Security and Exchange Commission, Washington, D.C. 20549, and serve a copy of the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-13779 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22104; File Nos. SR-CBOE-83-53 and SR-CBOE-85-17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change; Order Approving Proposed Rule Change

On November 30, 1983, Chicago Board Options Exchange, Inc. ("CBOE") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] to permit the trading on CBOE of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act [3] but are designated as Tier I National Market System Securities ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4]

At a public meeting held on April 16, 1985, the Commission decided that CBOE's proposal would be consistent with the Act if CBOE eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that BCOE (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the CBOE proposes to amend CBOE Rule 6.49 (a) [6] to state that the rule will not apply to any transaction in the over-the-counter market in any option listed on CBOE on a stock which was a Tier I NMS stock at the time CBOE commenced trading the option.[7] CBOE also states in a letter accompanying Amendment No. 1 to the filing that should CBOE seek to trade an option on an index of OTC stocks, it would need to file an amendment to remove its restrictions on the multiple trading of such an option. [8] CBOE also has stated that it interprets the "Option Allocation Agreement" [9] not to apply to options on Tier I NMS stocks, including any Tier I NMS stock that lists on an exchange after option trading commences on that stock.[10] CBOE also indicates that it will work with other exchanges to develop appropriate amendatory language to the Allocation Agreement.[11]

CBOE's proposal to amend its Rule 6.49(a) has not been noticed previously. Interested persons are invited to submit comments on this proposal by June 28, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-CBOE-85-17. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. 552, are available at the Commission's Public Reference Room and at the CBOE.

The Commission finds that the CBOE's proposal to amend CBOE Rule 6.49(a) (File No. SR-CBOE-85-17), as well as CBOE's interpretation of the Allocation Agreement, effectively eliminate CBOE's barriers to the multiple trading of options on Tier I NMS stocks listed on CBOE. The Commission finds that this proposal eliminates a restraint on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, sections 6 and 11A of the Act. With this amendment to CBOE's rules, and CBOE's interpretation of the Allocation Agreement,[12] for the reasons stated in the OTC Options Release, the Commission finds the CBOE proposal to trade options on Tier I NMS stocks [File No. SR-CBOE-83-53] is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. SR-CBOE-85-17 prior to the thirtieth day after publication of notice thereof in the **Federal Register** in that (1) the Commission previously has solicited comment on amending exchange barriers to the multiple trading of options on Tier I NMS stocks,[13] and the proposed rule change is designed to implement the Commission's decision to allow the multiple trading of these options; (2) the proposed rule change relieves a restriction and is essentially exemptive in nature;[14] and (3) CBOE desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission also finds that CBOE has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[15] The CBOE also has agreed not to commence trading any option on any Tier I NMS stock earlier than June 3, 1985, after the date of this order, and the announcement on May 22, 1985, of its intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR-CBOE-83-53 and 85-17 are approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13782 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b) (1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2-1 (b) (1) (1984). The proposed rule change (File No. SR-CBOE-83-53) was noticed in Securities Exchange Act Release No. 20471, December 9, 1983, 48 FR 55939.

[5] The Commission made the same finding with respect to proposals by the American, Boston, New York, Pacific and Philadelphia Stock Exchanges, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310 ("OTC Options Release"). In that release, the Commission also made clear that, once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n. 214.

[6] CBOE Rule 6.49(a), in general, prohibits CBOE members from effecting over-the-counter ("OTC") transactions in options lilsted on CBOE.

[7] File No. SR-CBOE-85-17. CBOE's original filing, submitted on May 3, 1985, would have covered only options on Tier I NMS stocks. Amendment No. 1, submitted on May 6, 1985, amended the proposal to read as described in the text above to take account of the possibility that the stock may subsequently list.

[8] Letter from Frederic M. Krieger, Assistant General Counsel, CBOE, to Brandon Becker, Assistant Director, Division of Market Regulation, dated May 15, 1985.

[9] The Allocation Agreement consists of a uniform set of rules adopted by each options exchange that sets forth the procedures for allocating options on individual listed stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[10] Letter from Frederic M. Krieger, Assistant General Counsel, CBOE, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 17, 1985.

[11] Id.

[12] Although the Commission believes that CBOE's interpretation of the Allocation Agreement is adequate to remove the potential barrier to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes that the CBOE should undertake, in coordination with the other Plan participants, to prepare formal rule changes as soon as practicable. CBOE has indicated that it intends to do so. *See supra*, note 11.

[13] *See* Securities Exchange Act Release No. 20653, April 12, 1984, 49 FR 15291. *See* the OTC Options Release, *supra* note 5, 50 FR 20310, text accompanying notes 178-231, for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[14] *Cf.* 5 U.S.C. 553(d) (1982).

[15] The CBOE has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until the plan is operational.

[16] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiple trading options on Tier I NMS stocks with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Divsion of Market Regulation to Frederic M. Krieger, Assistant General Counsel, CBOE, dated May 20, 1985.

[Release No. 34-22102; File No. SR-CBOE-83-61]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Partial Approval of Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE"), submitted on December 20, 1983, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend CBOE Rule 6.74 ("Rule") which establishes the procedure from a customer facilitation cross transaction. The last sentence of the Rule emphasizes that the customer side of the facilitation order cannot be blocked by revised bids or offers by participants in the trading crowd. That is, the rule currently provides that the public customer side of the facilitation order takes precedence over any other bid or offer in the crowd "at the same price", once the market is established and the bid or offer has been made.[1]

CBOE indicates that, contrary to the intent of the Rule, some traders have interpreted the phrase "at the same price" as creating a second opportunity for a market quotation which, if better than the customer side of the facilitation order, would prevent the customer's facilitation order from being transacted. Because this interpretation is contrary to the intent of the Rule, CBOE has proposed to eliminate the phrase "at the same price" from the Rule's provisions. This revision, however, would not preclude persons in the trading crowd and orders represented in the trading crowd from accepting the customer's bid or offer or providing the customer with an improved execution price.[2] The Exchange believes that elimination of the phrase will clarify the Rule's intent and codify CBOE's current interpretation.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of Commission release (Securities Exchange Act Release No. 20513, December 23, 1983), and by publication in the **Federal Register** (49 FR 181, January 3, 1984). No comments were received with respect to the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13780 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[1] The CBOE also has proposed to delete the requirement in rule 6.74 which provides that where a related transaction must be effected in another market, that transaction must be executed prior to execution of the options order. This portion of the proposed rule change is not being approved at the current time. The CBOE has informed the Commission that it intends to submit a new rule filing with respect to this aspect of the proposal.

[2] Telephone conversation between Frederic M. Krieger, Assistant General Counsel, CBOE, and Brandon C. Becker, Assistant Director, and Holly H. Smith, Attorney, Division of Market Regulation, SEC, May 29, 1985.

[Release No. 34-22105; File No. SR-CBOE-85-22]

Self-Regulatory Organizations; The Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change Relating to Use of the Order Support System for Options on Over-the-Counter Stocks

On May 20, 1985, the Chicago Board Options Exchange, Incorporated ("CBOE") submitted a proposed rule change pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, to amend CBOE's Order Support System ("OSS"), which allows member firms to route electronically to CBOE's limit order book certain public customer limit orders. On May 31, 1985, CBOE submitted Amendment No. 1 to the filing.

I. Description of the Proposals, Their Purpose and Statutory Basis

A. Proposals Being Approved in This Release

As amended, the proposed rule change would not impose size parameters, but would impose narrow price parameters in connection with the use of OSS for classes of options on over-the-counter ("OTC") stocks.[3] CBOE anticipates the commencement of options trading on OTC stocks on June 3, 1985.

Currently, OSS does not impose a contract limit on options classes that are otherwise OSS-eligible.[4] However, OSS does impose price parameters on OSS-eligible orders, based on the option premium.[5] In particular, the premium price parameters provide that an order may not be electronically booked unless it is at a limit price at least as far above or below the current bid or ask in that options series market as the stated level "B" parameter.

CBOE implemented OSS in 1980 as an experimental means by which to expedite the delivery of orders from member firms to their booths or directly to the book. Since 1980, CBOE has proposed and implemented certain variations of the original program. For example, as indicated, CBOE recently eliminated entirely the contract size parameter for all OSS-eligible orders thereby permitting many more options orders to be routed through OSS.[6] As stated in its filing, CBOE continues to believe that the OSS is in an experimental stage. Accordingly, as part of this experiment, CBOE proposes to test the use and effects of OSS in connection with a wide range of orders in options on OTC stocks.[7]

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b–4 (1984).

[3] As originally filed, the proposed rule change amended OSS to eliminate entirely the price parameters currently in effect. These level "B" premium price parameters are as follows: for an option premium of 1/16 to 1/2, 1/16; for an option premium of 5/16 to 3, 1/8; for an option premium of 3 1/8 to 10, 1/4; and for an option premium of 10 1/8 and above, 3/4. *See* Securities Exchange Act Release No. 20811 (April 2, 1984), 49 FR 13932 (April 9, 1984).

Amendment No. 1, dated May 31, 1985, however, amends the proposed rule change by narrowing, rather than eliminating entirely, the level "B" premium price parameters. In particular, Amendment No. 1 establishes level "C" parameters for the use of OSS in connection with OTC options orders, as follows: for an option premium of 1/16 to 3, 1/16; for an option premium of 3 1/8 to 10, 1/8; and for an option premium of 10 1/8 and above, 1/4.

[4] Recently, CBOE amended the procedures for use of OSS to eliminate the contract size parameter, which had been set at 29, for all eligible orders. *See* Securities Exhcange Act Release No. 21741 (February 11, 1985), 50 FR 10877 (March 18, 1985) (File No. SR–CBOE–84–33).

[5] The Commission previously approved a CBOE proposed rule change which authorized the implementation of a pilot program to eliminate the price parameters in connection with orders for S&P Telecommunications Index options. *See* Securities Exchange Act Release No. 20964 (May 15, 1984), 49 FR 21588 (May 22, 1984). Shortly after approval, however, CBOE delisted this index option.

[6] *See* note 3, *supra.*

[7] Although CBOE is eliminating the size parameters and narrowing the price parameters in connection with the use of OSS for options orders on OTC stocks, CBOE notes in its filing that participating member firms may set their own internal guidelines or parameters for the use of OSS, so long as such parameters do not exceed any limits which are set by the Exchange.

In its filing, CBOE stated that, in order for it to be competitive with the other exchanges and the NASD, some degree of automation is necessary in connection with those classes of options on OTC stocks which will be multiply traded.* In this connection, however, CBOE also stated its preference for an automated execution, rather than an automated order routing system. As a result, CBOE believes that the proposal offers the potential for the benefits of automation to be extended to a greater universe of orders, *i.e.*, orders for OTC stock options which are for any number of contracts and/or are near the current market price.

B. Proposals Only Being Noticed in This Release

As amended, the CBOE proposed rule change also would permit the electronic routing of OSS-eligible OTC options orders to a printer at the trading post for direct representation by floor brokers in the trading crowd.[10] In its filing, CBOE states that this should allow for the immediate representation in the trading crowd of member firms' OTC options orders which are at or near the market. CBOE also states in its filing that this proposal is consistent with sections 6(b)(5) and 11A of the Act.

II. Solicitation of Comments

The Commission is publishing this Release to solicit comment on that part of the CBOE proposal described in Section I.B., above. Persons interested in commenting on this part of the proposed rule change should submit six copies of their comments by June 28, 1985. Comments should be sent to the Secretary of the Commission, 450 5th Street NW., Washington, D.C. Copies of the proposed rule changes, including amendments, and all documents relating to the proposed rule changes, except those that may be withheld for the public pursuant to 5 U.S.C. § 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the filings also are available at the CBOE.

III. Partial Accelerated Approval of Proposed Rule Changes

As noted in previous orders regarding OSS, the benefits of automation include enhanced accuracy and efficiency in the processing of OSS-eligible orders and, as a result, more timely and cost efficient execution of these orders.[11] By making options on OTC stocks OSS-eligible, not imposing a contract size ceiling on these orders, and narrowing the premium price parameters in this connection, the Commission believes that the proposed rule change will facilitate the ability of member firms to transmit certain away-from-the-market-public customer orders for options on OTC stocks to the public limit order book.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

As noted above, the Commission recently approved a similar CBOE proposed rule change, which had been noticed for comment for the prescribed period of time pursuant to the Act. Because of the substantially similar nature of that proposal and the absence of any adverse comments in connection with that proposal, as well as the planned commencement of OTC options trading on June 3, 1985, the Commission finds good cause for approving this proposed rule change prior to the thirtieth day after the date of publication of notice of filing of this proposed rule change.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13786 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22100; File No. SR-NASD-85-12]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers; Inc. Relating to Proposed Amendment to Schedule D of the NASD's By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on May 24, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit the Association to require any market maker whose quotations appear to be no longer reasonably related to the prevailing market in a NASDAQ Security to re-enter its quotation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As noted above, the proposed rule change will permit the Association to require any market maker whose quotations appear to be no longer reasonably related to the prevailing market in a NASDAQ security to re-enter its quotation. It has been the Association's experience that a market maker's quotations may inadvertently become no longer reasonably related to other quotations as the market in a security changes. With the advent of automatic execution systems which execute transactions at the best bid or offer quotation for the stock displayed in the NASDAQ System, such a quotation could erroneously become the best bid or offer quotation and, therefore, define the "buy" or "sell" price for all participants in all automated systems. This proposed rule change will allow the Association to require the market maker with stale quotations to correct its quotations to cause them to be reasonably related to the prevailing market.

The propose rule change is consistent with the Association's obligations under section 15A(b)(11) of the Act that the

*Recently, the Commission authorized the exchanges and the NASD to trade individual options on certain OTC stocks. Because the Commission authorized the multiple trading of these classes of options, CBOE believes that thee are competitive reasons for its use of the automated order routing system described above for these options classes.

[10] *See* Amendment No. 1, dated May 31, 1985.

[11] *See* note 3, *supra*.

rules of the Association include provisions governing the form and content of quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13783 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22098; SR-NYSE-84-4 and 85-18]

Self-Regulatory Organizations; New York Stock Exchange Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change; Order Approving Proposed Rule Change

On February 8, 1984, the New York Stock Exchange, Inc. ("NYSE") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] to permit the trading on NYSE of standardized options that are not listed and registered on a national securities exchange under section 12(a) of the Act [3] but are designated as Tier I National Market System Stocks ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4]

At a public meeting held on April 16, 1985, the Commission decided that NYSE's proposal would be consistent with the Act if NYSE eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that NYSE (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response, NYSE proposes to amend NYSE Rule 756 [6] to allow NYSE members to trade through the facilities of NASDAQ any standardized options listed on the NYSE that relates either to (1) a NASDAQ stock qualified to underlie NYSE options or (2) a listed stock that was the subject of standardized options trading prior to listing.[7] The NYSE also proposes several technical amendments to its rules to accommodate the NASD's possible entry into the standardized options market. The NYSE also states in a letter accompanying this filing that if the NYSE proposes to trade options on an OTC index, the NYSE will appropriately further amend Rule 756 to likewise except such index options from that rule.[8] Finally, the NYSE states that it interprets the "Options Allocation Agreement" [9] not to apply either to (1) NASDAQ stocks qualified to underlie NYSE options or (2) listed stocks that were the subject of standardized stock options trading prior to listing.[10]

NYSE's proposal to amend its Rule 756 and to make certain other technical amendments to its rules (SR-NYSE-85-18) has not been noticed previously. Interested persons are invited to submit comments on these proposals by June 28, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth STreet, NW., Washington, DC 20549. Reference should be made to File No. SR-NYSE-85-18. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. Section 552, are available at the Commission's Public Reference Room and at the NYSE.

The Commission finds that the NYSE's proposal to amend NYSE Rule 756 (File No. SR-NYSE-85-18), and to make other technical amendments to NYSE's rules, as well as NYSE's interpretation of the Allocation Agreement, effectively eliminate NYSE's barriers to the multiple trading of options on Tier I NMS stocks listed on NYSE. The Commission finds that this proposal eliminates restraints on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, Sections 6 and 11A of the

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2-1(b)(1) (1984). The proposed rule change (File No. SR-NYSE-84-4) was noticed in Securities Exchange Act Release No. 20691, February 23, 1984, 49 FR 7682.

[5] The Commission made the same finding with respect to proposals by the American, Boston, Pacific and Philadelphia Stock Exchanges, Inc., and the Chicago Board Options Exchange, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310 ("OTC Options Release"). In this release, the Commission also made clear that, once multiple trading on Tier I NMS stock commenced, such multiple trading could continue even if the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n.214.

[6] Rule 756 generally prohibits NYSE members from effecting over-the-counter ("OTC") transactions in options listed on the NYSE.

[7] File No. SR-NYSE-85-18, submitted on May 16, 1985.

[8] Letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated May 15, 1985.

[9] The Allocation Agreement consists of a set of uniform rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19506.

[10] *See* letter cited *supra* note 8.

Act. With these amendments to NYSE's rules, and with NYSE's interpretation of the Allocation Agreement,[11] for the reasons stated in the OTC Options Release the Commission finds the NYSE proposal to trade options on Tier I NMS stocks (File No. SR-NYSE-85-4) is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. SR-NYSE-85-18 prior to the thirtieth day after publication of notice thereof in the **Federal Register** in that (1) the Commission previously has solicited comment on amending exchange barriers to multiple trading of options on Tier I NMS stocks,[12] and the proposed rule change is designed to implement the Commission's decision to allow such multiple trading; (2) the proposed rule change relieves restrictions and is essentially exemptive in nature;[13] (3) the other amendments contained in this filing are technical in nature; and (4) NYSE desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission finds that the NYSE has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[14] The NYSE also has agreed not to commence trading any option on a Tier I NMS stock earlier than June 3, 1985, after the date of this order and the announcement on May 22, 1985, of its intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR-NYSE-85-4 and 85-18 are approved.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-13784 Filed 6-6-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22103; SR-PSE-84-2, 85-13]

Self-Regulatory Organizations; Pacific Stock Exchange Inc.; Notice of Filing of and Order Granting Accelerated Approval to Proposed Rule Change; Order Approving Proposed Rule Change.

On January 4, 1984, the Pacific Stock Exchange, Inc., ("PSE") submitted a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder[2] to permit the trading on PSE of standardized options on securities that are not listed and registered on a national securities exchange under section 12(a) of the Act[3] but are designed as Tier I National Market System Stocks ("Tier I NMS stocks") pursuant to Rule 11Aa2-1(b)(1) under the Act.[4] At a public meeting held on April 16, 1985, the Commission decided that PSE's proposal would be consistent with the Act if PSE eliminated its barriers to the multiple trading of options on Tier I NMS stocks.[5] The Commission also decided that PSE (or any other exchange) could not commence trading options on Tier I NMS stocks until it had submitted to the Commission an adequate plan for the surveillance of such options.

In response to this decision, the PSE proposes to amend PSE Rule VI, section 53 to state that the rule[6] will not apply to any transaction through the facilities of NASDAQ or on another exchange in any option on a stock that was a Tier I NMS stock at the time that PSE commenced trading the option.[7] PSE also states that should PSE seek to trade an option on an index of OTC stocks, it would promptly file an amendment to remove its restrictions on the multiple trading of such an option.[8] The PSE also has agreed that it will not apply the "Options Allocation Agreement"[9] to options on Tier I NMS stocks, including any Tier I NMS stock that lists on an exchange after option trading commences on that stock.[10] PSE also indicates that it will promptly submit a filing pursuant to Rule 19b-4 to amend this rule.[11]

PSE's proposals to amend its Rule IV, section 53 has not been noticed previously. Interested persons are invited to submit comments on these proposals by June 28, 1985. Six copies of such comments should be submitted to the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549. Reference should be made to File No. SR-PSE-85-13. Copies of the proposal and related documents, except for those that may be withheld from the public pursuant to 5 U.S.C. section 552, are available at the Commission's Public Reference Room and at the PSE.

The Commission finds that the PSE's proposal to amend PSE Rule VI, section 53 (File No. SR-PSE-85-13), as well as PSE's agreement regarding the Allocation Agreement, effectively eliminate PSE's barriers to the multiple trading of options on Tier I NMS stocks listed on PSE. The Commission finds that this proposal eliminates restraints on competition and is consistent with the provisions of the Act applicable to national securities exchanges and, in particular, sections 6 and 11A of the Act. With this amendment to PSE's rules, and with PSE's commitment not to apply the Allocation Agreement[12] for the reasons

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[11] Although the Commission believes that the NYSE's interpretation of the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement might present, because the Agreement is itself a rule of the exchange, the Commission believes that the NYSE should undertake, in coordination with the other Agreement participants, to prepare formal rule changes to the Agreement as soon as practicable.

[12] *See* Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291. *See* the OTC options release, *supra* note 5, 50 FR 20310, text accompanying notes 176-231, for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[13] *Cf.* 5 U.S.C. 553(d) (1982).

[14] The NYSE has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until this plan is operational.

[15] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiply trading options on NMS stock with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Division of Market Regulation to James E. Buck, Secretary, NYSE, dated May 17, 1985.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1984).

[3] 15 U.S.C. 781(a) (1982).

[4] 17 CFR 240.11Aa2-1(b)(1) (1984). The proposed rule change (File No. SR-PSE-84-4) was noticed in Securities Exchange Act Release No. 20538, January 6, 1984, 49 FR 1808.

[5] The Commission made the same finding with respect to proposals by the American, Boston, New York and Philadelphia Stock Exchanges, Inc., and the Chicago Board Options Exchange, Inc., to trade options on Tier I NMS stocks. Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310 ("OTC Options Release"). In that release, the Commission also made clear that, once multiple trading on a Tier I NMS stock commenced, such multiple trading could continue even of the stock should subsequently list on an exchange. *Id.*, 50 FR 20310 at n.214.

[6] PSE Rule VI, section 53, in general, prohibits PSE members from effecting over-the-counter ("OTC") transactions in securities listed on PSE.

[7] File No. SR-PSE-85-13, submitted on May 20, 1985.

[8] Letter from Steven Wolf, Attorney, PSE, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 21, 1985.

[9] The Options Allocation Agreement consists of a set of uniform rules adopted by each options exchange that sets forth the procedures for allocating options on individual stocks among these exchanges. *See* Securities Exchange Act Release No. 22008, May 1, 1985, 50 FR 19508.

[10] Letter from Steven Wolf, Attorney, PSE, to Eneida Rosa, Branch Chief, Division of Market Regulation, dated May 17, 1985.

[11] *Id.*

[12] Although the Commission believes that the PSE's commitment regarding the Allocation Agreement is adequate to remove the potential barriers to multiple trading that the Agreement

Continued

stated in the OTC Options Release, the Commission finds the PSE proposal to trade options on Tier I NMS stocks (File No. SR–PSE–84–4) is consistent with the Act.

The Commission finds good cause for approving the proposed rule change contained in File No. PSE–85–13 prior to the thirtieth day after publication of notice thereof in the **Federal Register** in that (1) the Commission previously has solicited comment on amending exchange barriers to multiple trading of options on Tier I NMS stocks,[13] and the proposed rule change is designed to implement the Commission's decision to allow such multiple trading; (2) the proposed rule change relieves a restriction and is essentially exemptive in nature;[14] and (3) PSE desires to commence trading options on Tier I NMS stocks by June 3, 1985.

The Commission also finds that PSE has submitted an adequate plan for the surveillance of options trading on Tier I NMS stocks.[15] The PSE also has agreed not to commence trading any option on a Tier I NMS stock earlier than June 3, 1985, after the date of this order and the announcement on May 28, 1985 of its intent to commence trading. Subject to these conditions on the commencement of trading, it is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes contained in File Nos. SR–PSE–84–4 and 85–13 are approved.[16]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–13781 filed 6–6–85; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #6304]

California; Designation of Disaster Loan Area

The area affected is bordered on the north by Beverly Boulevard, on the south by Colgate Avenue, on the east by Gardner Street, and on the west by Fairfax Avenue in the City of Los Angeles, Los Angeles County, California. This constitutes a disaster area because of damage resulting from explosions and fires which occurred on March 24, 1985. Eligible small businesses without credit elsewhere and small agricultural cooperatives without credit elsewhere may file applications for economic injury assistance until the close of business on February 28, 1986, at the address listed below: Disaster Area 4 Office, Small Business Administration, 77 Cadillac Drive, Suite 158, Sacramento, California 95825, or other locally announced locations. The interest rate for eligible small business applicants without credit elsewhere is 4 percent and 11.125 percent for eligible small agricultural cooperatives without credit elsewhere.

This time period is subject to change in accordance with the requirements of the Federal budget.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 30, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85–13743 Filed 6–6–85; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0288]

Wesbanc Ventures, Ltd.; Issuance of a License To Operate as a Small Business Investment Company

On March 28, 1985, a notice was published in the **Federal Register** (50 FR 12680), stating that Wesbanc Ventures, Ltd., located at 2401 Fountainview, Suite 950, Houston, Texas, 77057 had filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1985), for a license to operate as a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on April 28, 1985, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 06/06–0288 to Wesbanc Ventures, Ltd. to operate as a small business investment company.

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

Dated: May 30, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–13744 Filed 6–6–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended May 31, 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 adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings (see 14 CFR 302.1701 et. seq.).

might present because the Agreement is itself a rule the exchange, the Commission believes that the PSE should undertake, in coordination with the other Agreement participants, to prepare formal rule changes as soon as practicable. The PSE has indicated that it intends to do so. *See supra*, note 11.

[13] *See* Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 15291. *See* the OTC Options release, *supra* note 5, 50 FR 20310, text accompanying notes 176–231, for a discussion of the issues relating to multiple trading and eliminating barriers to such trading.

[14] *Cf.* 5 U.S.C. 553(d) (1982).

[15] The PSE has indicated that this plan can be implemented by June 3, 1985. Trading cannot commence, of course, until this plan is operational.

[16] The Commission notes that it has encouraged all self-regulatory organizations ("SROs") contemplating multiple trading options on NMS stock with another SRO to adopt uniform expiration cycles, at least initially, for such options and to establish some coordinating mechanisms for the opening of trading each day. *See, e.g.*, letter from Richard T. Chase, Associate Director, Division of Market Regulation, to Steven M. Wolf, Attorney, PSE, dated May 20, 1985.

Dated filed	Docket No.	Description
May 30, 1985	42985	LeasExpress Air, Inc., c/o Joseph R. Haley, 116 West Grand Avenue, El Segundo, California 90245. Revised Application of LeasExpress Air, Inc. pursuant to section 401(d)(3) of the Act and Subpart Q of the Regulations requests permanent authority to engage in inter-state and overseas charter air transportation of passengers, freight, property and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any possession of the United States. Answers may be filed by June 27, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-13777 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP85-3; Notice 2]

BF Goodrich Co.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by B.F. Goodrich Co., of Akron, Ohio, to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars.* The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on February 8, 1985, and an opportunity afforded for comment (50 FR 5465).

Paragraph S4.3(e) of FMVSS No. 109 requires that the actual number of plies in a tire be indicated on both sidewalls with the actual number of plies in the sidewall and the actual number of plies in the tread area. Goodrich has manufactured 7071 P195/BOR13 Parkway radial ply tires branded "Tread—2 plies polyester, 2 plies steel; Sidewall—2 plies polyester." The correct labeling should be "Tread—1 ply polyester, 2 plies steel; Sidewall—1 ply polyester."

Goodrich argued that the noncompliance is inconsequential because the failure to label properly has no impact on safety, and the tires otherwise comply with FMVSS No. 109. Further Goodrich stated that the incorrect labeling is in letters 0.125-inch high near the bead of the tire, and it would not be practicable to correct the labeling.

No comments were received on the petition.

Goodrich has indicated that the tires meet all performance requirements of Standard No. 109, and NHTSA concurs with petitioner's argument that the noncompliance with labelling requirements does not compromise safety. In the early days of tire design engineering, the actual number of cotton casing plies was a fairly accurate way of identifying a specific tire size with its assigned load capacity. However, with the introduction of synthetic cord materials, such as rayon, nylon, and polyester, which were stronger and possessed other improved performance characteristics over cotton, the actual number of casing plies became less important and accurate as a way of identifying a tire with its maximum load carrying capacity. Rebranding the tire with the missing information could possibly damage the bead area of the tire, and NHTSA concurs that this type of remedy would be impracticable.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: June 4, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-13776 Filed 6-6-85; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

Advisory Committee Meeting

The first meeting of the USIA Television Telecommunications Advisory Committee will be held on June 18, 1985, from 9:30 a.m. to 12:00 noon.

Location of the meeting is Room 800 at 301 Fourth Street SW., Washington, D.C. Arrangements should be made in advance for attendance at the meeting, as access to the building is controlled.

For further information contact Ms. Kate Interdonato on (202) 485-8889.

Dated: June 4, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-13699 Filed 6-6-85; 8:45 am]

BILLING CODE 8230-01-M

Meeting of Book and Library Advisory Committee

A meeting of the Book and Library Advisory Committee will be held on June 18, 1985, from 2:00 p.m. to 5:00 p.m.

Location of the meeting is Room 855 at 301 Fourth Street SW., Washington, D.C. Arrangements should be made in advance for attendance at the meeting, as access to the building is controlled.

For further information contact Ms. Louise Wheeler on (202) 485-8889.

Dated: June 4, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-13747 Filed 6-6-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions, and a revision, and lists the following information: (1) The Department or Staff Office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 30, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Extensions

1. Department of Veterans Benefits
2. Report of Automatic Manufactured Home and/or Lot Loan
3. VA Form 26–8149
4. On occasion
5. Businesses or other for profit; small businesses or organization
6. 10,000 responses
7. 5,000 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Status of Loan or Termination
3. VA Form 26–8801
4. On occasion
5. Businesses or other for profit
6. 200,000 responses
7. 16,667 hours
8. Not applicable

* * * * *

Revision

1. Department of Veterans Benefits
2. Verification of VA Benefit-Related Indebtedness
3. VA Form 26–8937
4. On occasion
5. Individuals or households
6. 80,000 responses
7. 6,667 hours
8. Not applicable

* * * * *

1. Department of Veterans Benefits
2. Notice of Action Taken on Payroll Deduction for Government Life Insurance
3. VA Form 29–800
4. On occasion
5. Individuals or households
6. 5,040 responses
7. 420 hours
8. Not applicable

[FR Doc. 85–13721 Filed 6–6–85; 8:45 am]

BILLING CODE 8320–01–M

Schedule of Productivity Improvement (A–76) Reviews for Fiscal Year 1985

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A–76 and the September 27, 1984, memorandum to the President's Council on Management Improvement, the Veterans Administration will be conducting productivity reviews and A–76 cost comparisons at various field stations and central office to determine the most efficient organization (MEO) and the feasibility of contracting out specific commercial activities to private contractors.

Two schedules of commercial activities are shown: (1) A schedule of productivity (MEO) reviews which will not be cost compared with private industry; and (2) a schedule of A–76 reviews which will undergo cost comparison with private industry. Activities are listed first by Department or Staff Office, second by commercial activity and third by field facility. Specific invitations for bids or requests for proposals will be announced in the Commerce Business Daily (CBD) to ascertain bidder interest in contracting with the Government to perform the commercial activities scheduled for an A–76 cost comparison. No later than the deadline provided in the CBD advertisement two or more responsible business firms must indicate their interest in order for the review to proceed to a full cost comparison. If two or more potential bidders express interest, competitive bids will be solicited. These bids will be based upon VA's specifications called a performance work statement (PWS). Also, government contracting procedures will be followed. Concurrently, using the same PWS, the VA will prepare an in-house cost estimate. Formal bids received from interested firms will be cost compared with the VA bid in accordance with OMB's Cost Comparison Handbook, supplement to OMB Circular A–76 and 38 U.S.C. 5010.

VA employees adversely affected or separated as a result of the conversion to contract must be offered the right of first refusal for employment openings under the contract for which they are qualified.

Should it become necessary to substantially change this schedule, appropriate notice will be posted herein.

FOR FURTHER INFORMATION CONTACT: Questions relating to the schedule of reviews for the Department of Medicine and Surgery may be directed to Mr. John M. Bradley at (202) 389–2706; Department of Memorial Affairs to Charles W. Eyman at (202) 389–5235; Office of Administration to Gary J. Rivelle at (202) 389–2673; and, Office of Data Management and Telecommunications to Larry W. Flagg at (202) 389–2105.

Requests for single copies of the schedule should be made in writing to: Director, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Questions relating to local matters about "contracting out" should be referred to the Director of the VA facility concerned.

Dated: May 31, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

SCHEDULE OF PRODUCTIVITY REVIEWS (NOT TO BE COST COMPARED WITH PRIVATE INDUSTRY), FISCAL YEAR 1985, DEPARTMENT OF MEMORIAL AFFAIRS, NATIONAL CEMETERIES

[Cemetery Operations]

Field facility	Study start date	Completion date	Implementation date
Barrancas, FL	Aug. 5, 1985	Aug. 30, 1985	Feb. 28, 1986.
Calverton, NY	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986.
Culpeper, VA	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985.
Fort Bliss, TX	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985.
Fort Logan, CO	Sept. 1, 1985	Dec. 1, 1985	May 30, 1986.
Fort Rosecrans, CA	July 1, 1985	Oct. 1, 1985	Apr. 30, 1986.
Hampton, VA	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985.
Jefferson Barracks, MO	June 1, 1985	July 1, 1985	Jan. 31, 1986.
Keokuk/Quincy, IA	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986.
Long Island, NY	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986.
Marion, IN	July 1, 1985	Sept. 1, 1985	Mar. 31, 1986.
Mobile, AL	Apr. 1, 1985	Sept. 1, 1985	Oct. 1, 1985.

Schedule of Productivity Reviews (Not To Be Cost Compared With Private Industry), Fiscal Year 1985, Department of Memorial Affairs, National Cemeteries—Continued

[Cemetery Operations]

Field facility	Study start date	Completion date	Implementation date
Mound City, IL	June 1, 1985	Nov. 29, 1985	Jan. 1, 1985.
Riverside, CA	June 1, 1985	Aug. 1, 1985	Feb. 28, 1986.
Winchester, VA	Apr. 1, 1985	June 1, 1985	Dec. 31, 1985.

Schedule of A-76 Cost Comparisons—Fiscal Year 1985

[Department of Medicine and Surgery—VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Chauffeur Services						
Region No. 3: Little Rock, AR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Design/Drafting Services						
Region No. 3: Little Rock, AR	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Fire Protection						
Region No. 1: Northampton, MA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Region No. 2: Butler, PA	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Region No. 3: Murfreesboro, TN	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Region No. 4:						
Chillicothe, OH	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Cleveland, OH	do	do	do	do	do	Do.
Battle Creek, MI	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Marion, IN	do	do	do	do	do	Do.
Tomah, WI	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Hines, IL	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Marion, IL	October 1985	March 1986	August 1986	September 1986	January 1987	March 1987.
Region No. 5:						
Leavenworth, KS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Ft. Meade, SD	do	do	do	do	do	Do.
Knoxville, IA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Ft. Harrison, MT	do	do	do	do	do	Do.
Ft. Lyon CO	do	do	do	do	do	Do.
Sheridan, WY	do	do	do	do	do	Do.
Region No. 6:						
Livermore, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
American Lake, WA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
White City, OR	do	do	do	do	do	Do.
Region No. 5:						
Minneapolis, MN	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Dallas, TX	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Houston, TX	do	do	do	do	do	Do.
Waco, TX	do	do	do	do	do	Do.
Ft. Lyon, Co	do	do	do	do	do	Do.
Laundry and Drycleaning Services						
Region No. 1:						
Bedford, MA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Brockton, MA	do	do	do	do	do	Do.
Northampton, MA	do	do	do	do	do	Do.
Bath, NY	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Buffalo, NY	do	do	do	do	do	Do.
Canandaigua, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Brooklyn, NY	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
San Juan, PR	do	do	do	do	do	Do.
West Haven, CT	do	do	do	do	do	Do.
Region No. 2:						
Pittsburgh (UD), PA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Martinsburg, WV	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Perry Point, MD	do	do	do	do	do	Do.
Hampton, VA	October 1985	March 1986	August 1986	September 1986	January 1986	March 1987.
Richmond, VA	do	do	do	do	do	Do.
Salem, VA	do	do	do	do	do	Do.
Asheville, NC	December 1985	May 1986	October 1986	November 1986	March 1987	May 1987.
Mountain Home, TN	do	do	do	do	do	Do.
Salisbury, NC	do	do	do	do	do	Do.
Region No. 4:						
Chillicothe, OH	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Cleveland, OH	do	do	do	do	do	Do.
Dayton, OH	do	do	do	do	do	Do.
Battle Creek, MI	do	do	do	do	do	Do.
Marion, IN	do	do	do	do	do	Do.
St. Louis, MO	do	do	do	do	do	Do.
Region No. 5:						
Lincoln, NE	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	June 1986	November 1986	April 1987	May 1987	September 1987	November 1987.
Salt Lake City, UT	do	do	do	do	do	Do.
Region No. 6:						
Phoenix, AZ	September 1986	February 1986	July 1986	August 1986	December 1986	February 1987.
San Diego, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.

SCHEDULE OF A-76 COST COMPARISONS—FISCAL YEAR 1985—Continued

[Department of Medicine and Surgery—VA Medical Centers]

Field facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
American Lake, WA	do	do	do	do	do	Do.
Portland, OR	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986
Switchboard Services						
Region No. 3: Little Rock, AR	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986
Region No. 4:						
Wood, WI	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Hines, IL	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Region No. 5:						
Minneapolis, MN	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Houston, TX	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
West Los Angeles, CA	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Transcription Services						
Region No. 3: Tuskegee, AL	September 1985	February 1936	July 1986	August 1986	December 1986	February 1987.
Region No. 6:						
Palo Alto, CA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Portland, OR	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Seattle, WA	do	do	do	do	do	Do.
VCS Food Services						
Region No. 1:						
Bedford, MA	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Bedford, MA	do	do	do	do	do	Do.
Brockton, MA	do	do	do	do	do	Do.
Providence, RI	do	do	do	do	do	Do.
Togus, ME	do	do	do	do	do	Do.
Albany, NY	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Buffalo, NY	do	do	do	do	do	Do.
Syracuse, NY	do	do	do	do	do	Do.
Region No. 2:						
Pittsburgh (HD), PA	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Pittsburgh (UD), PA	do	do	do	do	do	Do.
Martinsburg, WV	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Washington, DC	do	do	do	do	do	Do.
Richmond, VA	June 1985	November 1985	May 1986	June 1986	October 1986	December 1986.
Salem, VA	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Asheville, NC	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Fayetteville, NC	do	do	do	do	do	Do.
Mountain Home, TN	do	do	do	do	do	Do.
Region No. 3:						
Augusta, GA	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Charleston, SC	do	do	do	do	do	Do.
Columbia, SC	do	do	do	do	do	Do.
Atlanta (Decatur), GA	do	do	do	do	do	Do.
Biloxi, MS	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Birmingham, AL	do	do	do	do	do	Do.
Jackson, MI	do	do	do	do	do	Do.
Region No. 4:						
Cincinnati, OH	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Ann Arbor, MI	do	do	do	do	do	Do.
Region No. 5:						
Des Moines, IA	September 1985	February 1986	July 1986	August 1986	December 1986	February 1987.
Iowa City, IA	do	do	do	do	do	Do.
Omaha, NE	do	do	do	do	do	Do.
Denver, CO	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Region No. 6:						
Phoenix, AZ	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Tucson, AZ	do	do	do	do	do	Do.
Loma Linda, CA	June 1985	November 1985	April 1986	May 1986	September 1986	November 1986.
Long Beach, CA	do	do	do	do	do	Do.
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Fresno, CA	May 1985	October 1985	March 1986	April 1986	August 1986	October 1986.
Palo Alto, CA	do	do	do	do	do	Do.
American Lake, WA	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Portland, OR	do	do	do	do	do	Do.
Seattle, WA	do	do	do	do	do	Do.
Warehouse Services						
Region No. 4:						
Cincinnati, OH	April 1985	September 1985	February 1986	March 1986	July 1986	September 1986.
Cleveland, OH	do	do	do	do	do	Do.
Dayton, OH	do	do	do	do	do	Do.
Allen Park, MI	July 1985	December 1985	May 1986	June 1986	October 1986	December 1986.
Battle Creek, MI	do	do	do	do	do	Do.
Region No. 6:						
Long Beach, CA	Septmber 1985	February 1986	July 1986	August 1986	December 1986	February 1987
San Diego, CA	do	do	do	do	do	Do.
West Los Angeles, CA	do	do	do	do	do	Do.
Palo Alto, CA	do	do	do	do	do	Do.
San Francisco, CA	do	do	do	do	do	Do.
Portland, OR	August 1985	January 1986	June 1986	July 1986	November 1986	January 1987.
Seattle, WA	do	do	do	do	do	Do.

SCHEDULE OF A-76 COST COMPARISONS—FISCAL YEAR 1985—Continued

Facility	Study start date	MEO complete	PWS complete	Solicitation issued	Bid closing date	Implementation of contract/MEO
Office of Data Management and Telecommunications Data Processing Center						
ADP Operations and Programming; Mail and File Operations; Facilities/Grounds Maintenance; Warehouse Services; Motor Vehicles: Hines Data Processing Center.	July 1985	June 1986	June 1986	October 1986	January 1987	November 1987
Office of Administration, VA Central Office						
Warehouse Services: Forms/Publication Depot.	September 1985	March 1986	March 1986	April 1986	July 1986	December 1986.
Office of Personnel and Labor Relations						
Training: VA Central Office	April 1985	October 1985	January 1986	March 1986	July 1986	October 1986.

[FR Doc. 85-13722 Filed 6-6-85; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 110
Friday, June 7, 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).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 98 21011.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, June 4, 1985.

CHANGE IN THE MEETING: The following matter was withdrawn and will not be rescheduled.

Draft of "EEOC Staff Guide for the Evaluation of Plans and Reports Developed by Federal Agencies"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634-6748.

Dated: June 5, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued June 5, 1985.

[FR Doc. 85-13879 Filed 6-6-85; 2:49 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 98 21011.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, June 4, 1985.

CHANGE IN THE MEETING: The following matter was postponed and will be rescheduled at a later date.

Amendments to the Commission's Section 4(g) of the ADEA 29 U.S.C. Section 623(g).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: June 5, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued June 5, 1985.

[FR Doc. 85-13880 Filed 6-5-85; 2:46 pm]

BILLING CODE 6750-06-M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, June 17, 1985, 2:00 p.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

Closed

1. Litigation Authorization; GC Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: June 5, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued June 5, 1985.

[FR Doc. 85-13881 Filed 6-5-85; 2:46 pm]

BILLING CODE 6750-06-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:38 p.m. on Sunday, June 2, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Security State Bank, Edgar, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; (2) accept the bid for the transaction submitted by The Guide Rock State Bank, Guide Rock, Nebraska, an insured State nonmember bank; (3) approve the application of The Guide Rock State Bank, Guide Rock, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Security State Bank, Edgar, Nebraska, and for consent to establish the sole office of Security State Bank as a branch of The Guide Rock State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) adopt a resolution making funds available for the payment of insured deposits in Scroggin and Company Bank, Oak, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; and (2) make funds available for an advance payment to uninsured depositors of Scroggin and Company Bank equal to 50 percent of their uninsured claims; and

(C)(1) adopt a resolution making funds available for the payment of insured deposits in The Fairfield State Bank, Fairfield, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; and (2) make funds available for an advance payment to uninsured depositors of The Fairfield State Bank equal to 50 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13829 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Monday, June 3, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Cardinal State Bank, an operating noninsured institution located at 2903 West 22 and Route 3, Maineville, Ohio, for Federal deposit insurance.

Application of The Central Trust Company, National Association, Cincinnati, Ohio, for consent to acquire the assets of and assume the liability to pay deposits made in Molitor Loan and Building Company, Cincinnati, Ohio, a non-federally insured institution.

By the same majority vote, the Board further determined, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13830 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

6

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b (e)(2)), notice is hereby given that at its closed meeting held at 10:30 a.m. on Monday, June 3, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of The First Bank of Marietta, Marietta, Ohio, an insured State nonmember bank, for consent to acquire certain assets of and assume the liability to pay deposits made in Citizens Building, Loan and Savings Association, Mount Vernon, Ohio, a non-federally insured institution, and to establish the sole office of Citizens Building, Loan and Savings Association as a branch of The First Bank of Marietta.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13831 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 12:35 p.m. on Friday, May 31, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Taylor, Taylor, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Friday, May 31, 1985; (2) accept the bid for the transaction submitted by Union Bank and Trust Company, Lincoln, Nebraska, an insured State nonmember bank; (3) approve the application of Union Bank and Trust Company, Lincoln, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Bank of Taylor, Taylor, Nebraska, and for consent to establish the sole office of Bank of Taylor as a branch of Union Bank and Trust Company; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

The meeting was recessed at 12:37 p.m., and at 5:28 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors:

(A) considered a recommendation concerning the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act;

(B) adopted a resolution providing financial assistance, pursuant to section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)), to facilitate the acquisition of Bank of Oregon, Woodburn, Oregon, by Alaska Pacific Bancorporation, Anchorage, Alaska;

(C)(1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Lockesburg, Lockesburg, Arkansas, which was closed by the Bank Commissioner for the State of Arkansas on Friday, May 31, 1985; (2) accepted the bid for the transaction submitted by Bank of Lockesburg, Lockesburg, Arkansas, a *de novo* bank; (3) approved the applications of Bank of Lockesburg, Lockesburg, Arkansas (the *de novo* bank), for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in Bank of Lockesburg, Lockesburg, Arkansas (the failed bank); and (4) provide such financial assistance, pursuant to section 13(c)(2)) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction; and

(D) adopted (1) a resolution (a) making funds available for the payment of insured deposits made in First Trust Bank of Lakefield, Lakefield, Minnesota, which was closed by the Commissioner of Commerce for the State of Minnesota on Friday, May 31, 1985; (b) accepting the bid of Fulda State Bank, Fulda, Minnesota, an insured State nonmember bank, for the transfer of the insured and fully secured or preferred deposits of the closed bank; and (c) designating Fulda State Bank as the agent for the Corporation for the payment of the insured and fully secured or preferred deposits of the closed bank; and (2) an Order approving the application of Fulda State Bank, Fulda, Minnesota, for consent to purchase certain assets of and to assume the liability to pay certain deposits made in First Trust Bank of Lakefield, Lakefield, Minnesota, and for consent to establish the sole office of First Trust Bank of Lakefield as a branch of Fulda State Bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the

"Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated June 4, 1985.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-13832 Filed 6-5-85; 11:26 am]

BILLING CODE 6714-01-M

8

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m.—June 12, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Portions closed to the public:

1. Agreement No. 224-010754: New Orleans Terminal Agreement.
2. Docket No. 84-33: Section 19 Inquiry—United States/Argentina and United States/Brazil Trades—Consideration of the Record.
3. Docket No. 85-3: Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports—Consideration of exceptions and the reply to exceptions and the reply to exceptions relative to the Administrative Law Judge's initial decision.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-13886 Filed 6-5-85; 2:37 pm]

BILLING CODE 6730-01-M

9

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting

TIME AND DATE: Meeting will commence at 9:00 a.m., Thursday, June 27, 1985 and continue until all official business is completed.

PLACE: The Westin Hotel, Renaissance Center, Kent Room, Detroit, Michigan 48243.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —May 23, 1985
3. Private Attorney Involvement—45 CFR 1614
   —Report from the Office of Field Services
   —Report from the Audit Division
   —Report from the Office of the General Counsel
   —Outside witnesses
   —Public comment
4. Recommendations to full Board on 45 CFR Part 1614 (Private Attorney Involvement)
5. Other Regulations Adopted after April 27, 1984.

CONTACT PERSON FOR MORE INFORMATION: Tom Bovard, Office of General Counsel, (202) 272-4010.

Date issued: June 5, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-13911 Filed 6-5-85; 3:58 pm]

BILLING CODE 6820-35-M

10

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: Wednesday, June 12, 1985, 3:00 p.m.

PLACE: Parkview Hilton, One Hilton Plaza, Hartford, CT 06103, (203) 249-5611.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Insurance Fund Report.
4. Report to the Board on the Activities of the Justice Department's Bank Working Group and Preliminary Board Approval of Request for Comments: "Safe Harbor" Bank Bribery Rules.
5. Deletion of Part 723, NCUA Rules and Regulations: Operational Systems.
6. Delegation of Authority Concerning CLF Loans to State Credit Union Share Guaranty Corporations.
7. Update on Proposed Credit Union Service Organization Regulation: Section 701.27 of NCUA Rules and Regulations.

TIME AND DATE: Wednesday, June 12, 1985, 10:00 a.m.

PLACE: Parkview Hilton, One Hilton Plaza, Hartford, CT 06103, (203) 249-5611.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Notice of Intent to Terminate Insured Status for State Chartered Credit Union. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Special Assistance to Prevent Liquidation under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone: (202) 357-1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85-13882 Filed 6-5-85; 2:46 pm]

BILLING CODE 7535-01-M

11

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 10, 1985.

A closed meeting will be held on Tuesday, June 11, 1985, at 2:30 p.m. and on Thursday, June 13, 1985, following the 2:30 p.m. open meeting. An open meeting will be held on Thursday, June 13, 1985, at 10:00 a.m. and at 2:30 p.m., in Room 1C20.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 11, 1985, at 2:30 p.m., will be:

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Litigation matter.
Settlement of injunctive action.

The subject matter of the closed meeting scheduled for Thursday, June 13, 1985, following the 2:30 p.m. open meeting, will be: Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, June 13, 1985, at 10:00 a.m., will be:

1. Consideration of whether to adopt new Forms N-3 and N-4 to provide insurance company separate accounts that offer variable annuity contracts with integrated registration forms that include a simplified prospectus; to adopt related rule amendments; to retain Rule 22d-2 under the Investment Company Act, which permits variable annuity separate accounts to establish variations in their sales loads; and to publish staff guidelines to assist registrants in complying with the requirements of the forms. For further information please contract Jeffrey S. Puretz at (202) 272-3010.
2. Consideration of proposed release requesting comment on the concept of National Market System Securities. For

further information please contact Andrew Feldman at (202) 272–2388.

The subject matter of the open meeting scheduled for Thursday, June 13, 1985, at 2:30 p.m., will be: Oral argument on an appeal by Gary L. Jackson, a certified public accountant, from the decision on an administrative law judge. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Angela Hall at (202) 272–3085.

John Wheeler,

Secretary.

June 3, 1985.

[FR Doc. 85–13778 Filed 6–4–85; 4:20 pm]

BILLING CODE 8010–01–M

federal register

Friday
June 7, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL85–1005	May 31, 1985.
District of Columbia: DC84–3009	Apr. 6, 1984.
Idaho:	
ID85–5012	Mar. 22, 1985.
ID85–5014	Mar. 1, 1985.
Illinois: IL84–5042	Dec. 14, 1984.
Maryland: MD83–3010	June 3, 1983.
Oklahoma: OK85–4011	May 10, 1985.
Pennsylvania: PA84–3015	June 1, 1984.
Tennessee: TN84–1024	Aug. 31, 1984.
Virginia: VA82–3034	Dec. 3, 1982.
Washington: WA84–5040	Nov. 16, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Connecticut: CT84–3016 (CT85–3023)	June 8, 1984.
Michigan: MI83–2007 (MI85–5022)	Feb. 11, 1983.
Virginia: VA85–3000 (VA85–3026)	Jan. 11, 1985.

Signed at Washington, D.C., this 31st day of May 1985.

Nancy M. Flynn,

Deputy Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AL85-1005
Mod # 1
(50 FR - May 31, 1985)
Madison County, Alabama

CHANGE:

	Basic Hourly Rates	Fringe Benefits
SHEET METAL WORKERS (includes HVAC work)	$9.26	

DECISION NO. DC84-3009-
MOD. #14
(49 FR 13800-April 6, 1984)
DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

CHANGE:

	Basic Hourly Rates	Fringe Benefits
TILE LAYERS, MOSAIC & TERRAZZO WORKERS	16.05	3.15
CARPENTERS	15.22	2.08
LATHERS	15.22	2.08
MILLWRIGHTS	15.95	2.08
PILE DRIVERMEN	15.57	2.08
MARBLE, TILE, & TERRAZZO FINISHERS	11.475	2.97
POWER EQUIPMENT OPERATORS:		
Building Construction (Excluding City of Alexandria), Heavy Construction (All Areas), & Highway Construction (Washington, D.C. Only):		
Group I	16.48	2.37+f
Group II	16.12	2.37+f
Group III	15.53	2.37+f
Group IV	14.26	2.37+f
Group V	10.10	2.37+f
Group VI	17.61	2.37+f

DECISION NO. IL84-5042 - Mod #2
(49 FR 48881 - Dec. 14, 1984)
Sangamon County, Illinois

OMIT:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS, PIPEFITTERS & STEAMFITTERS	$17.23	$2.68

ADD:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS, PIPEFITTERS & STEAMFITTERS:		
Commercial Building Residential up to and including 3 stories	17.23	2.75
	12.22	2.15

DECISION NO. MD83-3010-
MOD. #9
(48 FR 25100-June 3, 1983)
ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY MARYLAND, & FOR THE HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND

CHANGE:

	Basic Hourly Rates	Fringe Benefits
TILE, MARBLE & TERRAZZO FINISHERS	11.10	1.00

DECISION NO. VA82-3034-
MOD. #9
(47 FR 54746-December 3, 1982)
The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS AND CABLE SPLICERS	12.75	1.00 +9%

DECISION NO. ID85-5012 - Mod. #1
(50 FR 11617 - March 22, 1985)
Benewah, Bonner, Boundary, Clearwater, Idaho (North of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties, Idaho

OMIT:
FOOTNOTE "a"

ADD:
FOOTNOTE:

a. On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on components with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

PAVING (includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats)	$ 75,000
CRUSHING (including delivery to job site)	200,000
UTILITIES (storm, sanitary sewerage and facilities for the delivery of electricity, gas, communications and domestic water)	Unlimited
BUILDINGS	$2,000,000 exclusive of mechanical & electrical subcontracts

EXCEPTIONS:

PAVING within a 45 mile radius of Spokane or Lewiston shall receive the full rate

DECISION NO. ID85-5014 - Mod #3
(50 FR 8567 - March 1, 1985)
Ada & Canyon Counties, Idaho

OMIT:

FOOTNOTE:

a. On all projects involving one or more of the components listed below where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 85% of the basic hourly rate plus full fringe benefits; any other component in excess of the amounts shown shall be paid the full rate on that component.

Paving	$2,000,000
Crushing	2,000,000
Grading & Clearing	2,000,0000
Bridges & Related Work	2,000,000
Utilities	Unlimited (Pipelines & Dams excluded)
Buildings	2,000,000 (Excluding mechanical & electrical)

DECISION NO. ID85-5010 - Mod. #2
(50 FR 6503 - February 15, 1985)
Statewide Idaho

OMIT:

FOOTNOTE:

a. Buildings — $2,000,000 (Exclusive of mechanical & electrical subcontracts

b. AREA 2: CARPENTERS, CEMENT MASONS, LABORERS, POWER EQUIPMENT OPERATORS, AND TRUCK DRIVERS:
On all projects involving one or more of the components listed below where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 85% of the basic hourly rate plus full fringe benefits; any other component in excess of the amounts shown shall be paid the full rate on that component.

Paving	$2,000,0000
Crushing	2,000,000
Grading & Clearing	2,000,000
Bridges & Related Work	2,000,000
Utilities	Unlimited (Pipelines & Dams excluded)
Buildings	2,000,000 (Excluding mechanical & electrical)

ADD:

FOOTNOTE:

a. (Add to Footnote "a"): Applies to Highway construction only.

DECISION #OK85-4011-Mod.#2
50FR May 10, 1985
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods and Woodward Counties, Oklahoma

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LATHERS (Area I)	$14.25	$2.04
Sheet Metal Workers	16.15	3.30

OMIT:
DECISION #OK85-4011-Mod.#1
49FR May 10, 1985

ADD:
DECISION #OK85-4011-Mod.#1
50FR May 10, 1985

DECISION NO. PA84-3015
MOD. # 8
(49 FR 22976 - June 1, 1984)
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Carpenters	$15.00	2.67
LABORERS:		
Group 1	10.70	1.69
Group 2	11.17	1.69
Group 3	10.10	1.68
Group 4	11.37	1.71
Lathers	15.00	2.67
Millwrights	17.09	2.67
Painters:		
Brush	12.22	1.30
Plumbers & Steamfitters	17.85	2.82
Sheet metal workers	16.73	4.92
Soft floor layers	12.84	2.65

DECISION NO. TN84-1024
Mod # 2
(49 FR 34645 - August 31, 1984)
Anderson, Knox, Monroe & Roane Cos., Tennessee

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS:		
Commercial Construction *(See scope of work):		
Ironworker	$12.29	2.05
Rodman	12.15	2.05
Metal Buildings - Light Steel *(See scope of work):		
Ironworker	10.50	2.05
All Other Building Construction:		
Structural & Ornamental	13.29	2.05
Reinforcing	13.15	2.05

*SCOPE OF WORK:- IRONWORKERS:
Commercial Construction - Includes Schools, Hospitals, Office Bldgs., Banks, Shopping Centers, Warehouses, Department Stores, Telephone Bldgs., Motels, Hotels, & Condominiums, etc., Does not include any site that manufactures a product and/or industrial projects.
Metal Building - Light Steel - Includes all work involved in handling assembly, erection & installation required to construct & erect all mass produced buildings, (pre-engineered &/or prefabricated light steel bldgs. & their component parts).

DECISION NO. WA84-5040 - Mod#8
(49 FR 45532 - Nov. 16, 1984)
Statewide Washington

OMIT:
FOOTNOTE "e"
ADD:
FOOTNOTE:

e. COMMERCIAL BUILDING AND HIGHWAY PROJECTS ONLY: LABORERS (AREA 1), POWER EQUIPMENT OPERATORS (AREA 1), and TRUCK DRIVERS (AREA 1): All Counties and portions of Counties East of the 120th Meridian except DOE Hanford Site in Benton and Franklin Counties.

On all projects involving one or more of the components listed below, where the dollar value of the component is less than the amount shown, the rate to be paid for work on that component shall be 80% of the base rate plus full fringe benefits. Work on any other components or on components with dollar values in excess of the amounts shown shall be paid at the full base rate plus the full fringe benefit rate.

PAVING (includes fine grading and final laydown of surface material including asphalt, bituminous surface treatments, and emulsion seal coats)	$ 75,000
CRUSHING (including delivery to job site)	200,000
GRADING & CLEARING (HIGHWAY ONLY)	350,000
BRIDGES (including related work such as approaches and landscaping)	500,000
UTILITIES (Storm, sanitary sewerage and facilities for the delivery of electricity, gas, communications and domestic water)	Unlimited
BUILDINGS	$2,000,000 exclusive of mechanical & electrical subcontracts

EXCEPTIONS: Paving within a 45 mile radius of Spokane or Lewiston shall receive the full rate.

LABORERS ONLY: Work on building projects in which the value of the total project exceeds $2,000,000 shall be paid the full rate plus the full fringe benefit rate.

STATE: CONNECTICUT
DECISION NO. CT85-3023
COUNTIES: STATEWIDE
DATE: Date of Publication
Supersedes Decision No. CT84-3016 dated June 8, 1984 published in 49 FR 23980.
DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories); Residential (in Fairfield and Litchfield Counties only); Heavy (excluding tunnel construction); and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS		
Area 1	21.34	3.86
Area 2	18.73	4.53
Area 3	17.63	4.13
BOILERMAKERS	18.93	1.875+ 10%
BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:		
BUILDING CONSTRUCTION:		
Area 1	16.38	4.45
Area 2	18.15	2.68
Area 3	18.03	2.55
Area 4	17.60	3.25+a
HEAVY & HIGHWAY:		
Area 1	14.40	3.15
Area 2	14.57	2.58
Area 3	13.80	3.25
Area 4	14.00	3.15
CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; LATHERS;		
RESILIENT FLOOR LAYERS:		
BUILDING CONSTRUCTION:		
Area 1	15.75	2.25
Area 2	15.47	2.25
Area 3	15.70	3.05
Area 4	15.70	3.15
Area 5	15.80	3.15
Area 6:		
Carpenters	16.35	2.43
Millwrights	16.85	2.43
RESIDENTIAL		
Area 1	14.05	3.05
HEAVY & HIGHWAY CONSTRUCTION		
Area 1 & 2	15.95	1.80+c
Area 3	15.60	2.65+c
Area 4	15.05	2.65+c
Area 5	15.10	3.15+c
Area 6	16.25	3.15+c
ELECTRICIANS		
Area 1	21.00	.02+26% +d
Area 2	16.86	3.05+ 9.25%
Residential (Single Family housing)	10.40	2.55+ 9.25%
Area 3	18.15	3.05+ 3.75%
Area 4	18.70	2.07+ 3.25%
Area 5	16.80	3.78+ 3%
Area 6	18.20	5.35+ 3.5%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	18.81	3.29+ e+f
Helpers	13.17	3.29+ e+f
Probationary Helpers	9.405	
GLAZIERS:		
Area 1	19.05	6.10
Area 2	18.43	2.64+g
Area 3	13.16	3.84+g
Area 4	15.88	1.53+h
IRONWORKERS	18.50	5.93+i
LABORERS (BUILDING):		
Group 1	13.30	2.80+j
Group 2	13.55	2.80+j
Group 3	14.05	2.80+j
Group 4	13.80	2.80+j
Group 5	13.50	2.80+j
LABORERS (HIGHWAY - In the City of Hartford: Contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing, except state and interstate highways)	13.15	2.80
LABORERS (HIGHWAY-except contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing in the City of Hartford other than state and interstate highways & HEAVY CONSTRUCTION):		
Group 1	13.15	2.80

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	Basic Hourly Rates	Fringe Benefits
LABORERS (HEAVY CONSTRUCTION) (Continued)		
Group 2	13.40	2.80
Group 3	13.65	2.80
Group 4	13.90	2.80
LINE CONSTRUCTION:		
Area 1:		
Lineman	14.43	.02+d 19.5%
Compressor operator	12.00	.02+d 19.5%
Lamp Changer	11.21	.02+d 19.5%
Area 2		
Lineman, cable splicer, dynamite man	16.77	3.15+ 4.75%
Heavy equipment operator	15.07	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	14.22	3.15+ 4.75%
Driver groundman	12.52	3.15+ 4.75%
Groundman	9.11	3.15+ 4.75%
Area 3:		
Lineman, cable splicer, dynamite man	17.97	3.15+ 4.75%
Heavy equipment operator	16.15	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	15.24	3.15+ 4.75%
Driver groundman	13.42	3.15+ 4.75%
Groundman	9.77	3.15+ 4.75%
Area 4:		
Lineman, cable splicer dynamite man	17.49	3.15+ 4.75%
Heavy equipment operator	15.72	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	14.83	3.15+ 4.75%
Driver groundman	13.06	3.15+ 4.75%
Groundman	9.51	3.15+ 4.75%
Area 5:		
Lineman, cable splicer dynamite man	17.15	3.15+ 4.75%
Heavy equipment Op.	15.41	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	14.54	3.15+ 4.75%
Driver groundman	12.80	3.15+ 4.75%
Groundman	9.32	3.15+ 4.75%
Area 6:		
Lineman, cable splicer dynamite man	19.33	3.15+ 4.75%
Heavy Equipment Op.	17.37	3.15+ 4.75%
Equipment operator, tractor trailer driver, field mechanic	16.39	3.15+ 4.75%
Driver groundman	14.44	3.15+ 4.75%
Groundman	10.52	3.15+ 4.75%
Areas 2, 3, 4, 5, & 6:		
Traffic Control, Illumination & Maintenance:		
Linemen, technicians & cable splicers	16.95	3.15+ 4.75%
Equipment operator	14.37	3.15+ 4.75%
Driver groundman	12.65	3.15+ 4.75%
Groundman	11.79	3.15+ 4.75%
Railroad Construction (including electrical distrubution, transmission lines, substations and signal construction:		
Lineman, cable splicer & dynamite man	17.70	3.15+ 4.75%
Heavy Equipment Op.	15.91	3.15+ 4.75%

DECISION NO. CT85-3023

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D)		
Equipment Operator, tractor trailer driver, field mechanic	15.01	3.15+ 4.75%
Driver groundman	13.21	3.15+ 4.75%
Groundman	9.62	3.15+ 4.75%
PAINTERS:		
Bridge (Statewide):		
Structural steel	22.20	
Sandblasting or power tools	23.20	
Spray	25.70	
Area 1:		
Brush	16.65	2.41
Tapers	17.15	2.41
Bosun's chair	17.65	2.41
Spray	20.50	2.41
Area 2:		
Brush, tapers, sandblasters	16.00	2.21+k
Rollers, paperhangers, swing stage	16.50	2.21+k
Structural steel	17.00	2.21+k
Epoxy, polyester	18.00	2.21+k
Spray	20.00	2.21+k
Area 3:		
Brush, roller, tapers	16.60	1.95+1
Vinyl & wall coverings	18.00	1.95+1
Steel	18.40	1.95+1
Epoxy	19.50	1.95+1
Spray	24.90	1.95+1
Residential	14.85	1.95+1
Area 4 & 5:		
Painters, brush, roller, and tapers	17.00	3.05
Paperhangers	17.50	3.05
Riggers	18.10	3.05
Tanks, towers, swing stage, boatswain chair, riding steel and hazardous work of a similar nature	19.10	3.05
Sandblasters & Sprayman	21.10	3.05
Area 6:		
Brush, sandblasting	16.00	1.77
Tapers	16.35	1.77
Paperhangers	16.50	1.77
Spray	19.00	1.77
Structural steel	16.25	1.77
Area 7:		
Brush	14.65	2.41
Rollers	15.16	2.41
Paperhangers, tapers, sign, structural steel, swing stage, swing scaffold, window jacks, bosun chair, steam cleaning, sandblasting	15.65	2.41
Spray	17.81	2.41
Epoxy	16.01	2.41
Spray epoxy	19.64	2.41
Projects of $75,000 or less:		
Brush	13.65	2.41
Rolling	14.15	2.41
Epoxy	14.15	2.41
Spray	14.90	2.41
PLUMBERS & STEAMFITTERS:		
Area 1	17.64	3.57
Area 2	17.60	2.25+ 5%
Area 3	19.12	2.60
Residential	11.76	1.72
Area 4	18.00	3.87+m
Residential	11.76	1.72
Area 5	17.80	2.92
Residential	11.76	1.72
Area 6:		
Jobs where total mechanical work exceeds $200,000	18.00	3.83+n
Jobs where total mechanical work is $200,000 or less	13.50	3.83+n
Area 7	19.67	2.50+o
Area 8	19.45	3.27+p
Area 9	21.81	3.40+q
Area 10:		
Plumbers	18.36	4.39
Steamfitters	18.68	4.51
POWER EQUIPMENT OPERATORS (BUILDING)		
Group I	18.81	3.75+r
Group II	18.65	3.75+r
Crane with boom, including jib, over 150 feet: $0.25 extra		
Crane with boom, including jib, over 200 feet: $0.50 extra		

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (BUILDING) (CONT'D)		
Group III	18.49	3.75+r
Group IV	18.11	3.75+r
Group V	17.67	3.75+r
Group VI	17.57	3.75+r
Group VII	17.51	3.75+r
Group VIII	17.34	3.75+r
Group XI	17.19	3.75+r
Group X	16.93	3.75+r
Group XI	15.93	3.75+r
Group XII	15.61	3.75+r
Group XIII	14.79	3.75+r
(HEAVY & HIGHWAY)		
Class 1	18.86	3.75+r
Class 2	18.61	3.75+r
Crane with 150 foot boom (including jib) - $.25 extra		
Crane with 200 foot boom (including jib) - $.50 extra		
Class 3	18.13	3.75+r
Class 4	17.73	3.75+r
Class 5	17.48	3.75+r
Class 6	17.21	3.75+r
Class 7	16.87	3.75+r
Class 8	16.76	3.75+r
Class 9	17.22	3.75+r
Class 10	16.07	3.75+r
Class 11	15.63	3.75+r
Class 12	15.46	3.75+r
Class 13	14.82	3.75+r
Class 14	10.26	3.75+r

	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Area 1	14.90	1.80
Area 2	15.15	3.875
Composition	15.65	3.875
Slate; Tile	15.65	3.875
SHEET METAL WORKERS:		
Area 1	17.99	5.57*
Area 2	17.10	4.08+ 3%
SPRINKLER FITTERS	18.95	4.53
TILE, MARBLE & TERRAZZO FINISHERS	14.20	3.40
TRUCK DRIVERS		
Class 1	12.63	3.37+s
Class 2	12.73	3.37+s
Class 3	12.78	3.37+s
Class 4	12.83	3.37+s
Class 5	12.88	3.37+s
Class 6	12.93	3.37+s

WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

a. Paid Holidays: ½ day on Christmas Eve and ½ day on New Year's Eve.

b. $100 per year.

c. Paid Holidays: B, C, and D provided the employee works three days during the week of the holiday and the working day before and the working day after the holiday, if scheduled.

d. Employer contributes $10.00 per worker per day to Security Benefit Fund.

e. Paid Holidays: A through F, plus Friday after Thanksgiving.

f. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

g. Paid Holiday: A through F, Washington's Birthday, Good Friday and Columbus Day.

h. Paid Holiday: Labor Day, provided employee works any part of week prior to and any part of week after Labor Day.

i. The last 4 hours on Christmas Eve is a paid half-day, if employee has worked 5 consecutive days prior to Christmas Eve.

j. Paid Holidays: B, C, and D, provided the employee works three days during the week of the holiday and working day after the holiday.

k. Paid Holidays: A through F and Good Friday, provided employee works the day before and the day after the holiday.

l. Paid Holidays: A through F and Good Friday, provided employee works 15 work days within the 4 calendar weeks prior to the holiday.

m. Paid Holiday: Labor Day, provided employee was employed 10 working days prior to and works the day after the holiday.

FOOTNOTES: CONT'D

n. Paid Holidays: B and D, Good Friday and the Friday after Thanksgiving, plus a half-day the last working day before Christmas, provided the employee is employed during the work week ending the Friday immediately preceding the holiday.

o. Paid Holiday: D

p. Paid Holidays: B, D, E, and half-day paid holiday the Friday after Thanksgiving.

q. Paid Holidays: D, and half-day paid holidays on Friday before Labor Day and Friday after Thanksgiving.

r. A through F and Good Friday, provided the employee works three days in the work week in which the holiday falls, the working day before and the working day after the holiday, if scheduled.

s. A Through F and Good Friday, provided the employee has at least 31 days service and works the last scheduled day before and the first scheduled day after the holiday.

AREA DESCRIPTIONS

ASBESTOS WORKERS:

Area 1: FAIRFIELD; LITCHFIELD (Barkhansted, Bethlehem, Bridgewater, Cornwall, Goshen, Harwington, Kent, Litchfield, Morris, New Hartford, New Milford, Plymouth, Roxbury, Sharon, Torrington, Warren, Washington, Watertown, Winchester, Woodbury, Thomaston); HARTFORD (Avon, Berlin, Bloomfield, Bristol, Burlington, Canton, East Hartford, West Windsor, Farmington, Glastonbury, Hartford, Manchester, Marlborough, New Britain, Newington, Plainville, Rocky Hill, Simsbury, Southington, South Windsor, West Hartford, Wethersfield, Windsor); NEW HAVEN; MIDDLESEX; NEW LONDON (Bozrah, Colchester, East Lyme, Franklin, Groton, Lebanon, Lyme, Montville, New London, Norwich, Old Lyme, Salena, Sprague, Waterford; TOLLAND (Andover, Bolton, Columbia, Coventry, Ellington, Hebron, Mansfield, Tolland, Vernon, Willington); WINDHAM (Ashford, Chaplin, Eastford, Hampton, Scotland, Windham).

Area 2: LITCHFIELD (Cannan, Colbrook, Norfolk, North Canaan, Salisbury); HARTFORD (East Granby, Enfield, Granby, Hartland, Suffield, Windsor Locks); TOLLAND (Somers, Stafford, Union); WINDHAM (Woodstock).

Area 3: NEW LONDON (Griswold, Ledyard, Lisbon, North Stonington, Preston, Stonington, Voluntown); WINDHAM (Brooklyn, Canterbury, Killingly, Plainfield, Pomfret, Putnam, Sterling, Thompson).

BRICKLAYERS; CEMENT MASONS; CEMENT FINISHERS; MARBLE MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS:

Area 1: FAIRFIELD (Greenwich).

Area 2: FAIRFIELD (Darien, Stamford).

Area 3: FAIRFIELD (New Canaan, Norwalk, Ridgefield, Weston, Westport, Wilton).

Area 4: Remainder of State.

CARPENTERS; MILLWRIGHTS; PILEDRIVERMEN; RESILIENT FLOOR LAYERS:

Area 1: FAIRFIELD (Bethel, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, Newtown, Norwalk, Redding, Ridgefield, Sherman, Stamford, Wilton

Area 2: LITCHFIELD (Barkhamstead, Bethlehem, Bridgewater, Canaan, Colebrook, Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, Winchester, Woodbury).

Area 3: FAIRFIELD (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston, Westport); NEW HAVEN (Milford, Oxford, Derby, Seymour, Ansonia, Orange-that part south of Route 1 and west of the Oyster River).

Area 4: LITCHFIELD (Harwington, Plymouth, Thomaston, Watertown); HARTFORD (New Britain, Newington, Berlin, Southington, Plainville, Burlington, Canton, Bristol, Marlborough); NEW HAVEN (Meriden, Wallingford, New Haven, East Haven, Branford, Guilford, Madison, North Branford, North Haven, Hamden, West Haven, Orange - east of Orange Center Road and north of Route 1 plus north of Route 1 and east of the Oyster River, Cheshire, Waterbury, Wolcott, Middlebury, Southbury, Naugatuck, Prospect, Bethany, Beacon Falls, Woodbridge); MIDDLESEX.

Area 5: HARTFORD (Hartford, West Hartford, Avon, Farmington, Simsbury, Bloomfield, Windsor, East Granby, Granby, Windsor, Locks, Suffield, Enfield, East Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Rocky Hill, Wethersfield, Hartland); TOLLAND (Stafford, Somers, Tolland, Ellington, Bolton, Vernon).

Area 6: TOLLAND (Mansfield, Union, Willington, Coventry, Hebron, Columbia, Andover); WINDHAM; NEW LONDON.

DECISION NO. CT85-3023

ELECTRICIANS:

Area 1: FAIRFIELD (Darien, Greenwich, New Canaan, Stamford).

Area 2: FAIRFIELD (Norwalk, Wilton, Weston, Westport).

Area 3: FAIRFIELD (Bethel, Bridgeport, Brookfield, Danbury, Easton, Fairfield, Monroe, New Fairfield, Newton, Redding, Ridgefield, Shelton, Sherman, Stratford, Trumbull); LITCHFIELD (except Plymouth); NEW HAVEN (Milford, Beacon Falls, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury, Wolcott); HARTFORD (Hartland).

Area 4: LITCHFIELD (Plymouth); HARTFORD (Berlin, Bristol, New Britain, Newington, Plainville, Southington); NEW HAVEN (Remainder of County); MIDDLESEX (Chester, Clinton, Deep River, Durham, East Haddam, East Hampton, Essex, Haddam, Old Saybrook, Killingworth, Westbrook); NEW LONDON (East Lyme, Groton, Ledyard-Ledyard Submarine Base Only, Lyme, New London, Old Lyme, Waterford, Fishers Island Sound).

Area 5: HARTFORD (Suffield, Enfield - portion of Thompsonville west of George Washington Road and north of Hazard Avenue).

Area 6: HARTFORD (Remainder of County); MIDDLESEX (Cromwell, Middlefield, Middletown, Portland); TOLLAND; WINDHAM; NEW LONDON (Bozrah, Colchester, Franklin, Lisbon, Montville, North Stonington, Norwich, Griswold, Lebanon, Ledyard - except Ledyard Submarine Base, Preston, Salem, Sprague, Stonington, Voluntown).

GLAZIERS:

Area 1: FAIRFIELD (Greenwich).

Area 2: FAIRFIELD (Remainder of County; NEW HAVEN (except Waterbury, Meridan, Wallingford); LITCHFIELD (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington, Watertown, Woodbury); MIDDLESEX (Clinton, Essex, Killingworth, Old Saybrook, Westbrook; NEW LONDON (Old Lyme).

Area 3: LITCHFIELD (Remainder of County); HARTFORD; MIDDLESEX (Remainder of County); NEW LONDON (Bozrah, Colchester, East Lyme, Franklin, Lebanon, Lyme, Montville, New London, Norwich, Salem, Sprague, Waterford); TOLLAND; WINDHAM (Ashford, Chaplin, Hampton, East Fort, Scotland, Windham).

Area 4: NEW LONDON (Remainder of County); WINDHAM (Remainder of County).

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LINE CONSTRUCTION:

Area 1: FAIRFIELD (Darien, Greenwich, New Canaan, Stamford, Norwalk portion west of Five Mile River).

Area 2: FAIRFIELD (Wilton, Weston, Westport, Norwalk-East of Five Mile River).

Areas 3, 4, 5 & 6: See areas 3, 4, 5, & 6, respectively, of ELECTRICIANS.

PAINTERS:

Area 1: FAIRFIELD (Greenwich, Darien, Stamford, New Canaan, Norwalk, Weston, Westport, Wilton, Bridgeport, Easton, Fairfield - including Southport, Stratford, Trumbull); NEW HAVEN (Milford-South of Gulf Street).

Area 2: FAIRFIELD (Monroe, Shelton); NEW HAVEN (Ansonia, Beacon Falls, Derby, Oxford, Seymour).

Area 3: FAIRFIELD (Bethel, Brookfield, Danbury, Newton, New Fairfield, Redding, Ridgefield, Sherman); LITCHFIELD (New Milford).

Area 4: NEW HAVEN (Middlebury, Naugatock, Prospect, Southbury, Waterbury, Wolcott); LITCHFIELD (Roxbury, Thomaston, Washington, Watertown, Woodbury).

Area 5: LITCHFIELD (Barkhamstead, Canaan, Colebrook, Cornwall, Goshen, Harwington, Kent, Litchfield, New Hartford, Norfolk, North Canaan, Salisbury, Sharon, Torrington, Warren, Winchester); HARTFORD; NEW HAVEN (Cheshire, Guilford, Madison, Meriden, Wallingford); MIDDLESEX; TOLLAND; WINDHAM (Ashford, Windham).

Area 6: NEW HAVEN (Bethany, Branford, East Haven, Hamden, Milford - south to Gulf Street, New Haven, North Branford, North Haven, Orange, West Haven, Woodbridge, Woodmont).

Area 7: NEW LONDON; WINDHAM (Remainder of County).

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PLUMBERS & STEAMFITTERS:

Area 1: FAIRFIELD (Greenwich).

Area 2: FAIRFIELD (Stamford, Darien, New Canaan).

Area 3: FAIRFIELD (Norwalk, Westport, Weston, Wilton).

Area 4: FAIRFIELD (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull); NEW HAVEN (Milford).

Area 5: FAIRFIELD (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding Ridgefield, Sherman); LITCHFIELD (Bridgewater, New Milford).

Area 6: LITCHFIELD (Remainder of County); NEW HAVEN (Ansonia, Beacon Falls, Bethany, Middlebury, Naugatuck, Oxford, Prospect, Seymour, Southbury, Waterbury, Wolcott); HARTFORD (Hartland).

Area 7: HARTFORD (Berlin, Bristol, New Britain, Plainville, Southington and parts of Newington, Farmington and West Hartford--Newington south of Cedar Street, west of Berlin Turnpike, north along New Haven Railroad to South Main Street to Route 6, west on Route 6 to Bristol town line); NEW HAVEN (Cheshire, Meriden, Wallingford); MIDDLESEX (Durham).

Area 8: NEW HAVEN (Branford, Derby, East Haven, Guilford, Hamden, Madison, New Haven, North Branford, North Haven, Orange, West Haven, Woodbridge) MIDDLESEX (Chester, Clinton, Deep River, Killingworth, Westbrook).

Area 9: NEW LONDON; MIDDLESEX (Essex, Old Saybrook, Saybrook); WINDHAM (Except Windham Twsp.).

Area 10: HARTFORD (Avon, Bloomfield, Burlington, Canton, East Granby, East Hartford, East Windsor, Enfield, Farmington, Glastonbury, Granby, Hartford, Manchester, Marlborough, Newington, Rocky Hill, Simsbury, South Windsor, Suffield, West Hartford, Wethersfield, Windsor, Windsor Locks); MIDDLESEX (Cromwell, East Haddam, East Hampton, Haddam, Middlefield, Middletown, Portland); TOLLAND; WINDHAM.

ROOFERS:

Area 1: FAIRFIELD; LITCHFIELD (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington, Woodbury); NEW HAVEN (Ansonia, Beacon Falls, Bethany, Branford, Derby, East Haven, Guilford, Hamden, Madison, Middlebury, Milford, Naugatuck, New Haven, North Branford, North Haven, Orange, Oxford, Seymour, West Haven, Woodbridge).

Area 2: NEW HAVEN (Cheshire, Meriden, Prospect, Wallinford, Wolcott); LITCHFIELD (Remainder of County); HARTFORD; MIDDLESEX; NEW LONDON; TOLLAND; WINDHAM

SHEET METAL WORKERS:

Area 1: FAIRFIELD; LITCHFIELD.

Area 2: NEW HAVEN; HARTFORD; MIDDLESEX; NEW LONDON; TOLLAND; WINDHAM.

CLASSIFICATION DESCRIPTIONS

LABORERS (BUILDING):

Group 1: Laborers, carpenter tenders, wrecking laborers, fire watchers.

Group 2: Jack hammer operator, mason tenders, mortar mixer, pipelayers, plasterers tenders, power buggy operators, powdermen.

Group 3: Air track operators, wagon drill operators, sand blasters, blasters.

Group 4: Bottom men on open air caisson, cylindrical work and boring crew.

Group 5: Top men on open air caisson, cylindrical work and boring crew.

LABORERS (HIGHWAY - except contracts for repairing or paving streets, roads, sidewalks, parking lots and/or curbing in the City of Hartford other than state and interstate highways):

Group 1: Laborers (unskilled).

Group 2: Asphalt rakers, chain saw operators, fence and guard rail erectors, pipelayers, mason tenders, pneumatic tool operators, powdermen, and wagon drill operators.

Group 3: Air track operators, block pavers, curb setters.

Group 4: Blasters.

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POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

Group I: Derrick, hoisting engineer 2 drums and over, hoisting structural steel, pile driver & setting stone.

Group II: Dragline, forklift - over 4' lift, front end loader - 7 cy. or over, gradall, hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull, or drag material regardless of motive power or operation), Koehring scooper loader and/or hoe, master mechanic, shovel, & tower crane.

Group III: Maintenance engineer.

Group IV: Central mix operator, Coleman loader and screening plant or similar equipment, combination hoe and loader over ¾ yd, conveyors - regardless of motive power, front end loader 3 cy. up to 7 cy., joy drill limited to joy heavy weight champion or equivalent, mucking machine, post hole digger, pumpcrete machine, rock boring machine, vibratory hammer, welder & well digger.

Group V: Asphalt spreader.

Group VI: Bulldozer, carry-all operators, grader, & scraper pan.

Group VII: Combination hoe and loader machine, concrete mixer - 5 bags and over, front and loader under 3 cy., powerstone spreader.

Group VIII: Fork lift not over 4', Steam Jenny.

Group IX: Roller.

Group X: Dinky machine, power pavement breaker.

Group XI: Mechanical Heater.

Group XII: Fireman (High Pressure).

Group XIII: Oiler.

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POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over).

Class 2: Piledriver; power shovel and crane; dragline; gradall; trenching machine; lighter derrick; master mechanic; paver (concrete); derrick (stiff leg and guy); steel pile sheeting; Koehring loader (scooper).

Class 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid); mucking machine; pumpcrete; rock and earth boring machine; post hole digger; well digger; & hammer (vibratory); central mix; combination hoe & loader (over ¾ yd.).

Class 4: Asphalt spreader.

Class 5: Front end loader (3 yds. or over); grader; power stone spreader; combination hoe and loader.

Class 6: Asphalt roller; bulldozer; carryall; maintenance engineer concrete mixer (5 bags and over); welder.

Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine.

Class 8: Compressor battery.

Class 9: Well point system.

Class 10: Batch plant.

Class 11: Fireman (high pressure).

Class 12: Compressor; pump.

Class 13: Oiler.

Class 14: Track backhoe oiler.

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TRUCK DRIVERS:

Class 1: Two axle trucks; helpers.

Class 2: Three axle trucks; two axle ready mix.

Class 3: Three axle ready mix.

Class 4: Four axle trucks; heavy duty trailer-up to 40 tons.

Class 5: Four axle ready-mix; specialized earth moving equipment other than conventional type on-th road trucks and semi-trailer (including Euclids).

Class 6: Heavy duty trailer-40 tons and over.

STATE: MICHIGAN

AREA: MACOMB, MONROE, OAKLAND, WASHTENAW and WAYNE COUNTIES

DECISION NO.: [illegible]

DATE: DATE OF PUBLICATION

Supersedes Decision Number MI83-2007 dated February 11, 1983, in 48 FR 6454.

DESCRIPTION OF WORK: Building construction, Heavy construction (does not include Bridge, Airport, Sewer, Water Lines or TV/Grout projects) and Residential construction (consisting of single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$16.85	$2.47
Area 2	15.93	4.90
Area 3	17.39	5.02
BOILERMAKERS:		
Area 1	20.325	3.58
Area 2	16.94	5.70
BRICKLAYERS:		
Area 1	19.62	3.52
Area 2	15.95	2.96+ 19%
CARPENTERS:		
Area 1	16.57	2.15
Area 2:		
Building construction	16.07	1.70 +22%
Residental construction	13.20	2.45 +11%
CEMENT MASONS:		
Area 1	14.11	2.44 +25%
Area 2	19.62	1.52
ELECTRICIANS:		
Area 1	20.00	3.3% +3.00
Area 2:		
Electricians	16.96	1.76+ 19%
Cable Splicers	19.50	1.76+ 19%
Area 3	18.10	4.51 +3%
ELEVATOR CONSTRUCTORS:		
Area 1:		
Mechanics	17.30	3.00 +a+b
Helpers	12.11	3.00 +a+b
Probationary Helpers	8.65	
GLAZIER:		
Building construction	14.69	2.70+b
Residential construction	9.00	2.70+b

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS:		
Area 1	19.19	3.84
Area 2	13.53	3.13 +38.64%
LINE CONSTRUCTION:		
Area 1:		
Linemen & Technicians	15.50	1.00 +8 1/2% +c
Cable Splicers	16.13	1.00 + 8 1/2% +c
Combination Dozer Operator and Tractor Operator Groundman	13.07	1.00+ 8 1/2% +c
Light Equipment Operator Groundman; Distribution Line Truck Driver Operator Groundman	10.59	1.00+ 8 1/2% +c
Combination winch Truck Driver Groundman	10.10	1.00+ 8 1/2% +c
Combination Truck Driver & Groundman	8.55	1.00+ 8 1/2% +c
Area 2:		
Linemen & Technicians	17.63	2.05+ 13.5%
Cable Splicers	18.38	2.05+ 13.5%
Combination Equipment Operators & Groundmen	14.14	2.05+ 13.5%
Combination Truck Driver & Groundman	13.31	2.05+ 13.5%
Groundman	12.26	2.05+ 13.5%
MARBLE MASONS	16.23	3.80
MARBLE FINISHERS	13.77	3.05
MILLWRIGHTS	15.4037	2.8611+ 33.5%

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	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 1:		
Brush	$14.75	$5.02
Spray, under 40'	15.25	5.02
Spray, over 40'	15.375	5.02
Residential Painter	12.75	5.02
PLASTERERS:		
Area 1	16.61	3.75
Area 2	19.62	1.52
PLUMBERS:		
Area 1	16.62	5.00
Area 2	14.93	4.25
Area 3:		
Single family homes and apartments up to and including 2 stories	13.90	3.20
All others construction	15.09	6.43
ROOFERS:		
Area 1	16.45	3.85
Area 2	15.02	4.09
Area 3:		
Roofers	15.83	5.00
Slater	16.83	5.00
SHEET METAL WORKERS:		
Area 1	16.825	3.64
Area 2:		
Residential construction and light commercial construction (jobs consisting of 10 tons of air conditioning and/or 200,000 B.T.U.'s of heating, and architectural sheet metal work on such projects)	10.11	2.04
All others construction	16.13	3.26+ 26.01%
SPRINKLER FITTERS:		
Area 1	17.17	2.83
Area 2	18.635	4.45
TERRAZZO WORKERS	15.07	3.80
TILE SETTERS	15.62	3.82
TILE FINISHERS	13.77	3.55
TRUCK DRIVERS:		
Building, Heavy and Residential work:		
Group 1	13.80	*111.50
Group 2	13.95	*111.50
Group 3	14.05	*111.50

*PER WEEK PER EMPLOYEE

WELDERS:
Receive rate prescribed for craft performing operation to which welding is incidental.

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	Basic Hourly Rates	Fringe Benefits
LABORERS - BUILDING AND HEAVY CONSTRUCTION:		
Area 1:		
Group 1	12.76	2.94
Group 2	12.96	2.94
Group 3	13.08	2.94
Area 2:		
Group 1	14.69	1.69
Group 2	14.88	1.69
Area 3:		
Group 1	11.84	4.84
Group 2	11.92	4.84
Group 3	12.09	4.84
Group 4	12.03	4.84
Group 5	12.07	4.84
Group 6	12.17	4.84
Group 7	12.22	4.84
Group 8	12.59	4.84
Group 9	12.34	4.84
Group 10	11.09	4.84
LANDSCAPE LABORERS:		
Class A	8.60	
Class B	6.56	
LABORERS - Open Cut Construction:		
Contracts over $400,000:		
Area 1:		
Group 1	12.03	2.54
Group 2	12.12	2.54
Group 3	12.17	2.54
Group 4	12.22	2.54
Group 5	12.27	2.54
Area 2:		
Group 1	12.07	2.54
Group 2	12.17	2.54
Group 3	12.27	2.54
Group 4	12.32	2.54
Group 5	12.43	2.54
Area 3:		
Group 1	12.34	4.14
Group 2	12.42	4.14
Group 3	12.47	4.14
Group 4	12.53	4.14
Group 5	12.58	4.14
Contracts $400,000 or less:		
Area 1:		
Group 1	10.28	2.54
Group 2	10.37	2.54
Group 3	10.42	2.54
Group 4	10.47	2.54
Group 5	10.52	2.54
Area 2:		
Group 1	10.07	2.54
Group 2	10.17	2.54
Group 3	10.27	2.54
Group 4	10.32	2.54
Group 5	10.43	2.54

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	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D)		
LABORERS- Open Cut Const. (Cont'd)		
Contract $400,000 or less:		
Area 3:		
Group 1	11.09	4.14
Group 2	11.17	4.14
Group 3	11.22	4.14
Group 4	11.28	4.14
Group 5	11.33	4.14
LABORERS - Tunnel, Shaft and Caisson work:		
Contracts over $400,000:		
Area 1:		
Group 1	12.46	4.14
Group 2	12.55	4.14
Group 3	12.60	4.14
Group 4	12.75	4.14
Group 5	12.96	4.14
Group 6	13.22	4.14
Area 2:		
Group 1	12.56	2.99
Group 2	12.65	2.99
Group 3	12.70	2.99
Group 4	12.85	2.99
Group 5	13.06	2.99
Group 6	13.31	2.99
Contracts $400,000 or less		
Area 1:		
Group 1	11.21	4.14
Group 2	11.30	4.14
Group 3	11.35	4.14
Group 4	11.50	4.14
Group 5	11.71	4.14
Group 6	11.97	4.14
Area 2:		
Group 1	10.55	2.99
Group 2	10.63	2.99
Group 3	10.68	2.99
Group 4	10.84	2.99
Group 5	11.04	2.99
Group 6	11.30	2.99
POWER EQUIPMENT OPERATORS - Building, Heavy and Residential Construction		
Group A	16.47	4.35
Group B	16.25	4.35
Group C	15.69	4.35
Group D	15.21	4.35
Group E	14.84	4.35
Group F	12.59	4.35
Group G	11.77	4.35

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS		
Steel Erection:		
Group 1	17.37	4.35+13%
Group 2	18.26	4.35+13%
Group 3	17.13	4.35+13%
Group 4	18.02	4.35+13%
Group 5	16.49	4.35+13%
Group 6	17.37	4.35+13%
Group 7	16.17	4.35+13%
Group 8	17.05	4.35+13%
Group 9	15.96	4.35+13%
Group 10	12.98	4.35+13%
Group 11	11.82	4.35+13%
POWER EQUIPMENT OPERATORS - Underground Work:		
Contracts over $400,000:		
Class 1	14.93	4.35+13%
Class 2	14.55	4.35+13%
Class 3	13.90	4.35+13%
Class 4	13.40	4.35+13%
Contracts $400,000 or less:		
Class 1	14.04	4.35+13%
Class 2	13.66	4.35+13%
Class 3	13.22	4.35+13%
Class 4	12.51	4.35+13%

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

FOOTNOTES:

A. SEVEN PAID HOLIDAYS: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving; Christmas Day. Vacation Pay Credit: Employer contribution of 8% of basic hourly wage for employees with 5 years' or more of service, and 6% for employees with 6 months' to 5 years' service.

B. FOUR PAID HOLIDAYS: New Year's Day; Decoration Day; Labor Day Christmas Day.

C. SEVEN PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day - provided the employee works the scheduled workday preceding and following the day observed.

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Monroe County
Area 2: Washtenaw County (Townships of Bridgewater, Dexter, Freedom, Lima, Lindon, Manchester, Sharon and Sylvan)
Area 3: Remainder of Area

BOILERMAKERS:
Area 1: Monroe County
Area 2: Remainder of Counties

BRICKLAYERS:
Area 1: Washtenaw County
Area 2: Macomb County, Monroe County (East Half), Oakland County and Wayne County

CARPENTERS:
Area 1: Washtenaw County
Area 2: Remainder of Counties

CEMENT MASONS:
Area 1: Macomb, Monroe, Oakland and Wayne Counties
Area 2: Washtenaw County

ELECTRICIANS:
Area 1: Monroe County
Area 2: Washtenaw County
Area 3: Remainder of Counties

ELEVATOR CONSTRUCTORS:
Area 1: Macomb, Oakland and Wayne Counties

IRONWORKERS:
Area 1: Monroe County
Area 2: Remainder of Counties

LINE CONSTRUCTION:
Area 1: Monroe County (Townships of Bedford, Erie, Lasalle and Whiteford), Oakland County (Township of Holly), and Washtenaw County (Townships of Lyndon, Manchester, Sharon and Sylvan)
Area 2: Remainder of area

PAINTERS:
Area 1: Macomb, Monroe, Washtenaw and Wayne Counties

PLASTERERS:
Area 1: Macomb County (South of 13-miles road), Monroe County (North of route 223 from the west county line east on route 151 to Lake Erie), Oakland County (South of 13-mile road), and Wayne County
Area 2: Washtenaw County

PLUMBERS:
Area 1: Monroe County
Area 2: Washtenaw County
Area 3: Remainer of Counties

ROOFERS:
Area 1: Monroe County
Area 2: Washtenaw County
Area 3: Remainder of Counties

SHEET METAL WORKERS:
Area 1: Monroe County
Area 2: Remainder of Counties

SPRINKLER FITTERS:
Area 1: Monroe County
Area 2: Remainder of Counties

LABORERS-BUILDING AND HEAVY CONSTRUCTION:
Area 1: Washtenaw County
Area 2: Monroe County
Area 3: Remainder of Counties

LABORERS-OPEN CUT CONSTRUCTION:
Area 1: Washtenaw County
Area 2: Monroe County
Area 3: Remainder of Counties

LABORERS-TUNNEL, SHAFT AND CAISSON WORK:
Area 1: Macomb, Oakland and Wayne Counties
Area 2: Remainder of Counties

DESCRIPTIONS OF GROUPS
TRUCK DRIVERS-BUILDING, HEAVY AND RESIDENTIAL WORK

Group 1: Truck drivers on all trucks except semi trucks or tractor trailers, pole trailers, lowboys, straddle carrier, double bottom and special load permit vehicles
Group 2: Truck drivers on semi trucks or tractor trailer except pole trailer driver, lowboy driver, straddle carriers, double bottom and special load permit vehicles
Group 3: Pole trailer driver, lowboy driver, straddle carriers, double bottom driver, special permit load driver and fuel truck driver

LABORERS-BUILDING AND HEAVY CONSTRUCTION

Area 1:
Group 1: General Laborers
Group 2: Mortar mixer, material mixer (hand or machine), air/gas/electric tool operators, power buggy operator, stone setter helper, scaffold builder or dismantler, windlass operator, tar and kettle opertor
Group 3: Crock or pipe layer and caisson worker
Area 2:
Group 1: Laborer and carpenter helper
Group 2: Mortar mixer, including concrete and mortar 1/2 cu. yd. or smaller machine, or by hand in a mortar box; mason tender and cement mason helper, plaster tender, portable mixer operator, air/diesel/electric/gasoline tool operator (including concrete vibrator operator and acetylene torch), furnace battery heater helpers, caisson workers, signalman on concrete pours only
Area 3:
Group 1: Construction laborer
Group 2: Mortar mixer (including concrete and mortar 1/2 cu. yd. or smaller machine, or by hand in mortar box), scaffold builder
Group 3: Signal man and top man (on sewer and caisson work), air, electric or gas tool operator, including concrete vibrator and acetylene torch air hammer
Group 4: Windlass and tugger operator (on caisson work)
Group 5: Crock grade man
Group 6: Crock layer and pipe layer
Group 7: Caisson worker
Group 8: Lansing burner, blaster and powder man
Group 9: Furnace battery heater helpers, burning bar and oxy-acetylene gun
Group 10: Cleaner/sweeper laborer

LANDSCAPE LABORERS

Class A: Landscape specialist, including air, gas, diesel, electric tools and equipment
Class B: Landscape Laborers, truck drivers, material haulers and small power equipment

LABORERS-OPEN CUT CONSTRUCTION-AREA 1, 2, AND 3:

Group 1: Construction Laborers
Group 2: Mortar and Material Mixer, concrete form man, signal man, well point man, manhole, headwall and catch basin builder, guard rail builders and fence erector
Group 3: Air, gasoline and electric tool operator, vibrator operator, bracers, rodders, reinforced steel or mesh men (e.g., wire mesh, steel mats, dowel bars, etc.), cement finisher, pipe jacking and boring man, wagon drill and air track operator and concrete saw operator (under 40 H.P.), windlass and tugger man
Group 4: Trench or excavating grade man
Group 5: Pipe layer (including crock, metal pipe, multi-plate or other conduits)

LABORERS-TUNNEL, SHAFT AND CAISSON WORK-AREAS 1 AND 2:

Group 1: Tunnel, shaft and caisson laborer, pump man, shanty man, hog house tender, testing man (on gas)
Group 2: Manhole, headwall, catch basin builders, bricklayer tender, mortar man, material mixer, fence erector and guard rail builder
Group 3: Air tool operator (jackhammer man, bush hammer man and grinding man), first bottom man, second bottom man, cage tender, car pusher, carrier man, concrete man, concrete form man, concrete repair man, cement invert laborer, cement finisher, concrete shoveler, conveyor man, floor man, gasoline and electric tool operator, gunmite man, grout operator, pump man, outside lock tender, scaffold man, top signal man, switch man, track man, tugger man, utility man, vibrator man, winch operator, pipe jacking, boring man, wagon drill and air track operator and concrete saw operator (under 40 H.P.)
Group 4: Tunnel, shaft and caisson mucker, bracer man, liner plate man, long haul dinky driver and well point man
Group 5: Tunnel, shaft and caisson miner, drill runner, key board operator, power knife operator, reinforced steel or mesh man (e.g., wire mesh, steel mats, dowel bars, etc.)
Group 6: Dynamite man and powder man

POWER EQUIPMENT OPERATORS-BUILDING, HEAVY AND RESIDENTIAL CONSTRUCTION:

Group A: Crane with boom and jib or leads 220' or longer
Group B: Crane with boom and jib or leans 140' or longer
Group C: Crane with boom and jib 120' or longer
Group D: Regular crane operator
Group E: Regular engineer
Group F: Engineer when operating compressor or welding machine
Group G: Firemen or oiler

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POWER EQUIPMENT OPERATORS-STEEL ERECTION:

Group 1: Crane operator when operating combination of boom and jib 220' or longer
Group 2: Crane operator when operating combination of boom and jib 220' or longer on a crane that requires an oiler
Group 3: Crane operator when operating combination of boom and jib 140' or longer
Group 4: Crane operator when operating combination of boom and jib 140' or longer on a crane that requires an oiler
Group 5: Crane operator when operating combination of boom and jib 120' or longer
Group 6: Crane operator when operating combination of boom and jib 120' or longer on a crane that requires and oiler
Group 7: Crane operator and job mechanic
Group 8: Crane operator on a crane that requires an oiler
Group 9: Hoisting operator
Group 10: Compressor and/or welder operator
Group 11: Oiler

POWER EQUIPEMENT OPERATORS-UNDERGROUND WORK:

Class 1: Backfiller tamper, backhoe, batch plant operator (concrete), clamshall, concrete paver (two drum or larger), conveyor loader (euclid type), crane (crawler, truck type or pile driver), dozer (9 ft. blade and over), dragline, elevating grader, endloader (over 1-1/2 cu yds. capacity), gradall (and similar type equipment), mechanic, power shovel, roller (asphalt), scraper (self-propelled or tractor drawn), side boom tractor (type D-4 or equivalent and larger), slip form paver, slope paver, trencher (over 8 ft. digging capacity), well drilling rig
Class 2: Boom truck (power swing type boom), crusher, dozer (less than 9 ft. blade), endloader (1-1/2 cu. yds. capacity and smaller), hoist, pump (one or more - 6 in. discharge or larger - gas or diesel-powered or powered by generator of 300 amps or more - inclusive or generator), side boom tractor (smaller than type D-4 or equivalent), sweeper (Wayne type and similar equipment), tractor (Pneu-tired, other than backhoe or front-end loader), trencher (8 ft. digging capacity)
Class 3: Air compressor (6,000 cfm or larger), air compressor (2 or more, less than 600 cfm), boom truck (non-swinging, non-powered type boom), concrete breaker (self-propelled or truck mounted - includes compressor), concrete paver (one drum - 1-1/2 yd or larger), elevator (other than passenger), maintenance man, mechanic helper, pump (2 or more - 4 in. up to 6 in. discharge - gas or diesel powered - excluding submersible pumps), pumpcrete machine (and similar equipment), wagon drill (multiple), welding machine or generator (2 or more 300 amp. or larger - gas or diesel powered)
Class 4: Boiler, concrete saw (40 H.P. or over), curing machine (self-propelled), farm tractor (with attachment), finishing machine (concrete), fireman, hydraulic pipe pushing machine, mulching equipment, oiler, pumps (2 or more up to 4 in. discharge if used 3 hours or more a day - gas diesel powered - excluding submersible pumps), roller (other than asphalt), stump remover, trencher (service), vibrating compaction equipment (self-propelled, 6 ft. wide or over)

SUPERSEDEAS DECISION

STATE: Virginia

COUNTIES: Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington Wise & Wythe

DECISION NO. VA85-3028

DATE: Date of Publication

Supersedes Decision No. VA85-3000, dated January 11, 1985 in 50 FR 1681.

DESCRIPTION OF WORK: Highway Construction

	Basic Hourly Rates	Fringe Benefits
Asphalt Raker	5.16	
Carpenter, Structure	6.42	
Carpenter Helper, Structure	5.15	
Concrete Finisher	5.81	
Concrete Finisher Helper	5.25	
Electrician	8.00	
Guardrail/Fence Erector	4.90	
Ironworker, Reinforcing	7.00	
Laborer, Unskilled	4.41	
Mechanic	7.99	
Mechanic Helper	6.09	
Pipe Layer	4.58	
Powderman Blaster	6.85	
Sign Erector	8.00	
Asphalt Distributor Operator	5.25	
Asphalt Paver Operator	5.30	
Backhoe Operator	7.06	
Bulldozer Operators	6.46	
Crane, Derrick, Dragline Operator (1 yd. & under)	6.75	
Crane, Derrick, Dragline Operator (Over 1 yd.)	7.00	
Drill Operator	6.07	
Form Grader Operator	7.50	
Line Marker Operator	8.00	
Loader Operator (2 yds. & under)	5.94	
Loader Operator (over 2 yd.)	6.57	
Motor Grader Operator (Fine Grade)	6.88	
Motor Grader Operator (Rough Grade)	6.24	
Oiler Greaser	5.97	
Roller Operator (Rough)	4.78	
Roller Operator (Finish)	5.00	
Scraper Pan Operator	5.35	
Stone Spreader Operator	5.16	
Plant Operator	5.00	
Power Tool Operator	8.00	
Tractor Operator (Utility)	5.00	
Trenching Machine Operator	6.50	
Truck Driver, Heavy Duty (7 cy. & under)	4.83	
Truck Driver, Heavy Duty (over 7 cy.)	5.50	
Truck Driver (Multi-Rear Axle)	5.10	
Truck Driver (Single-Rear Axle)	4.82	

[FR Doc. 85-13531 Filed 6-6-85; 8:45 am]

BILLING CODE 4510-27-C

Federal Register

Friday,
June 7, 1985

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control; Public Hearings and Extension of Public Comment Period

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Requirements for Surface Coal Mining and Reclamation Permit Approval; Ownership and Control

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

ACTION: Notice of Public Hearings and Extension of Public Comment Period.

SUMMARY: In response to requests from the public, the Office of Surface Mining (OSM) will hold public hearings in two States and will extend until June 28, 1985, the public comment period on the rule it proposed in the April 5, 1985 **Federal Register** (50 FR 13724).

The proposed rule would amend OSM regulations pertaining to the permit approval process by adding definitions for the terms "ownership" and "control", and expanding the scope of findings required prior to permit approval

A clear explanation of the meaning of "ownership" and "control", along with a corresponding expansion of the findings required prior to permit approval is needed to eliminate or greatly reduce the possibility of persons obtaining and/or holding permits in violation of the permit approval provision of section 510(c) of the Surface Mining Control and Reclamation Act. More detailed background on the proposed rule can be found in the April 5, 1985, **Federal Register** (50 FR 13724).

DATES: The public hearings will be held:

Thursday, June 20, 1985, beginning at 10:00 a.m. in the auditorium, Mountain Empire Community College, Route 23, Gate City Highway, Big Stone Gap, VA; and

Friday, June 21 1985, beginning at 10:00 a.m. at 2242 South Hamilton Road, 2nd Floor, Columbus, OH.

Persons wishing to speak at the hearings are asked to contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** by June 14, 1985, to facilitate the scheduling of testimony.

The comment period on the proposed rule will extend until June 28, 1985. All written comments must be received at the location below under **"ADDRESSES"** by close of business on that date.

ADDRESSES: Hand-deliver or mail written comments to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C., 20240.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Acting Chief, Division of Regulation and Inspection, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, N.W., Washington, D.C., 20240; Telephone: 202–343–5866 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: Public hearings on the proposed rule will be held at the times and locations listed above to hear all those who wish to testify.

OSM appreciates all comments on the proposed rules, but those that will be most useful will be those that are as specific as possible, focus on the issues in this proposed rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this rule, nor can OSM ensure consideration of written comments received after the comment period ends or those delivered to an address other than that specified.

Individual testimony at the hearing will be limited to 15 minutes. The hearing will be transcribed. Filing of a written statement at the time of giving oral testimony would be helpful, and would facilitate the job of the court reporter. Submission of written statements in advance of the hearing would greatly assist OSM officials who will attend the hearing. Advanced submissions will give these officials an opportunity to consider appropriate questions, which could be asked for clarification, or to request more specific information from the person testifying.

The public hearing will continue until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak and wish to do so will be heard following the scheduled speakers. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to speak have been heard. Persons not scheduled to testify, but wishing to do so, assume the risk of having the public hearing adjourned unless they are present in the audience at the time all scheduled speakers have been heard.

Dated: June 3, 1985.

C.B. Kenehan,

Acting Assistant Director, Program Operations and Inspection, Office of Surface Mining.

[FR Doc. 85–13622 Filed 6–6–85; 8:45 am]

BILLING CODE 4310–05–M

federal register

Friday
June 7, 1985

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Part 2090

Special Laws and Rules; Segregation and Opening of Public Lands; Restatement of Procedures; Proposed Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2090

Special Laws and Rules; Restatement of Procedures for the Segregation and Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would revise the regulations in subpart 2091 to restate in one location the regulations that cover all forms of segregation of public lands, as well as the procedures under which those lands are opened to the public land laws and the mineral laws. This proposed rulemaking will remove outdated provisions, making the subpart more useable by the public for the purpose of determining the status of public lands. The revision would also facilitate the improvement of the accuracy of the public land records.

DATE: Comments should be submitted by August 6, 1985. Comments received or postmarked after the above date may not be considered as part of the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jim Powell, (202) 343-6486.

SUPPLEMENTARY INFORMATION: This proposed rulemaking is designed to clarify the procedural aspects of specific actions which segregate public lands and interests in lands, as well as the effect of actions which open such lands, including procedures governing the date and time an opening becomes effective. The proposed rulemaking would also provide equal public notice and opportunity to acquire lands and interests in lands which formerly were not available for acquisition.

The proposed rulemaking would provide, in a single location for easy reference and better understanding by the public, a restatement of the description of the circumstances and procedures under which public lands and interests in lands are segregated from and opened to operation of the public land laws and the mineral laws governing the use and disposal of such lands and interests therein.

Historically, in the absence of specific regulations or other authority, notation to the public land records served to segregate or open public lands or interests in those lands to operation of the various public land and mineral laws as of the date of notation. The proposed rulemaking would end the existing uncertainty as to the dates public lands and interests are segregated or opened by providing in one location for easy access the procedures governing the dates and times such actions are effective. The proposed rulemaking would not change the status of the land records as a source of information on the availability of the public lands and the interests therein.

The principal author of this proposed rulemaking is Jim Powell, Division of Withdrawals and Withdrawal Review, assisted by the staff of the Office of Legislation and Regulatory Review, all of the Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The revision made by this proposed rulemaking is a restatement in one location of the existing procedures for segregating or opening the public lands to the various public land laws and the mineral laws. The proposed rulemaking makes no change in the procedures that exist in other parts of Title 43 of the Code of Federal Regulations, procedures that apply equally to all entities who desire to use the public lands.

This proposed rulemaking is a restatement of regulations that are located in other parts of Title 43 of the Code of Federal Regulations and there are no new information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indian lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawal, Seashores, Veterans.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321-323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327-329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339-340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), it is proposed to amend Part 2090, Group 2000, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Part 2090 is amended by revising subpart 2091 to read:

PART 2090—SPECIAL LAWS AND RULES

Subpart 2091—Segregation and Opening of Lands

Sec.

2091.0-1 Purpose.
2091.0-3 Authority.
2091.0-5 Definitions.
2091.0-7 Principles.
2091.1 Action on applications and mining claims.
2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.
2091.2-1 Segregation.
2091.2-2 Opening.
2091.3 Segregation and Opening resulting from the filing of an application or offer.
2091.3-1 Segregation.
2091.3-2 Opening.
2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.
2091.4-1 Segregation and opening—Desert land entries and Indian allotments.
2091.4-2 Segregation and opening—airport leases and grants.
2091.4-3 Segregation and opening—Carey Act.
2091.5 Withdrawals.
2091.5-1 Segregation and opening of withdrawals resulting from applications filed on or after October 21, 1976.
2091.5-2 Withdrawals resulting from applications filed prior to October 21, 1976.

Sec.

2091.5-3 Segregative effect and opening—emergency withdrawals.
2091.5-4 Segregative effect and opening—water power withdrawals.
2091.5-5 Segregative effect and opening—Federal Power Act withdrawals.
2091.5-6 Congressional withdrawals and opening of lands.
2091.6 Opening of withdrawn lands—general.
2091.7 Segregation and opening of lands for a specific use.
2091.7-1 Segregative effect and opening—Recreation and Public Purposes Act, Small Tract Act and the Classification and Multiple Use Act.
2091.7-2 Segregative effect and opening—Taylor Grazing Act.
2091.9 Segregation and opening resulting from laws specific to Alaska.
2091.9-1 Alaska Native selections.
2091.9-2 Selections by the State of Alaska.
2091.9-3 Lands in Alaska under grazing lease.

Authority: R.S. 2478 (43 U.S.C.1201); R.S. 2275, 2276 (43 U.S.C. 851, 852); 43 U.S.C. 869 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 641 et seq.; 43 U.S.C. 321–323; 43 U.S.C. 231, 321, 323, 327–329; 25 U.S.C. 334; 25 U.S.C. 336; 16 U.S.C. 485; 72 Stat. 339–340; 43 U.S.C. 852 Note; 16 U.S.C. 818; 43 U.S.C. 315f; 43 U.S.C. 1601 et seq.; 43 U.S.C. 1701 et seq.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0-1 Purpose.

The purpose of this subpart is to provide a general restatement of the regulatory provisions in Title 43 of the Code of Federal Regulations dealing with the segregation and opening of public lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2091.0-3 Authority.

Section 2478 of the Revised Statutes (43 U.S.C. 1201), sections 2275 and 2276 of the Revised Statutes (43 U.S.C. 851, 852), the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), section 4 of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Act of March 3, 1877 (43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (43 U.S.C. 231, 321, 323, 325, 327–329), section 4 of the General Allotment Act of February 8, 1887 (25 U.S.C. 334), as amended by the Act of February 28, 1891 (26 Stat. 794) and section 17 of the Act of June 25, 1910 (25 U.S.C. 336), the Act of March 20, 1922, as amended (16 U.S.C. 485), the Act of July 7, 1958 (72 Stat. 339–340), the Act of January 21, 1929, as supplemented (43 U.S.C. 852 Note), section 24 of the Federal Power Act, as amended (16 U.S.C. 818), section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

§ 2091.0-5 Definitions.

As used in this subpart, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(b) "Segregation" means the removal for a limited period, subject to valid existing rights, of a specified area of the public lands from the operation of the public land laws, including the mining laws, pursuant to the exercise by the Secretary of regulatory authority for the orderly administration of the public lands.

(c) "Land" or "public lands" means any lands or interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(d) "Mineral laws" means those laws applicable to the mineral resources administered by the Bureau of Land Management. They include, but are not limited to, the mining laws, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act.

(e) "Public lands records" means the Tract Books, Master Title Plats and Historical Indices, or automated representation of these books, plats and indices on which are recorded information relating to the status and availability of the public lands. The recorded information may include, but is not limited to, withdrawals, restorations, openings, classifications, applications, segregations, leases, permits and disposals.

(f) "Opening" means the restoration of a specified area of public lands to operation of the public land laws, including the mining laws, and, if necessary, the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, subject to valid existing rights and the terms and provisions of existing withdrawals and reservations. Depending on the language in the opening order, an opening may restore the lands to all or some of the public land laws.

(g) "Opening order" means an order issued by the Secretary or the authorized officer and published in the **Federal Register** that describes the lands, the extent to which they are restored to operation of the public land laws and the mineral laws, and the date and time they are available for application, selection, sale, location, entry, claim or settlement under those laws.

(h) "Public land laws" means that body of laws dealing with the administration, use and disposition of the public lands, but does not include the mineral laws.

(i) "Revocation" means the cancellation of a Public Land Order, but does not restore public lands to operation of the public land laws.

(j) "Secretary" means the Secretary of the Interior or a secretarial officer subordinate to the Secretary who has been appointed by the President with the advice and consent of the Senate, and to whom has been delegated the authority of the Secretary to perform the duties described in this part as being performed by the "Secretary".

§ 2091.0-7 Principles.

(a) Segregated lands are not available for application, selection, sale, location, entry, claim or settlement under the public land laws, including the mining laws, but may be open to application, lease and permit under the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, if so specified in the document that segregates the lands. The segregation is subject to valid existing rights and is for a limited period which is specified in the document that segregates the lands. Where there is an administrative appeal or review action on an application pursuant to part 4 or other subparts of this title, the segregative period continues in effect until publication of an opening order.

(b) Opening orders may be issued at any time but are required when the opening date is not specified in the document creating the segregation, or when an action is taken to terminate the segregative effect and open the lands prior to the specified opening date.

§ 2091.1 Action on applications and mining claims.

(a) Except where regulations provide otherwise, all applications shall be accepted for filing. However, applications which are accepted for filing shall be rejected and cannot be held pending possible future availability of the lands or interests in lands, when approval of the application is prevented by:

(1) Withdrawal or reservation of lands;

(2) An allowed entry or selection of lands;

(3) A lease which grants the lessee exclusive use of the lands;

(4) Classification under appropriate law;

(5) Segregation due to an application previously filed under appropriate law and regulations;

(6) Segregation resulting from a notice of realty action published in the **Federal Register** under appropriate regulations; and

(7) The fact that, for any reason, the lands have not been made subject to, restored or opened to operation of the public land laws, including the mineral laws.

(b) Lands may not be appropriated under the mining laws prior to the date and time of restoration and opening. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, vests no rights against the United States. Actions required to establish a mining claim location and to initiate a right of possession are governed by State laws where those laws are not in conflict with Federal law. The Bureau of Land Management does not intervene in disputes between rival locators over possessory rights because Congress has provided for the resolution of these matters in local courts.

§ 2091.2 Segregation and opening resulting from publication of a Notice of Realty Action.

§ 2091.2-1 Segregation.

The publication of a Notice of Realty Action in the **Federal Register** segregates lands that are available for disposal under:

(a) The Recreation and Public Purposes Act, as amended (43 U.S.C. 869-4), for a period of 18 months (See Part 2740 and Subpart 2912);

(b) The sales provisions of section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) for a period of 270 days (See Part 2710); and

(c) The exchange provisions of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) for a period of 2 years (See Part 2200).

§ 2091.2-2 Opening.

(a) The segregative effect of a Notice of Realty Action terminates and the lands automatically become open either:

(1) At the end of the periods set out in § 2091.2-1 of this title; or

(2) Upon the publication in the **Federal Register** of an opening order; or

(3) Upon issuance of a patent or other document of conveyance; whichever occurs first.

(b) Lands conveyed under either the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, upon opening, remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(c) Lands conveyed to the United States by exchange become public lands and become open to the operation of the public lands laws to the extent and on the date and time set forth in an opening order published in the **Federal Register**.

§ 2091.3 Segregation and opening resulting from the filing of an application or offer.

§ 2091.3-1 Segregation.

(a) The filing of an application for lands for selection by a State (exclusive of Alaska) segregates the lands included in the application for a period of 2 years from the date the application is filed. (See Subparts 2621 and 2622)

(b) The proper filing of a notice of an offer for exchange of lands within the National Forest System segregates the lands for a period of 2 years from the date of such filing with the authorized officer. (See § 2202.1(b))

(c) The filing of an application and publication in the **Federal Register** of a notice of the filing of an application for the purchase of Federally-owned mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719) segregates the lands for a period of 2 years from the date of the filing of the application with the authorized officer. (See Part 2720)

(d) The filing of an application for an airport lease under the Act of May 24, 1928, as amended (49 U.S.C. 211-214), segregates the lands as of the date of filing with the authorized officer. (See Subpart 2911)

§ 2091.3-2 Opening.

(a) If the application or offer described in § 2091.3-1 of this title is not denied or otherwise terminated prior to the end of the 2-year segregative period, the segregative effect of those actions terminates either:

(1) Upon the issuance of a patent, other document of conveyance or lease to such lands; or

(2) Upon publication in the **Federal Register** of an opening order terminating the segregative effect and specifying the date and time of opening; or

(3) Automatically upon the expiration of the 2-year period commencing on the date the application or offer is filed; whichever occurs first.

(b) If the application or offer described in § 2091.3-1 of this title is denied or otherwise terminated prior to the end of the 2-year segregation period, the lands are opened by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Lands conveyed to the United States within the National Forest System under the authority of the Act of March 20, 1922, as amended (16 U.S.C. 485), or the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are open to operation of all laws and regulations applicable to National Forest System lands and the public lands, as applicable, on the date of acceptance of title by the United States.

§ 2091.4 Segregation and opening resulting from the allowance of entries, leases, grants or contracts.

§ 2091.4-1 Segregation and opening—Desert land entries and Indian allotments.

(a) Lands covered by an application for a desert land entry or Indian allotment become segregated on the date of allowance or approval of entry or allotment by the authorized officer. (See Subparts 2520 and 2530)

(b) If an entry or allotment is cancelled or relinquished, the lands become open to the operation of the public land laws by publication in the **Federal Register** of an opening order which specifies the date and time of opening. (See Subparts 2520 and 2530)

§ 2091.4-2 Segregation and opening—airport leases and grants.

(a) For lands covered by an airport lease or grant, the issuance of a lease for airport purposes under the authority of the Act of May 24, 1928 or a patent or document of conveyance for airport and airway purposes under the authority of the Act of September 3, 1982, as amended (49 U.S.C. 2215), continues to segregate the lands on the date the lease, patent or document of conveyance is signed by the authorized officer. (See Subparts 2640 and 2911)

(b) If an airport lease is terminated, the lands are opened by publication in the **Federal Register** of an opening order which specifies the date and time of opening.

(c) The lands covered by an airport lease or grant remain open to the operation of the mineral leasing laws, the material disposal laws and the Geothermal Steam Act, are segregated from the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe (See Subparts 2640 and 1911).

§ 1091.4-3 Segregation and opening—Carey Act.

(a) For lands covered by a Carey Act grant, publication of a notice in the **Federal Register** that a contract has been signed segregates the lands

described in the contract, as of the date of publication for a 10 year period, from operation of the public land laws and the mineral laws as described in the notice. (See Subpart 2610)

(b) If the contract under the Carey Act is terminated, the lands are opened by publication in the Federal Register of an opening order which specifies the date and time of opening. Preference right of entry to Carey Act entrymen may be provided in accordance with the provisions of Subpart 2613 of this title.

§ 2091.5 Withdrawals.

§ 2091.5-1 Segregation and opening of withdrawals resulting from applications filed on or after October 21, 1976.

(a) Publication in the Federal Register of a notice of an application for withdrawal, as provided in Subpart 2310 of this title, segregates the lands described in the withdrawal application or proposal to the extent specified in the notice. The segregative effect becomes effective on the date of publication and extends for a period of 2 years unless sooner terminated as set out below.

(b) Withdrawals resulting from applications and proposals filed on or before October 21, 1976, terminate:

(1) Automatically upon the expiration of a 2 year period from the date of publication of the notice of the filing of an application or proposal for withdrawal;

(2) Upon the issuance of a Public Land Order approving or effecting a new withdrawal, in whole or in part, including any new lands that might be added by the Public Land Order;

(3) The publication of a notice denying the withdrawal application or proposal, in whole or in part, giving the date and time the lands shall be open; or

(4) Publication in the Federal Register of a notice of request for cancellation of a withdrawal application or proposal, in whole or in part, giving the date and time the lands are open.

§ 2091.5-2 Withdrawal resulting from applications filed prior to October 21, 1976.

(a)(1) Lands covered by a withdrawal application filed prior to October 21, 1976, were segregated on the date the application was properly filed and remain segregated through October 20, 1991, to the extent specified in notices published in the Federal Register, unless the segregative effect is terminated prior to that date in accordance with procedures in § 2091.5-1 of this title.

(2) Any amendment made to a withdrawal application filed prior to October 21, 1976, or on or after October 21, 1986, for the purpose of adding lands modifies the term of segregation for all lands covered by the amended application to conform with the provision of § 2091.5-1 of this title.

(b) Withdrawals resulting from applications filed under this section terminate in accordance with procedures in § 2091.5-1 of this title.

§ 2091.5-3 Segregative effect and opening—emergency withdrawals.

(a) When the Secretary determines that an emergency exists and extraordinary measures need to be taken to preserve values that would otherwise be lost, a withdrawal is made immediately in accordance with § 2310.5 of this title. Emergency withdrawals are effective on the date the Public Land Order making the withdrawal is signed, cannot exceed 3 years in duration and may not be extended.

(b) The lands covered by an emergency withdrawal are opened automatically on the date of expiration unless the segregative effect is continued by a withdrawal application or proposal and the publication in the Federal Register of a notice as provided under Subpart 2310 of this title.

§ 2091.5-4 Segregative effect and opening—water power withdrawals.

(a) Lands covered by powersite reserves, powersite classifications, and powersite designations are considered withdrawn and are segregated from operation of the public lands laws, but are open to operation of the mineral laws.

(b) These lands may be opened to operation of the public land laws, subject to Federal Energy Regulatory Commission concurrence and appropriate terms and conditions. (See Subpart 2320) Mining claims may be located on such lands under procedures in Subpart 3730 of this title. These lands are opened by publication in the Federal Register of an opening order specifying the extent, date and time of opening.

§ 2091.5-5 Segregative effect and opening—Federal Power Act withdrawals.

(a)(1) The filing of an application for a power project with the Federal Energy Regulatory Commission withdraws the lands covered by the application from the operation of the public land laws; however, the lands remain open to the location, lease or disposal of the mineral estate under the provisions of section 24 of the Federal Power Act of 1920, as amended (16 U.S.C. 818).

(2) The issuance of a permit or license by the Federal Energy Regulatory Commission continues the earlier withdrawal and withdraws the lands from the operation of the mining laws.

(b) Upon the effective date of the cancellation of permits or licenses issued by the Federal Energy Regulatory Commission, lands covered by the cancellation are automatically opened to the operation of the public land laws and the minerals laws, as applicable.

§ 2091.5-6 Congressional withdrawals and opening of lands.

(a) Congressional withdrawals become effective and are terminated as specified in the statute making the withdrawal. If the statute does not specify the date the lands are to be withdrawn, the Secretary publishes in the Federal Register a Public Land Order specifying the extent, date and time the lands are withdrawn.

(b) If the statute does not specify when and to what extent the lands are to be opened, the Secretary publishes in the Federal Register an opening order specifying the extent, date and time of opening and the lands are automatically opened as of that date.

§ 2091.6 Opening of withdrawn lands—general.

The term of a withdrawal ends upon expiration under its own terms, or upon revocation or termination by the Secretary by publication in the Federal Register of a Public Land Order. Lands included in a withdrawal that is revoked, terminates or expires do not automatically become open, but are opened through publication in the Federal Register of an opening order. An opening order may be incorporated in a Public Land Order that revokes or terminates a withdrawal or may be published in the Federal Register as a separate document. In each case, the opening order specifies the time, date and specific conditions under which the lands are opened.

§ 2091.7 Segregation and opening of lands classified for a specific use.

§ 2091.7-1 Segregative effect and opening—Recreation and Public Purposes Act, Small Tract Act and Classification and Multiple Use Act.

(a)(1) Lands classified under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869-4), and the Small Tract Act (43 U.S.C. 682a) are segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, the material disposal laws, and the Geothermal Steam Act.

(2) Lands classified under the authority of the Classification and Multiple Use Act (43 U.S.C. 1411-18) are segregated to the extent described in the notice of cancellation.

(b) The segregative effect of the classifications described in § 2091.7-1 of

this title terminates and the lands are opened under the following procedures:

(1) Recreation and Public Purposes Act classifications: (i) Made after the effective date of these regulations terminate and the lands automatically become open at the end of the 18-month period of segregation specified in part 2470 of this title, unless an application is filed; (ii) made prior to the effective date of these regulations where the 18-month period of segregation specified in part 2470 of this title is in effect on the effective date of these regulations, expire and the lands automatically become open at the end of the 18-month period of segregation unless an application is filed; (iii) made prior to the effective date of these regulations where the 18-month period of segregation has expired prior to the effective date of these regulations, terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(2) Small Tract Act classifications terminate by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(3) Classification and Multiple Use Act classifications shall be terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening.

§ 2091.7-2 Segregative effect and opening—Taylor Grazing Act.

Lands classified under section 7 of the Act of June 28, 1934, as amended (43 U.S.C. 315f), are segregated to the extent described in the classification notice, but not to the mineral laws. The segregative effect of such classifications for Desert Land entries, Indian allotments, State selections (exclusive of Alaska) and Carey Act grants made after the effective date of these regulations remains in effect until terminated by publication in the **Federal Register** of an opening order specifying the date and time of opening.

§ 2091.9 Segregation and opening resulting from laws specific to Alaska.

§ 2091.9-1 Alaska Native selections.

The segregation and opening of lands authorized for selection and selected by Alaska Natives under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 et seq.), are covered by Part 2650 of this title.

§ 2091.9-2 Selections by the State of Alaska.

The segregation and opening of lands authorized for selection and selected by the State of Alaska under the various statutes granting lands to the State of Alaska are covered by Subpart 2627 of this title.

§ 2091.9-3 Lands in Alaska under grazing lease.

The segregation and opening of lands covered by the Act of March 4, 1927 (43 U.S.C. 316, 316a-316o) are covered by Part 4220 of this title.

Dated: February 7, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85-13696 Filed 6-6-85; 8:45 am]

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Friday
June 7, 1985

Part V

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 161, and 284
Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Proposed Rulemaking

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 154, 157, 161, and 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued May 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to amend its rules in four specific areas.

In order to open up natural gas transmission to more competition, any natural gas pipeline that holds itself out as a transporter of natural gas would be required to provide firm transportation service on a non-discriminatory basis with volumetric rates to all shippers for all categories of gas and for all end-uses. During a transition period, firm sales customers and their pipeline suppliers would be able to adjust their contract demands and certificated service obligations to take advantage of transportation or other services.

In order to assure pipelines that transport gas on a non-discriminatory basis that their current "take-or-pay" contracts with producers will not be an obstacle to such transportation, a rebuttable presumption of prudence would be established for certain limited and circumscribed payments ("buy-outs") made by such pipelines to extinguish all future minimum payment or purchase obligations in certain contracts with producers and suppliers.

In order to foster competition and a broader range of services to consumers, easier entry and exit from the natural gas industry would be made available for new services, facilities, and operations where a pipeline is willing to assume the whole risk of the new venture. New, expedited certificate procedures would be available on an optional basis to persons who apply for certificates to the Commission under section 7 of the Natural Gas Act, 15 U.S.C. 717f (1982). These optional certificates would only be available to pipelines who agree to charge "volumetric rates" which allow recovery of fixed costs from customers proportionate to their gas purchases. Competing certificates would be available as well. Traditional certificates would remain available under non-expedited procedures to pipelines who are not willing to assume the full risk of their ventures.

This proposal would also preserve to existing consumers the benefits of "old gas" price-controlled under the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301-3432 (1982). In addition, the proposal would remove the inaccurate price signals sent to producers by pipelines who "roll-in" their pricing of all other gas with "old gas" in order to compete for new customers and markets.

In order to achieve these two goals, the proposal would require pipeline gas purchase costs to be billed on the basis of three parts, including a two-block gas rate. The first block would contain so-called "old gas" price-controlled under the NGPA. Such gas would be reserved to existing firm sales customers based on their average percentage takes. The second block would consist of all other gas. All other demand and commodity costs would be billed as a third part of the rate.

After a transition period, prices charged by pipelines for gas in the second block, i.e., gas other than price-controlled "old gas," would be rebuttably presumed just and reasonable where a pipeline makes available non-discriminatory transportation services to its firm sales customers.

DATES: Comments must be received before 5:00 p.m., Monday, July 15, 1985. A public conference will be held on Tuesday, July 30, 1985. Written requests to participate in the conference must be received by July 22, 1985.

ADDRESSES: Comments and written requests to participate in the public conference should be directed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM85-1-000 (Parts A-D). An original and fourteen copies of each comment must be filed. The conference will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and will begin at 10:00 a.m. local time. The number of the room in which the conference will be held will be available in the Commission's Division of Public Information, Room 1000, prior to the conference on the morning of the conference.

FOR FURTHER INFORMATIN CONTACT: Charles E. Teclaw, Director, Office of Regulatory Analysis, Federal Energy Regulatory Commission, 825 North Capitol Street, NE.; Washington, D.C. 20426, (202) 357-8100.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 29, 1985, the Federal Energy Regulatory Commission (Commission) concluded the public proceedings in Phases I, II, and III of our Notice of Inquiry in Docket No. RM85-1-000 (NOI), commenced in December of 1984.[1] In that proceeding, the Commission received over 200 detailed comments from entities representing all facets of the natural gas industry.[2] Those comments addressed a wide range of topics and provided a wealth of information and insight to guide the Commission.

During the past five months, we have also begun to observe the actual behavior of the industry—including field markets, burner tip markets and capital markets—following the partial removal of wellhead price controls on January 1, 1985, in accordance with the Congressionally mandated schedule contained in the Natural Gas Policy Act of 1978 (NGPA).[3]

We have also begun to receive the guidance of reviewing courts on appeal of some of the initiatives set in motion by the Commission over the last year and a half in anticipation of partial wellhead decontrol.[4]

In addition, we have been informed by the comments of elected representatives in their oversight of the Commission's exercise of its delegated authority,[5] and by executive branch policy-makers pursuant to the NGPA.[6]

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[1] Interstate Transportation of Gas for Others, 50 Fed. Reg. 114 (January 2, 1985) (Phase I); Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 Fed. Reg. 3801 (January 28, 1985) (Phases II and III).

[2] For a more detailed discussion of these proceedings, see Statement of Policy and Interpretive Rule on Regulatory Treatment of Payments Made In Lieu of Take-or-Pay Obligations, Docket No. PL85-1-000, 31 FERC ¶ 61,040 (April 10, 1985).

[3] 15 U.S.C. 3301, *et seq.* (1982).

[4] *Maryland People's Counsel* v. *FERC, et al.*, No. 84-1019, slip op. (D.C. Cir., May 10, 1985) and *Maryland People's Counsel* v. *FERC, et al.*, No. 84-1090, slip op. (D.C. Cir., May 10, 1985).

[5] Letter dated May 20, 1985, from The Honorable Jim Wright, Majority Leader, United States House of Representatives; Robert H. Michel, Republican Leader, United States House of Representatives; John D. Dingell, Chairman, Committee on Energy and Commerce; and James T. Broyhill, Ranking Minority Member, Committee on Energy and Commerce.

[6] United States Department of Energy, *Increasing Competition in the Natural Gas Market, The Second Report Required by Section 123 of the Natural Gas Policy Act* 6, 17 (Jan. 1985) (here aftercited as Section 123 Report).

The NOI comments, judical decisions, comments of both the legislative and executive branches of the Federal Government—and our own experience—have led us to the conclusion that the present regulatory framework for the natural gas transmission industry may not be as well adapted as it could be to the economic realities of the industry as they exist today and are likely to evolve in coming years. As pointed out by the commenters, the partial removal of wellhead price controls mandated by the NGPA has been responsible in large part for economic forces that have fundamentally changed the behavior of the various segments of the natural gas industry.[7] This natural evolution in the industry appears to have been impeded to some degree by a regulatory framework which, while well adapted to the earlier period, has not been sufficiently adjusted to promote adequately the public interest in the newer, evolving economic environment.

For these reasons, as detailed more fully below, the Commission is proposing a series of changes in our existing rules.

Our overall goal is to make such adjustments in our regulation of interstate transportation of natural gas as are required to ensure that the natural gas markets are viably and sufficiently competitive so that consumers are provided natural gas at the lowest reasonable rates consistent with reliable, long-term service. If we are successful in this goal, we will also be fostering a more efficient allocation of scarce resources among the energy production, transmission and consumption segments of the economy. That, in turn, will permit natural gas (and other energy sources, to the extent that natural gas prices affect other energy prices) to play the appropriate roles in producing goods and services which their respective comparative advantages and real economic costs permit.

More particularly, our goal is to identify and then adjust, within the scope of the authority delegated by the Congress, those aspects of our current regulations that may now appear to hinder the development of competition in those areas where competition will better protect the public interest than will traditional public utility regulatory rules.

The comments in the NOI were of great help in identifying areas where some changes may be appropriate.

A number of common threads emerged. For example, the commenters generally supported the availability of transportation programs and urged that such programs be made a permanent part of the regulatory framework.[8] At the same time, however, many commenters expressed some dissatisfaction with the present scheme of fairly numerous, individually-tailored transportation programs.[9]

Second, the commenters indicated that pipeline services could appropriately be unbundled, with concomitant rate changes that might include unbundled, downwardly flexible, cost-of-service rates for self-implementing transportation.[10]

Third, and more important, a rather broad consensus appeared among the commenters that, *in the longer-term*, a regulatory framework for transportation could be established which could incorporate open access to nondiscriminatory transportation, at appropriate rates, to the extent that capacity is available, *provided* this adjustment is made over some reasonable time period during which all parties would have an opportunity to realign their gas purchase contracts, service agreements and service obligations more in keeping with their new requirements and responsibilities.[11]

One of the main obstacles to such a transition cited by commenters—especially the interstate pipelines—was the continuing effect of take-or-pay exposure under wellhead contracts entered into before the more competitive environment began clearly to emerge.[12] The other major obstacles cited was the distorting effect of the so-called old gas "cushion."[13] Many of the commenters asserted that there was a need for a "more level playing field" before the Commission could appropriately allow more open access to transportation and greater ease in the entry to other markets.

Finally, with regard to encouraging non-discriminatory transportation, the commenters suggested a variety of approaches. Many commenters indentified changes in ratemaking, including the setting of representative volumes (with appropriate cost allocation and pipeline retention of transportation revenue), which would attempt to make the pipeline economically indifferent as to whether it sold gas or transported it for other.[14] In addition, a number of commenters urged the Commission to condition our grant of transportation authorization to require pipelines to provide equal access to all potentital shippers.[15]

In addition, however, many commenters asserted that there was no need for major changes in the Commission's rules.[16]

In light of the comments and our obligations under the NGA, the NGPA and the Department of Energy Organization Act, it appears appropriate to propose changes to our regulations to address these points. Accordingly, the Commission is proposing to modify our rules in four specific areas, pursuant to

[7] *See, e.g.*, Phase I comments of Interstate Natural Gas Association of America (at 2); Indicated Producers (at 2); and United Distribution Companies (at 5).

[8] *See* Phase I comments of Process Gas Consumers Group, *et al.* (PGC) (at 25–27); Tennessee Gas Pipeline Co. (at 12–13); Texas Gas Transmission Corp. (at 9); Maryland Industrial Group; Firestone Tire and Rubber Co.; Natural Gas Supply Assoc. (at 13); Yankee Resources, Inc. (at 10); United Distribution Cos. (at 13–14); Montana-Dakota Utilities (at 8); and Interstate Natural Gas Assoc. of America (at 9, 14–15) (noting how broadly all customers have benefited from existing programs and calling for increased incentives).

[9] *See, e.g.*, Phase I comments of PGC (at 27–30); Piedmont Natural Gas Co. (at 4–5, 12–13); Association for Equal Access to Natural Gas Markets and Supplies (at 29).

[10] *See, e.g.*, Phase I comments of Tennessee Gas Pipeline Co. (at 24–25); El Paso Natural Gas Co. (at 36–38); Natural Gas Supply Assoc. (at 15–16; Association for Equal Access to Natural Gas Markets and Supplies (at 26–27).

[11] *See, e.g.*, Transcript of Public Conference of March 29, 1985, at 345–351 (Statement on behalf of Northern Natural Gas Co. *See also* Phase I comments of Indicated Producers (at 10); Interstate Natural Gas Association of America (at 14–15); Tennessee Gas Pipeline Co. (at 3, 7); Panhandle Eastern Pipe Line Co. and Trunkline Gas Co. (at 2); El Paso Natural Gas Co. (at 8–9); United Gas Pipe Line Co. (at 30); Columbia Gas Transmission Corp. (at 25–26); Pacific Gas Transmission Co. (at 5); Texas Gas Transmission Corp. (at 7–8); Williams Co. (at 2–3); Peoples Gas Light and Coke Co. (at 3); Southern California Gas Co. and Pacific Lighting Gas Supply Co. (at 2); American Gas Assoc. (at 5); Columbia Gas Distribution Cos. (at 9–10); California Public Utility Commission; Natural Gas Supply Assoc. (at 17–18); Delhi Gas Pipeline Corp. (at 5–6); Louisiana Intrastate (at 3); Consolidated Edison Co. of New York (at 1–2); Florida Cities (at 5); Associated Gas Distributors (at 5–6); Yankee Resources, Inc. (at 7, 21); Tenngasco Corp. (at 22–23); Process Gas Consumers (at 12–15); American Paper Institute (at 5); Chemical Manufacturers Assoc. (at 2–3); Illinois Commerce Commission (at 1); and U.S. Department of Energy (2, 11).

[12] *See, e.g.*, Phase I comments of Tennessee Gas Pipeline Co. (at 4–5, 18–19); ANR Pipeline Co. (at 9–10); Pacific Gas and Electric Co. (at 8–10); Peoples Gas Light and Coke Co. and North Shore Gas Co. (at 4–5); Niagara Mohawk Power Corp. (at 7–8).

[13] *See, e.g.*, Phase I comments of Natural Gas Supply Assoc. (at 19).

[14] *See, e.g.*, Phase I comments of Tennessee Gas Pipeline Co. (at 21–22); Texas Gas Transmission Corp. (at 3–7, 18–24); Peoples Gas Light and Coke Co. and North Shore Gas Co. (at 24); Niagara Mohawk Power Corp. (at 8–10).

[15] *See, e.g.*, Phase I comments of Process Gas Consumers (at 53–86); and Assoc. for Equal Access to Natural Gas Markets and Supplies.

[16] *See, e.g.*, Phase I comments of Interstate Natural Gas Assoc. of America and United Distribution Cos.

sections 4, 5, 7 and 16 of the NGA,[17] sections 311 and 50.1 of the NGPA,[18] and sections 402 and 403 of the Department of Energy Organization Act.[19]

Part A—Transportation

- A simplified transportation program is proposed, including blanket certificates under section 7 of the NGA and transportation under section 311 of the NGPA, conditioned to require non-discriminatory access to such transportation.
- Tariffs for such service would be required to be volumetric, downwardly flexible, cost-of-service rates, differentiated by time-of-use, and consistent with sections 4 and 5 of the NGA.
- A conditional opportunity would be created for customers of pipelines to modify their existing service agreements in order to reduce their contract demands for firm sales service. This customer option would only be available if the pipeline held itself out as a transporter of gas for others. Pre-granted abandonment would be available to the pipeline to the extent of any customer's reduction. This would enable such customers to choose more freely among a portfolio of service options offered by pipelines. This would entail an adjustment in the pipeline's sales obligation under its existing service agreement and certificate, and revision of any demand charges, minimum bills, etc. that may be required under the firm sales tariff for the sales service being adjusted.
- Traditional sales and transportation options would remain available to pipelines and their customers under the Commission's existing certificate authority.

Part B—Take-or-Pay

- During a limited transition period, a rebuttable presumption of prudence would be established for certain limited and circumscribed payments made by pipelines to extinguish all future minimum payment or purchase obligations in certain contracts.
- This presumption would be available only to pipelines willing to offer non-discriminatory access to transportation service; this in turn gives rise to an option for firm sales customers to reduce their contract demands.

Part C—Optional, Expedited Certificates

- Optional expedited certification procedures under section 7 of the NGA for new services, facilities and operations would be established and would be made available by choice to pipelines willing to assume the risk of these ventures by agreeing to specified conditions (including volumetric rates) governing the proposed services.
- Appropriate abandonment may generally be pre-granted to the pipeline to be effective at the expiration of the underlying contracts. In those instances where the customer has an alternate provider of service, the pipeline would be able to discontinue service at the expiration of the applicable private contract.
- Because pipelines would knowingly assume the risk of their ventures, competing certificates would be granted.
- Traditional certification proceedings would remain available to pipelines seeking to impose some of the risk of their venture on other parties, in order to ensure that the risk imposed involuntarily on others is required by the public convenience and necessity.
- Where customers have no alternate provider of service and are willing to pay the just and reasonable rate for continued service, abandonment would require Commission approval.
- The initial rates for optional expedited certificates authorizing such unbundled services would be volumetric rates.

Part D—Billing Mechanism for Old Gas Supplies

- A three-part gas rate would be required for pipeline gas sales, to preserve the benefits of "old" gas for existing firm sales customers and to mitigate competitive distortions resulting from the lingering effects of existing wellhead price controls.
- The first block would contain "old gas" under sections 104, 106(a) and 109 of the NGPA and would be available first to all existing firm sales customers of the pipeline; the second block would contain all other gas. All non-gas costs associated with purchasing gas would be billed as a third charge. At present, the proposal does not specify an allocation mechanism for the third charge as between the two blocks.
- This procedure would permit all pipelines to compete for marginal markets and additional sales on the basis of current markets for gas supplies, not on the basis of rolled-in pricing of forever price-controlled gas.
- When a pipeline has permitted its firm sales customers to reduce 100 percent of their contract demands and offers those customers non-discriminatory self-implementing transportation, then, subject to a transition period, the sales price established by the pipeline for natural gas assigned to the second block would be presumed to be just and reasonable.

The reasons underlying this proposal, and the interrelationship of the four parts of the proposal are detailed below.

II. Statement of the Problem

A. The NGPA and its Effects on the Natural Gas Industry

In November of 1978, Congress enacted the NGPA.[20] As noted by the U.S. Supreme Court, the NGPA "has been justly described as 'a comprehensive statute to govern future natural gas regulation.' "[21] In adopting the NGPA, one of Congress' "motivating purposes" was "to eliminate the dual market that distinguished between interstate and intrastate sales of natural gas."[22]

This integration of the two markets was to be established by a scheme of gradual removal of federal price controls over natural gas at the wellhead (NGPA Title I and section 601 (a)(1) and (b)(1)) and by the provision for more efficient transportation of natural gas (NGPA Title III and section 601(a)(2)).

In short, the NGPA set in motion a gradual transition from a regulatory scheme in which interstate natural gas was subject to federal regulation from the wellhead to the city gate to a scheme whereby wellhead and burnertip prices are increasingly set by market forces, even though interstate pipelines remain subject to regulation under the NGA.

Developments over the last six years have moved the natural gas industry significantly along in this transition. Since 1978, wellhead prices have risen,[23] encouraging the development of new supplies of natural gas.[24] At the

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[17] 15 U.S.C. 717c-717f, 717o (1982).

[18] 15 U.S.C. 3371, 3411 (1982).

[19] 42 U.S.C. 7172, 7173 (1982).

[20] *See, supra* n.3.

[21] Public Service Commission of New York v. Mid-Louisiana Gas Co., ——— U.S. ———, 103 S.Ct. 3024, 3031 (1983) (quoting Note, *Legislative History of the Natural Gas Policy Act*, 59 Texas L. Rev. 101, 116 (1980)).

[22] *Id.* 3037 (footnote omitted).

[23] *See e.g.*, U.S. Energy Information Administration, *Natural Gas Monthly*, at 23 (Table 10) (February 1985) (DOE/EIA-0130) (85/02)) (hereafter cited as *Natural Gas Monthly*).

[24] U.S. Energy Information Administration, *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, 1983 Annual Report* (October 1984) (DOE/EIA-0216 (83)) (showing stabilization of U.S. natural gas reserves levels).

same time, rising prices have provided incentives for users of gas to conserve,[25] thereby cutting back on demand.[26] After the sharp increases from 1978 to 1982, *average* wellhead prices stabilized in early 1983 and have hovered at the same level during the last two years.[27]

One result of the rapid supply and demand changes under the NGPA was the appearance in 1982 of a substantial surplus of gas deliverability.[28] This surplus translated into significant take-or-pay exposure for many interstate pipelines.[29] As the price of natural gas in the "spot" or short-term markets fell below the price of gas in the long-term or "contract" market, demand for transportation services also tended to increase.[30]

Equally significant have been changes that have occurred at the other end of the pipeline. Economic forces, in the form of declining oil prices and improvements in electricity-using technologies, have created strong and viable competition for end uses in many markets previously dominated by natural gas. The effect of these events has been to increase market competition at both ends of many pipelines.

The competitive pressures caused by partial wellhead deregulation continue to grow and have become even more evident since January 1, 1985.[31] Demand for transportation services to reflect the growing competition at both wellhead and burnertip can also be expected to increase.[32] Greater customer access to alternate suppliers and/or transporters of gas is giving rise to innovative marketing strategies both by new entrants to the natural gas sales business as well as by traditional suppliers.[33] Alterations in the way risks are shared, more open access to transportation and concomitant changes in service agreements, and new gas purchase policies are reflections of and responses to fundamental changes which have already occurred in natural gas markets. These new ways of doing business in response to market forces have important implications for the way the industry is regulated, and have made necessary timely regulatory adjustments.

B. The Problem in a Nutshell

As these changes in the industry have occurred, a number of problems have been brought to the Commission's attention:

1. Many interstate pipelines have contracted for more gas supply than can be marketed at the prices set forth in those contracts.[34]

2. Producers of gas, responding to very high prices for small supplies of deregulated gas, have developed new supply sources of gas.[35] But since the market could not absorb these quantities at prevailing prices, a surplus has been created,[36] resulting in many wells being shut-in and in producers—particularly independent producers—seeking alternative markets for their gas.[37]

3. Pipelines have sought alternative markets as well and sought out new customers. But the existing customers of the pipelines have been concerned that so-called "off-system" sales would effectively transfer to the new customers a portion of the economic rent associated with the old, price-controlled gas. Reflecting these same concerns, the Commission generally has allowed these sales only under somewhat restrictive conditions.[38]

4. Purchasers of natural gas, seeing the availability of supplies in the field at prices below the rolled-in average cost of all gas, have sought to purchase gas in the field and receive it instead of the supplies which the pipeline has obtained under the non-uneconomic long-term contracts.[39]

5. The pipelines have generally expressed a reluctance to provide this transportation.

a. With respect to incremental volumes (*i.e.*, gas that would not displace a sale by the pipeline itself from its own contracted-for supply), pipelines generally have not had adequate incentives to provide this service as long as the pipeline's rate structure required the crediting to the pipeline's sales customers of essentially all revenues received from the transportation. The regulations allowed the pipeline to elect an option pursuant to which costs would be allocated to the transportation service (allowing retention of the revenues), but until fairly recently most major pipelines had not elected that option.[40] Moreover, the pipelines were under no legal obligation to elect the revenue retention option. Once pipelines began to design their rates to allocate costs to the transportation service, thereby obtaining the right to retain revenue, the ratemaking rationale for declining to transport incremental volumes has diminished.

b. With regard to volumes of gas that would displace a sale by the pipeline from its own contracted-for supply, the situation has been somewhat more complex.

(i) Where the pipeline's take-or-pay exposure was so great that it believed that prepaid gas would never be able to be "made up," the pipeline faced the possibility of forfeiting the entire principal amount of the prepayment. Under these economic circumstances, even where the pipeline was able to retain the revenues received from providing transportation, the pipeline would still lose money were it to transport gas that would displace a unit of contracted-for gas. The more gas it transported, the more money it would lose. Under these circumstances the pipeline's reluctance to transport was at its height.

(ii) Where the pipeline's take-or-pay exposure was *not* so great as to confront it with the prospect of forfeiting

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[25] U.S. Energy Information Administration, *Monthly Energy Review* at 14 (January 1985) (DOE/EIA-0035 (85/01)) (showing petroleum and natural gas consumption per 1972 dollar of Gross National Product declining from 41.6 MBtu in 1977 to 28.6 MBtu in the fourth quarter of 1984).

[26] *Natural Gas Monthly*, *supra* at note 5, 12 (Table 3) (showing decline in natural gas consumption from approximately 19.8 Tcf in 1975–1980 period to 17.5 Tcf in 1984).

[27] *Natural Gas Monthly*, *supra* note 5, at 23 (Table 10).

[28] *Natural Gas Monthly*, *supra* note 5, at 43 (Table 23).

[29] Interstate Natural Gas Association of America, "The Gas Contracts Problem: Results of an INGAA Survey" (May 1983).

[30] Interstate Natural Gas Association of America, "Voluntary Carriage Through 1984" (May 1985).

[31] To assure that this goal was being achieved, Congress established a monitoring mechanism. Section 123 of the NGPA requires DOE to submit to the President and Congress two reports that examine "natural gas prices, supplies and demand, and the competitive conditions and market forces in the natural gas industry."

[32] Interstate Natural Gas Association of America "Voluntary Carriage Through 1984" (May 1985).

[33] *See, e.g., Citizens Energy Corp.*, 31 FERC ¶——— (1985). (Order approving special marketing program for subsidiary of non-profit energy company); *Yankee Resources, Inc.*, 30 FERC ¶ 61,201 (1985) (Order authorizing spot marketing program for an independent gas marketer); *Tenngasco Corp., et al.*, 30 FERC ¶ 61,200 (1985) (Order approving spot market or exchange program for new marketing affiliates of Tennessee Gas Pipeline Co.); *PanMark Gas Co.*, 26 FERC ¶ 61,341 (1984), *clarified*, 26 FERC ¶ 61,398 (1984) (Order approving marketing program for affiliate of Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.). *See also*, Phase I comments of New York Mercantile Exchange (at 9).

[34] Interstate Natural Gas Association of America, *supra*, n.32.

[35] Note 24, *supra*.

[36] Note 28, *supra*.

[37] *See, e.g.*, applications for special marketing programs filed with the Commission by producers since November 20, 1983.

[38] Statement of Policy in Off-System Sales, 23 FERC ¶ 61,140 (1983). *But see also* Natural Gas Pipe Line Co. of America, 28 FERC ¶ 61,174 (1984).

[39] U.S. Energy Information Administration, *Natural Gas Monthly*, Table 22 (November 1984) (published January 1985).

[40] This is based on rate filings with the Commission.

prepayments, the question was more one of cost allocation. If the pipeline had to finance the prepayments, who should bear the burden of the carrying charges associated with the prepayment: the sales customers, the transportation customers, the producer (by not being paid in accordance with the contract), or the pipeline's shareholders?

6. A number of key aspects of the existing contractual arrangements in the industry from wellhead to city-gate tended in large part to allocate to the buyer the risk that the supply of the commodity might prove unmarketable at some point over the life of the contract. As a result, the average delivered price of gas has been slow to adjust downwards to transmit price signals more accurately that would help increase consumption and absorb the available excess supply.

7. This situation is resulting in a very large loss to the American economy in terms of net economic efficiency.[41] In concrete terms, this has meant a drag on the competitiveness of American products in world markets, lost jobs, lost production, and unnecessarily high energy costs to all consumers. It has contributed to distortions in the financial markets and to the inefficient allocation of scarce investment capital by encouraging the over-investment in what now appear to be uneconomic energy supplies.

8. As a result, it appears that the current regulatory principles now tend to result in rates for the jurisdictional sale or transportation of natural gas that may not be the lowest reasonable rates consistent with reliable, long-term supply.

C. Legal Obligations Under the Natural Gas Act

Sections 4 and 7 of the Act establish the basic framework and authority under which the Commission regulates natural gas transportation and sale for resale in interstate commerce.

First, section 7(c) provides that natural gas companies must obtain authorizations from the Commission, in the form of a certificate of public convenience and necessity, before constructing or operating any facilities to be used for activities within the Commission's jurisdiction. This authorization is given only if the Commission finds that the proposed service, sale, operation, or construction will be required by the present or future public convenience and necessity. Additionally, under section 7(b), the Commission's authorization must be obtained before any service or facilities subject to the Commission's jurisdiction are abandoned.

Second, section 4(a) establishes the general standard (which forms the purpose of the Act) that all rates and charges for service subject to the Commission's jurisdiction must be just and reasonable. Section 4(b) establishes an additional standard requiring that the transportation or sale for resale of natural gas by regulated companies may not result in the grant of any undue preference or advantage or subject any person to an undue prejudice or disadvantage. Any changes by a natural gas company in its rates, charges, classifications, or service may only take place after proper notice to the Commission, as specified in section 4(d).

In addition to this basic framework created by sections 7 and 4, Congress gave the Commission very significant authority in sections 16 and 5 of the Act. Section 16 reads in pertinent part:

> The Commission shall have power to . . . prescribe, issue, make, amend, and rescind such orders, rules or regulations as it may find necessary or appropriate to carry out the provisions of this act.

Section 5(a) provides in pertinent part, that if the Commission:

> [s]hall fine that any rate, charge, or classification demanded, observed, charged, or collected by any natural gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that *any* rule, regulation, practice or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission *shall* determine the just and reasonable rate, charge, or classification, rule, regulation, practice or contract to be thereafter observed and in force, and *shall* fix the same by order. [Emphasis supplied.]

These statutory pronouncements are mandatory as opposed to precatory. The broad language of section 16, when employed in conjunction with section 5, has permitted the Commission to alter and amend conditions to certificated service with full approval of the courts. Section 5(a) has been interpreted as giving the Commission authority to alter the terms and conditions of certificated service even though the affected parties, acting alone, could not have changed them. *F.P.C. v. Louisiana Power and Light Co.*, 406 U.S. 621, 646–647 (1972). In Opinion No. 754–A, Docket No. RP71–119, issued August 17, 1976, *aff'd on other grounds, Hercules, Inc. v. F.P.C.*, 559 F.2d 1208 (3rd Cir. 1977), the Federal Power Commission concluded, with court approval, that it could exercise its section 5 authority to promulgate new terms and conditions under which certificated service would be performed.

Moreover, the Commission also has an obligation under the statute to weigh and consider the competitive effects of our decisions. *See, e.g., Gulf States Utilities Co. v. F.P.C.*; and 411 U.S. 747, 760 (1973); and *Northern Natural Gas Co. v. F.P.C.*, 399 F.2d 953, 958 (D.C. Cir. 1968).

The combined effect of sections 5(a) and 16 is to require the Commission to change terms and conditions under which a pipeline renders a certificated service if those terms and conditions result in rates or changes which are subsequently found unjust and unreasonable. As the United States Court of Appeals for the District of Columbia Circuit stated in *American Smelting and Refining Company v. F.P.C.*, 494 F.2d 925, 940–941 (1974), *cert. denied*, 419 U.S. 882 (1974), once the Commission finds that an existing rate or charge is unjust or discriminatory, it "must prescribe the remedy for that condition." If the existing illegal rate or charge is the result of the operation of a provision that was set out in the initial tariff or terms and conditions of service when the certificate was issued, the remedy clearly will lie in the alteration of that provision.

As noted above, it is our tentative judgement that the existing regulatory framework may no longer operate to provide the lowest reasonable rates consistent with reliable long-term service. Accordingly, the Commission is proposing to modify its regulations to address each of the major aspects of these problems.

III. Discussion of Proposed Policies

A. Increasing Regulatory Options

The proposed regulations are intended, for the most part, to supplement existing Commission regulations and provide additional options to interstate pipelines that seek increased flexibility in offering those services that their customers wish to purchase.

The proposed regulations permit pipelines to enjoy greater flexibility and the opportunity for increased returns as long as the pipeline is willing to assume the economic risks of under-recovery of costs.

With one notable exception, there is no requirement in this proposal that would be imposed involuntarily on any pipeline. Rather, a pipeline that so desires would remain free to offer only natural gas sales and storage services in which the transportation component of the service is part of a package or

[41] Section 123 Report, *supra*, at S–2.

"bundle" of services.[42] *The various access and rate conditions would only apply if the pipeline chose, after the effective date of the proposed rules, to hold itself out as a transporter of gas for others.*

The exception is the requirement that all pipelines separate out, for billing purposes, their supplies of "old" gas. Under this three-part billing mechanism, the subsidy associated with the old, price-controlled gas would be effectively allocated to the historical customers. This requirement is intended to help "level the playing field" by requiring all pipelines to compete for new markets on the basis of their current cost of gas unaffected by their relative shares of older, price-controlled supplies.

B. Accountability, the Allocation of Risk, and Returns to Equity

Accountability is inherent in a competitive environment: each participant assumes responsibility for the success or failure of its own market participation. Accountability is ultimately achieved in the marketplace through revenue collections which are either sufficient or insufficient for cost recovery. The risk that revenues will be insufficient for cost recovery is what motivates the firm to recognize the potential consequences of its decisions. Efficient firms can expect to recover their costs of providing service. Inefficient firms cannot. Involuntary cost shifting and cross-customer subsidies do not occur.

Our intention is to foster, consistent with the NGA and NGPA, viable competition where it exists or could exist, and to retain more traditional public utility-type regulation where it is necessary to protect natural gas consumers. In those areas where viable competition exists or could exist, general regulatory principles that foster such competition are likely to offer greater protection of purchasers than an individually adjudicative-type procedure.

Thus, in those markets that could be viably competitive, accountability may be supplied by the discipline of the market. Regulatory oversight would still be required in the other markets.

Clearly, the question of how risks are allocated among market participants is intimately tied to the question of accountability. Where risks are allocated by legal rules to one party to a transaction, there tends to be little accountability borne by the other party. It is our tentative judgement that, with regards to pipelines that in the future hold themselves out as transporters, the risk of under recovering the costs of the services in question between rate periods is appropriately be assigned to the pipeline. This tentative judgement is reflected in the proposed rules that require the use of volumetric rates for these services and that forbid the use of minimum bill and minimum take-type provisions. As detailed below, we call for comment on the appropriateness of allowing for capacity reservation charges to be used, however, where specifically agreed to by the customer.

To the extent that these proposed changes result in increased risks borne by pipelines that are not offset by reduced risk elsewhere, the Commission anticipates that returns on equity will be adjusted appropriately.

C. Proposed Policies.

Accordingly, the Commission is proposing to adopt policies to address the major components of the problems identified during our NOI proceeding. The proposed policies would be implemented in the various rule changes described in Part V of the proposal. Generally stated, those proposed policies are as follows.

1. *Non-discriminatory access to transportation.* A pipeline that chooses, after the effective date of the proposed rules, to hold itself out as a transporter of natural gas for others should offer that service without discrimination to all shippers willing to pay appropriate cost-based rates.

2. *Increased flexibility in offering new services and changing rates.* In those areas where competitive forces are adequate, the regulatory framework should allow all participants in the industry greater flexibility to adjust to market conditions so long as the adjustments do not involve cross subsidization or the involuntary shifting of costs among customers. This flexibility should not preclude—at the federal regulatory level—the entry of new companies to serve existing loads, as long as the regulatory framework allows comparable flexibility to all competitiors. We recognize that the prospect of new entry may raise issues of acute concern in some cases for individual localities. However, it is our tentative judgement, reflected in the proposed rules, that, under our system of federalism, State governmental authorities, not the Commission, are provided the discretion and authority to evaluate these issues and to strike the appropriate balance among competing local interests.

3. *Establishing appropriate levels of company accountability.* The more competitive environment that has begun to emerge for the pipeline industry has required firms within the industry to respond in new and innovative ways. For the Commission to allow *regulated* companies to respond flexibly and quickly to these requirements (by authorizing new ventures, or allowing companies to alter the way in which some traditional service has been rendered because of an unregulated entity's market threat) the pipeline must be held accountable for such decisions. To do otherwise is to eliminate a very powerful incentive to reasoned and rational behavior on the part of pipeline companies, and require more explicit regulatory requirements and oversight instead.

Common sense and economic theory both suggest that putting a firm at risk for the consequences of its investment and operational decisions can affect the incentives to undertake those decisions judiciously: a firm is more likely to work to minimize its costs if its financial health is at stake than if its costs, even some fraction of its costs, are guaranteed. It is generally accepted that the potential for profit and the fear of financial loss create strong incentives for firms to hold down costs. Thus, pipelines that bear significant business risk, that is, firms that are ultimately accountable for their business decisions, are more likely to operate efficiently than are those firms that bear little or no risk. This aspect of policy implementation in the current rulemaking is reflected in the ratemaking design requirements as well as the Commission's willingness to grant competing certificates when pipelines demonstrate a willingness to assume all risk of the certificated activities.

4. *Adjustment of service agreements and service obligations.* Existing certificate obligations and individual service agreements were largely developed in an era of wellhead price controls when natural gas was the cheapest fuel. Markets were largely supply or capacity constrained rather than demand constrained. With the gradual lifting of those controls, conditions have changed; it now appears appropriate to provide an opportunity to pipelines and their customers to make necessary adjustments to better reflect current conditions, especially where a pipeline is willing to assume these non-discriminatory access conditions and open its system for transportation. This proposed policy is reflected in the proposed rules regarding customers'

[42] In addition, a pipeline could continue to perform transportation services for others under existing individualized section 7(c) transportation certificates. These pre-existing arrangements would be "grandfathered" under the proposed rules.

conditional rights to reduce their firm sales obligations and the provision for a corresponding pre-grant of abandonment to the pipeline.

5. *Removing the remaining distorting effects of prior price controls.* For the proposed policies enumerated above to be effectively implemented, it is necessary to minimize the distortions still caused in current and future markets by past price controls on natural gas at the wellhead. It is the Commission's tentative judgment that transitional policies should be adopted: (1) To provide regulatory predictability to interstate pipelines seeking to resolve future take-or-pay exposure under so-called "problem contracts;" and (2) to require all pipelines to separately bill the old gas volumes to their customers while reserving to historical customers the benefits of that gas for which Congress saw fit to retain wellhead price control.

6. *Regulations that are appropriate in times of rising as well as falling commodity prices.* Finally, the proposed regulations are intented to establish a long-term regulatory framework—not to be a reaction to immediate circumstances. The measure of a good regulatory scheme is that it remains valid in all circumstances—in times of shortage as well as surplus. To this end, the proposed regulation would establish a scheme that reflects and promotes competition, secures its benefits to natural gas consumers, and gives to natural gas companies the tools with which they can compete.

D. Specific Policy Proposals

1. *Transportation policies.* The initial focus of this proposal is a simplified transportation framework for non-owner shippers. Since 1978, transportation of gas for non-owner shippers has increased significantly; today, it is a fact of life. These proposed regulations provide an appropriate framework in which transportation may take place, and appropriate regulations to facilitate such transactions.

a. *Non-discriminatory access to transportation.* This proposed rule would require that any natural gas pipeline seeking blanket or expedited authorization to provide transportation service separately from gas sales would be required to offer transportation service on a non-discriminatory basis. Such transportation service would be offered as a stand-alone service, unbundled from any other services, and separately tariffed. This precludes any tying arrangements between the transportation service so offered and other services unless such bundled transportation services are offered as an additional option to the stand-alone transportation service.

The rule, as it applies to newly certificated transportation, would apply the Natural Gas Act prohibition against unduly discriminatory rates and services. Discrimination is objectionable because it benefits certain customers at the expense of others. Thus, this rule would prohibit discrimination in the outright selection of customers. It would also preclude more subtle forms of discrimination, such as proscribing discrimination only within a customer class and then permitting establishment of countless customer classes. It prohibits discrimination among customer classes as well as exclusion on the basis of volume requirements, the quality of service rendered, the end-use to which the gas is put, or the type of gas transported.

b. *Quality of self-implementing transportation service.* The basic transportation service to be offered on a non-discriminatory basis must be service subject to the same curtailment priorities and curtailment procedures as the pipeline has established for its sales customers. Those customers electing this service can neither be discriminated against nor unduly favored in terms of the quality of service they receive when compared with any other service involving transportation made available by the pipeline.

A simplified example may be helpful. Suppose a pipeline has 100 units of capacity. The services offered include: (a) Contract demands for sales of 60 units, (b) contract demands for long-term section 7(c) transportation of 20 units, and (c) 20 units of self-implementing transportation.

Assume the pipeline has fixed costs of $100 and that these costs are allocated to the three services in proportion to the capacity available for each service. Assuming representative volumes of 4000 units of transportation over the year, the volumetric rate for self-implementing transportation would be 5.0 mills per unit ($20 of fixed cost ÷ 4000 units = 5 mills per unit of transportation service).

The 4000 units of self-implementing transportation, if fully utilized, would recoup the full allocation of fixed costs attributable to this service. Thus, self-implementing transportation has equal standing with the other types of service. The 20 units of capacity for self-implementing transportation are guaranteed to be available for the purpose of short-term transportation. They are not guaranteed to any individual customer, however. A customer seeking such an individual assurance may prefer traditional section 7(c) transportation (what some commenters referred to as "Cadillac" service). Once a customer contracts with the pipeline for self-implementing transportation service, the customer will receive firm service so long as capacity is available. Self-implementing transportation is not subject to any other type of service (contract sales or contract transportation). The pipeline may also provide interruptible transportation service, but this is, of course, subject to interruption if customers for those other services make demands up to their contract limits.

c. *Adjustments of contract demand.* Additionally, in order to assure truly non-discriminatory access to transportation service under this rule, all pipeline customers must have the opportunity to adjust their contract demand for sales service so that may take advantage of transportation service. This means that customers that have signed exclusive supplier sales contracts must also be given an opportunity to choose between either continuing their present sales agreement or adjusting some portion of it to transportation service.

Reductions to contract demand may be accomplished by the customer by reducing its contract demand by no more than 25 percent of its contract demand in any given year. At the discretion of the pipeline, the customer will be permitted to reduce up to 100 percent of its sales volumes under contract.

Such reductions of sales entitlements require thirty-days notice to the pipeline. Once firm sales volumes have been reduced, the pipeline may, at its discretion, readjust the contract demand of a customer back to the original sales entitlement, if requested by the customer. Such adjustment of sales entitlement require a proportionate adjustments to any demand charges, minimum bills, minimum takes, or any other fixed charges that are otherwise required under the tariffs in effect for the firm sales service being adjusted. Total reduction of sales service to transportation service would therefore eliminate entirely any revenues paid the pipeline by the customer arising from the sales tariff.

d. *Rate conditions.* In order to insure that the pipeline is fully accountable for the consequences of its decision to offer transportation services under this rule, the rates permissible under this transportation program are conditioned as detailed below. As a consequence, customers should not be concerned by the potential for unwarranted cost shifting in the event the transportation

program causes third-party gas sales to replace the pipeline's sales. Similarly, customers electing transportation service from the pipeline would be accountable for that decision. That accountability is realized through the responsibility they assume for securing their own gas supplies up to the volumes of transportation they have elected.

(i) *Proscription on cost shifting.* First, rates for transportation would recover only those costs properly attributable to transportation service. Analogously, customers who do not avail themselves of the transportation service would not have any costs shifted to them as a consequence of the pipeline's having failed to recover its costs associated with its transportation service. As discussed below in our optional, expedited certificate proposal, the Commission proposes to prohibit applicants availing themselves of these optional procedures from ever shifting costs of underutilized capacity onto ratepayers in future rate cases. The Commission requests comment on whether it should impose such a condition to certificates for self-implementing transactions.

(ii) *Use of volumetric rates.* As noted above, between rate cases, volumetric, cost-based rates allocate to the pipeline the risk of providing the service. Volumetric rates also preclude cost shifting among customers for different services, and provide accurate price signals as to the cost and the value of the service.

Rates for transportation should be designed to achieve three objectives concurrently. Peak rates should ration capacity, off-peak rates should maximize throughput, and the pipeline's revenue requirement allocated to transportation would be attained through transporting the expected peak and non-peak volumes at the maximum rate.

Volumetric rates will be fully allocated and will recover costs assigned to a particular rate period. Each customer would have a mileage or zone differentiated volumetric rate ceiling depending upon where the transported volumes are delivered. Thus, each customer pays only for the cost allocated for its own service. The customer who takes proportionally more of the service will pay, at the price ceiling, an amount greater by the same proportion.

In the event the pipeline charges a rate less than the maximum level allowed in a particular rate period, but does not make that discounted rate generally available to all transportation customers taking service under the volume rates, the Commission would not hold that such selective discounting is *per se* unduly discriminatory. Such discounting would be unduly discriminatory if there were cross-subsidization as a consequence; that is, if the discount provided one customer was based on costs borne by customers to whom the discount was not offered. That fact that a different price is paid is not, in itself either undue discrimination or "an unreasonable difference" in rates.[43]

Price discounting would not be undertaken lightly by a pipeline given the associated revenue loss from selling below the price ceiling; however, downward price flexibility would permit the pipeline to sell at a lower profit margin rather than not make any contribution to its overhead due to a lost sale. Indeed, to the extent that transitory demands for transportation services may be highly elastic, a pipeline may actually increase total revenues by lowering the price of transportation services and increasing throughput by a larger percentage.

(iii) *Interruptible transportation service.* The transportation service required to be offered under the certificate procedures described in this rule would not preclude the pipeline from retaining what are traditionally thought of as interruptible loads. Indeed, the maximum prices in the offpeak periods should presumably approach the rate levels formerly associated with interruptible transportation tariffs. The maximum rate in the peak period, by contrast, should be higher than the transportation component of non-seasonally differentiated rates presently on file. Thus, those customers previously unwilling to pay firm service rates will be even less likely to avail themselves of peak transportation service. Further, if the pipeline and some customer or set of customers are willing to establish some transportation service of inferior quality to the service covered in this rule, then as long as the tariff established for such service is a volumetric rate form and falls within the rate band established for transportation service under the rule, the Commission would presume the rate to be just and reasonable.

2. *Presumption of prudence.* If a pipeline's gas is properly priced, it can compete as a merchant with itself as transporter. If a pipeline loses sales to other suppliers, it may have exposure or incur costs associated with excess gas supply. As a result, pipelines may be reluctant to transport gas that might replace sales and aggravate their surplus deliverability and take-or-pay obligations.

Rather than limit transportation, the proposed rules relating to the "safe harbor" presumption of prudence is intended to create a framework with which these problems may be addressed. This presumption will be available only to those pipelines which offer open access to transportation pursuant to this rule. Moreover, the opportunity to enter new markets should reduce the likelihood of persistent losses. Having brought their wellhead purchase obligations into line with current market realities by means of lump sum payments to producers, pipelines will be able to make their gas purchase decisions and compete for markets on the basis of the actual wellhead prices unencumbered by the now uneconomic gas supply agreements.

3. *Optional expedited certificate.* This rule proposes four vehicles to implement this policy of granting expedited certification, namely, expedited processing, granting of competing certificates, pipeline willingness to bear the full risk of new investment, and pre-granted abandonment.

a. *Expedited certification.* This rule would amend the Commission's present regulations governing certificate and abandonment by adding an additional expedited certification process which will be available to pipelines willing to accept the full risk of the proposed venture. Blanket certification may be granted under this process. These certificates will be available for all new and expanded services and construction of additional facilities requisite thereto.

Consumers are provided greater options in the array of gas services available when pipelines have the ability to offer new and expanded services and to construct new facilities on a timely basis. Easier entry and exit by a pipeline in the provision of new or expanded services are prerequisities for consumers to gain the full benefits of greater competition.

This rule removes certification as a barrier to entry, and thus helps insure that pipelines proposed the most efficient scale for new facilities. Suboptimally-sized facilities will have higher average costs at design volumes and will be vulnerable to entry of more correctly-sized facilities.

This rule proposes to maximize the use of alternative market access for producers and consumers and to provide incentives for competition where none exists. Distributors which are now restricted to one pipeline, even where new hook-ups involve construction of minimal tap facilities, may gain access

[43] *See, Sea-Land Service v. ICC*, 738 F2d 1311, 1317 (D.C. Cir. 1984).

to more than one pipeline. Offerings of new pipeline services to off-system markets will be more readily possible, and willing competitors may enter established markets. This rule, then, removes any federal prohibition against adding new receipt or delivery points and does not permit discrimination which would permit some customer groups to add delivery points more easily than others.

b. *Granting competing certificates.* The NGA gives the Commission broad certification authority. It does not require franchised monopolies, but instead provides for the certification of competing ventures. The proposed rule is intended to create conditions that will assure the benefits of existing pipeline market competition. Certification of competing services will be granted.

c. *Pipeline accountability.* The essential aspect of this rule is the matter of accountability in the more competitive environment. To the extent a pipeline accepts full responsibility for its ventures, it is given a relatively free rein to function as a prudent, rational economic entity. So long as pipelines assume full risk of their ventures, there is little danger the ratepayers will be forced to absorb inappropriate costs. If a pipeline voluntarily accepts a certificate assigning all risk to the pipeline, the presumption must be that the undertaking is prudent.

The rule would require pipelines to be at risk for services authorized under these optional, expedited certifications and would prohibit pipelines from shifting costs among customers in future rate cases.

The Commission would impose four principles to carry out the requirement that no inappropriate costs be borne by customers. First, rates would be volumetric. Thus, the pipeline would be at risk for any failure to sell or transport up to its representative volumes. Second, only properly allocated costs would be included in the rates for this new service. Thus, this service would not cross-subsidize any other service, nor would it be cross-subsidized by any other service. Third, the pipeline would not be allowed to reduce its representative volumes in future rate cases. Thus, fixed costs will never be allocated to smaller volume of sales than those originally anticipated. Fourth, the pipeline would not be allowed to recover past losses in future rate cases. Thus, future customers' rates will never reflect a recoupment of past losses.

The mechanisms to promote this accountability are the same as those discussed at more length above in the transportation proposal. Thus, the rule proposes that rates be time-varying, downwardly flexible, volumetric rates. No minimum bill, no demand charge and no revenue guarantee provisions and no cost banking will be permitted under these initial rates. Volumetric cost-based rates allocate initially to the pipeline the risk of providing the service. Properly allocated rates also preclude cost shifting among customers for different services (even though the rates are downwardly flexible), and provide accurate price signals as to the cost and the value of the service.

d. *Pre-granted abandonment.* Where applicable, pre-granted abandonment will be provided, the period for authorization of any given service will be coterminous with the contracts governing that service.

A part of accountability in a competitive market involves the negotiation of contracts defining rights and obligations, and assigning risk among the parties. Certificate applications are geared to fulfilling these contractual obligations. It is therefore logical to make new certificates co-terminous with the governing contracts. Abandonment can thus be pre-granted or assumed to occur at the expiration of the relevant contracts *when alternate suppliers exist.*

e. *Traditional certification.* This rulemaking would not preclude the pipeline from having the full protection of a section 7 proceeding for obtaining a certificate with different terms and conditions, such as a different assignment of risk. Similarly, where customers have no alternate provider of the service in question and are willing to pay the just and reasonable rate for continued service, existing section 7 abandonment procedures and protection would continue to be available.

This proposed rule would not eliminate any of the existing section 7 requirements; rather it would constitute an additional option available to natural gas companies, provided they are willing to abide by the conditions set forth herein. The conditions of this proposal may not be appropriate for *existing* service agreements or certificates unless the former are renegotiated and the latter amended accordingly.

4. *Billing mechanism for gas costs.* Finally, the rule proposes three substantive policies with respect to the billing mechanism for a pipeline's purchase gas costs. First, consumers and producers shall see clear and more accurate price signals. Second, the playing-field on which pipelines compete will be leveled such that competition is fair and leads to economic efficiency. Third, the economic rents associated with "old" gas are preserved for a pipeline's traditional customers.

Currently, the rolled-in pricing of all gas purchases prevents these substantive policy objectives from being realized. Consumers are misled in their decisions on gas purchases and price signals are sent that natural gas is cheaper than the cost of purchasing additional increments. Producers, on the other hand, are given price signals that higher cost new gas supplies are marketable. Consumption decisions should be based on a more accurate cost of gas supply; production decisions should be based on a more accurate measure of the value of the gas supply. Pipelines and merchants should be at risk in marketing gas, and their prices should reflect these production costs and consumer values.

Currently, interstate pipelines have a relatively uneven distribution of low-priced gas from old fields. Newer independent merchants typically do not have access to these lower-priced gas supplies at all. Thus, some firms may possess comparative advantages which are not based upon current operational efficiency. It is important that concommitantly with the Commission's encouragement of greater competition that the Commission ensures that the playing-field has been leveled such that competition leads to greater economic efficiency and not to expenditures for new transmission facilities or new gas supplies that would not be economic except for the one pipeline's relatively greater access to old gas.

This rule proposes three vehicles for implementing these substantive policy objectives, namely, a three-part billing mechanism for natural gas supply, a presumption that certain gas priced by the pipeline is just and reasonable, and the assignment of entitlements to old gas to customers based upon their historical purchases.

This proposed rule is intended to neutralize the price distortions caused by vintaged gas. While it does not *per se* mandate any change in pipeline costs, it does provide customers with a clearer understanding of the mix of gas being offered by the pipeline and of the real cost of incremental consumption.

a. *Three-part billing.* The present practice of across-the-board rolled-in pricing permits and may encourage pipeline gas purchases at prices above market-clearing levels. Such purchases can then be balanced out by other low-cost gas which serves as a cushion. The proposed three-part scheme will not eliminate the possibility of that happening, but will mitigate the effects of pricing signals distorted by cushion

gas, and will make explicit the effect of the cushion in the pricing of system supply.

The proposed three-part rate would preserve the economic rents associated with this gas for the pipeline customers as Congress apparently intended. However, by confining the sales of old gas to the initial block, the effective use of old gas as a competitive tool in marginal or new markets will be blunted. Ownership of an old gas cushion will become less relevant for inter-pipeline competition.

The proposed rule would, through the pricing of the second block, convey immediate price signals along the distribution chain from customers to pipelines to producers. Customers would be able to base consumption decisions on the present incremental cost of gas.

Further, the second block would be priced higher than a pipe-line's present WACOG, which includes old gas. However, since customers would be purchasing from both blocks, a given pipeline customer's total gas costs might not necessarily change. Second, for the gas solid to marginal and new markets, or for additional sales to pipeline customers, any significant disparity between pipeline prices and market clearing prices would impose market discipline on the pipeline in the form of load loss. The sale of gas in the second block would thus provide an immediate measure of the appropriateness of a pipeline's gas acquisition practices. This in turn would also provide a strong incentive for pipelines to realign their gas costs and prices. Finally, we would note that, if the price of gas in the second block were such that the gas was difficult to market, this would not mean it was inappropriate to use a scheme which priced a pipeline's gas sales to reflect acquisition costs. Rather, it would mean that the pipeline's purchase price for gas was inappropriately established above market-clearing levels.

The Commission requests comments on how the costs contained in the third charge should be allocated as between the two blocks.

b. *Prudence tests for price of gas in the second block.* If the pipeline offers transportation as a distinct service on a non-discriminatory basis and the pipeline has provided its customers full adjustment rights to reduce contract demands, then the price established for the volumes of gas sold in the second block would be determined by the pipeline and this price would be presumed to be just and reasonable by this Commission. This presumption may be rebutted.

This proposal acknowledges that the selling price of the second block reflects an accurate measure of the cost of and value of new gas when the pipeline has provided transportation as a distinct service on a non-discriminatory basis to all customers and after which its customers gain the ability to convert fully their system sale pruchases to transportation. In this event, the pipeline would be at risk for its purchasing practices with both profit and loss possible. If the pipeline attempted to charge a price higher than the delivered price charged by other suppliers, its customers could turn to other merchants. The pipeline, then, may suffer a loss from having to sell below its weighted average cost of new gas and from being unable to pass on any attendant take-or-pay obligations. There is no deferred balance account for new gas supply in which the pipeline can place these losses for future guaranteed pass-through.[44] On the other hand, if the pipeline has vigorously pursued a more effective low-cost gas acquisition program than that of competing merchants (*i.e.*, the pipeline's weighted average cost of new gas is below the market price for new gas), then the pipeline should be rewarded with any gains that can be made in selling gas at the market price.

This proposed rule would recognize that when customers can purchase from alternative merchants, the oversight of gas purchasing practices can be effectively augmented by greater reliance upon market forces. As independent merchants and marketers have arisen in the last few years, both consumers and producers have benefitted from their transmission of clearer price signals. Under the proposal, there would be a presumption that if the pipeline has opened its system to competition, the competitive city gate or delivered price would be a just and reasonable price.

Given the proposed 25 percent per year reduction of firm sales to transportation specified in these proposed regulations, this rule would provide at least a four-year transition period for this provision to be implemented. Particularly when taken in tandem with the safe harbor provisions of this rule, this adjustment period will allow pipelines to realign their gas pruchase schemes in a competitively efficient manner.

Many of the NOI commenters argued for this change in the form of oversight on new gas supply purchases. This form of oversight is consonant with relying upon competition where competition can exist and with the assignment of proper risk and rewards for gas supply acquisition.

For the pipeline which does not choose to provide transportation as a distinct, unbundled service, or until the pipeline's customers gain the full ability to convert sales to transportation, the pipeline would continue to price its volumes in the second block at the weighted average cost of their "new" gas supplies. For this supply, a deferred balance account would still exist to rectify differences between projected and actual new gas supply costs. Customers of this bundled service may still file complaints with the Commission that their pipeline supplier did not engage in prudent purchasing practices, and the Commission would still hold hearings on such complaints, where appropriate.

c. *Entitlements to old gas.* Each customer's percentage entitlement to gas in the initial block would be equivalent to its relative share of the pipeline's firm sales volumes. This share would be calculated using actual sales and averaged for the years 1982, 1983 and 1984. Within thirty days of the effective date of this rule, each pipeline would notify its customers of: (1) Each customer's actual takes for the years 1982, 1983 and 1984; (2) the annual contract quantity of sections 104, 106(a) and 109 gas that was available to the pipeline for 1986; and (3) each customer's percentage entitlement to gas in the first block calculated as prescribed herein.

If a pipeline and its customers by uncontested settlement, agreed on an entitlements formula other than that proposed in the rule, that alternative entitlement scheme could be used to allocate gas in the first block.

This approach would assign the rent on old gas to consumers as Congress apparently intended. (The rent is the difference between the current market value on the old gas and its vintaged price.) However, to prevent these supplies from being a large influence on consumers' purchases in the current and future periods, the entitlement to old gas would be assigned to consumers based upon their past purchases. Thus, any incremental change in the current or future period would only reflect the price of gas in the second block. This rule indicates that this Commission is

[44] The division of system supply gas in storage between Block 1 and 2 will be in the same proportion as the pipeline's purchase of these gas supplies for firm system sales over the past twelve months. Further, Block 1 and 2 gas in storage will be priced, as are all other gas sales, in these two blocks respectively. (The Commission does, however, request comments on alternative accounting treatment.)

not concerned with the formula used to allocate the price benefits of old gas among a pipeline's customers as long as it is not based upon current purchases on new gas from that pipeline. Thus, this rule permits the pipeline and its customers to attempt to devise a better allocation formula before the starting date for this new three-block billing mechanism.

New customers or expanded service of a pipeline will be served entirely from the second block of gas supply of that pipeline or from third-party supply.

This rule removes the artifical advantage of the pipeline or merchant with great amounts of old gas. Further, the incentive for new interconnections will be based upon differences in current market efficiencies rather than access to old gas.

E. Inter-relating the Proposed Policies

These proposed policies are intended to implement our overall goal in the instant docket and to adjust our regulations to current and anticipated future economic realities in order to assure customers the lowest reasonable rates consistent with reliable long-term service.

A detailed analysis of each of the rules being proposed to implement these proposed policies is set out in Section V of this proposal. But the proposed policies, and the rules being proposed to implement those policies, cannot be considered in isoloation.

Rather, they reflect an effort to establish a comprehensive non-discriminatory program for the future interstate transportation of natural gas.

This may be seen in several areas. For example, with respect to risk allocation, the proposed policies and implementing rules would open up access to many gas markets and parties. While this may increase the risk to a particular pipeline, that risk may be offset by other aspects of the proposed rules that provide to pipelines offering nondiscriminatory transportation the opportunities for commensurate competitive rewards. For example, for pipelines offering transportation as a separate service, these proposed rules would eventually provide a presumption that market prices are just and reasonable prices for certain of their gas sales. Similarly, the proposed rules offer pipelines providing non-discriminatory transportation an opportunity to recover the costs of extinguishing certain contract obligations. Furthermore, it should be noted that, with open access to transportation under the proposed rules, the pipeline may over time eliminate a considerable amount of market risk for security of gas supplies that customers and/or suppliers will assume directly.

The proposed streamlined certification procedure will provide all pipelines with new market opportunities. Revenue guarantees will not be provided for such new competitive ventures, but the opportunity for commensurate reward will be, by virtue of the volumetric rates proposed for such undertakings. Moreover, because of these proposed rates, no cost shifting can occur in the case of unsuccessful ventures.

Core market protection as now defined by some market participants would be less feasible under the proposed rules. We would note, however, that such protections appear to play less of a role after enactment of the NGPA than was previously the case. The proposed policies would allow pipelines, their customers and suppliers, to compete more effectively and on more equal bargaining terms. Each of the various aspects of the proposal is designed to achieve this end.

For example, the proposed three-part gas sales billing proposal is designed to minimize the distortions associated with the unequal availability of the old gas "price cushion." It confines the benefits of a pipeline's old gas to the pipeline's historical customers, and makes the acquisition of new and marginal markets a function of the pipeline's efficiency in acquiring gas at competitive market prices—and a producer's ability to meet those market prices. Pipelines would thus compete with each other on a far more equal regulatory footing than previously.

Such a sales billing structure also provides the incentive for pipelines to reduce their gas costs. As competition increases between pipelines, or on a pipeline system between sales and transportation, this three-part rate structure should serve to lower gas prices in the second block and act as a disincentive to imprudent pipeline gas purchasing practices.

Incentives to operate efficiently, and to offer flexible innovative services (in short, incentives to achieve the maximum throughput possible consistent with recovery of the costs incurred under traditional public utility ratemaking principles) require that certification procedures neither hinder nor inhibit potential entrants from offering increased competition to firms currently operating in a market.

Where a pipeline is willing to assume the full economic risks of a new venture, the public interest is not furthered by precluding the pipeline and its willing customers from obtaining expeditious regulatory approval. As long as pipelines assume the full risk of these ventures, as required by the proposed rules, there is little danger that ratepayers will be forced to absorb inappropriate costs. Also, if a pipeline voluntarily accepts a certificate assigning all risk to that pipeline, the presumption must be that the undertaking is prudent. On the other hand, pipelines and their customers retain the option to contract for new services, facilities and operations under traditional Commission certification and ratemaking procedures.

IV. General Requests for Comments

A. Administrative Procedures

These proposals open up a number of new service options for pipelines and their customers. In order to take advantage of these options, pipelines may choose to revise their rates and tariffs in rate cases under section 4 of the NGA. The Commission requests comments on what changes in its administrative procedures or Rules of Practice may be necessary in order to assure that we are able to process and review filings in a timely fashion. In particular, we request comments on the appropriateness of the effective dates proposed for these rules and on the potential need for the Commission to prescribe a schedule for making rate filings subsequent to the effective date of this rule.

B. Strength of Presumptions

One of the primary goals of these proposed rules is to provide the industry with regulatory predictability and stability in the Commission's treatment of services, facilities and operations provided by natural gas companies in competitive markets. In order to provide such predictability, these proposals provide that, if certain conditions are met and subject to rebuttal, certain activities are presumed to be consistent with the applicable NGA criteria. The Commission requests comments on whether such presumptions provide adequate regulatory predictability under the Commission's rules and procedures, or whether such presumptions should be strengthened into general principles or promulgated as binding rules.

The Commission also calls for comment on whether there should be a presumption that the issuance of a blanket certificate under § 284.221 is required by the public convenience and necessity.

C. Contract Adjustment Rights

The Commission also requests comments on whether firm sales customers and their pipeline suppliers

should be provided greater or less flexibility to adjust their contract rights, service obligations or certificates in order to meet changing market conditions or certificates in order to meet changing market conditions consistent with the NGA.

V. Changes to the Regulations To Implement the Proposals

Explanation of Organization

This section is divided into four proposals designed to address the policy considerations discussed in Sections I, II, III, and IV.

The four proposals are:

A. Transportation
B. Take-or-Pay
C. Optional Expedited Certificates
D. Billing Procedures for Purchased Gas

A. Transportation

Part 284–Section 311 Transportation By Interstate/Intrastate Pipelines

Section 284.3(c) Generally applicable provisions. This section currently provides that the Natural Gas Act shall not apply to facilities utilized solely for transportation authorized by section 311(a) of the NGPA. It thereby implements NGPA § 601(a)(2) and exempts from NGA jurisdiction those facilities used exclusively for section 311 transactions. The proposed rule does not propose any change to this regulation. In two recent orders, however, we addressed two complaints regarding reliance on § 284.3 to permit the construction of facilities that would result in core market displacement.[45] In light of those orders, the Commission requests comments on the role and function of this section, including the impact on the Commission's jurisdiction and how facilities constructed under section 311 may be used in the future.

Section 284.4(b). This section requires any interstate pipeline engaging in section 311 transactions to file by telegram a summary report to the Commission within 48 hours after commencing deliveries of natural gas sold, assigned, or transported under Part 284. Intrastate pipelines engaging in such transactions are required to file a summary report with both the Commission and appropriate state regulatory agencies. The report includes the dates of commencement and anticipated termination of the deliveries, the estimated total quantities to be delivered and maximum daily deliveries, and the rates to be charged.

The proposed rule would delete this 48 hour report as unnecessary in light of our experience with these transactions and the other reporting requirements in §§ 284.106 and 284.126 relating to these transactions.

Section 284.7 Rate Conditions. This is a new section which sets forth a number of requirements for the rate filed by any person for transportation service preformed under new §§ 284.102, 284.122, 284.221, 284.224 or 284.243, or transportation or sales service under 157.105. These conditions require the rate schedule to provide for a volumetric rate which does not include provisions that Guarantee revenue, such as minimum bills, minimum-take provisions, or demand charges. The rate must also reasonably reflect any material variation in the cost of service due to the time that the service is provided (such as seasonal variations) or attributable to geographic variations.

The rate schedule must also provide for maximum and minimum rates. The "maximum rate" is defined as the incremental cost of providing service if the service is offered at off-peak periods. The "minimum rate" is defined as the short-run average variable costs of providing service. If offered during peak periods, the "maximum rate" is based on the fully allocated costs of providing the service, less any fixed costs recovered in the maximum rate for off-peak service.

All rates filed pursuant to this paragraph are subject to the Commission's review pursuant to section (4)(e) of the Natural Gas Act.

Paragraph (c) provides that pipelines may charge a customer any rate between the maximum and minimum rates. A pipeline may not file rates to recover revenue lost, during the period the rates were in effect, as a result of charging a rate less than the maximum rate.

Paragraph (d) provides that if the pipeline offers rate schedules in conformance with paragraph (b), the pipeline may, subject to the specific agreement of the affected customer, file rate schedules containing other types of rates.

The Commission requests comments on whether the restrictions placed on the pipeline's discretion to charge rates less than the maximum are consistent with the Natural Gas Act.

Section 284.102 Transportation by Interstate Pipelines. Sections 284.101 through 284.107 apply to interstate pipelines transporting gas under section 311. Section 284.102(a)(4) requires interstate pipiines engaging in section 311 transportation to file the 48 hour report described above. This section would be revised to reflect the deletion of the 48-hour report.

Section 284.102(b)(1)(i) currently limits transportation arrangements under this section to a period of two years. This condition is eliminated so that transportation arrangements may extend for the period agreed to by the parties.

Paragraph (b)(1)(ii) of this section currently imposes the system supply limitation on interstate pipelines transporting gas under section 311. Such transportation currently is limited to gas delivered directly or indirectly to an interstate pipeline, intrastate pipeline, or local distribution company, which receives the gas for its system supply for resale. The proposed rule would eliminate this test and allow interstate pipelines to transport gas under the authorization in § 184.102 without any system supply limitations. Therefore, interstate pipelines would be permitted to transport gas on behalf of an intrastate pipeline or local distribution company without any restrictions to the actual recipient.

While we have eliminated the system supply test, we wish to note that such transportation must still be "on behalf of" the intrastate pipeline or local distribution company. This is a statutory test in section 311 of the NGPA and is a necessary condition of transportation under that section. However, as we discussed in Order No. 46,[46] which implemented section 311, this test is a legal test, not a physical test, and only requires some nexus between the transporter and the intrastate pipeline or local distribution company. Thus, the intrastate pipeline or local distribution company need not physically receive the gas, but need only have the gas transported for its account.

By eliminating the system supply test condition not required under the broad mandate of section 311, the Commission is recognizing that, under our system of federalism, it is within the traditional sound discretion of the states and local governments to regulate local distribution companies in the public interest. The states, not the Commission, have the opportunity, and indeed the right, to determine the appropriate mixture of transportation and sales service provided to customers by local distribution companies not within the Commission's jurisdiction.

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[45] *See Columbia Gas Transmission Corp.* v. *Consolidated Gas Transmission Corp.*, 31 FERC 61,057 (1985), and *Columbia Gas Transmission Corp.* v. *Transcontinental Gas Pipe Line Corp.*, 30 FERC ¶ 61,298 (1985).

[46] Sales and Transportation of Natural Gas, 44 FR 52179 (Sept. 7, 1979).

Section 284.103 Rates and Charges. The current provisions of §§ 284.103 (a), (b), and (c) are retained but made subject to the volumetric rate conditions of new § 284.7 and new paragraph (d), discussed below.

Paragraph (d)(2) of § 284.103 currently provides that all revenues received by interstate pipelines for section 311 transportation which are in excess of one cent per MMBtu are to be credited to Account 191 and flowed back to the interstate pipeline customers. However, the current section provides that such crediting is not required to the extent revenues fall within representative levels which have been credited in arriving at a test period cost of service or to the extent that volumes transported fall within representative levels which have been included in billing determinants for the purpose of establishing rates.

Current paragraph (d) of § 284.103 would be removed and replaced with the requirement that rates for all self-implementing transportation be based on representative levels. Specifically, new § 284.103(d) provides that the rates for transportation shall separately identify cost components for transportation, storage, and gathering and will be based on representative levels of volumes of natural gas transported under § 284.102 of Subpart B, § 284.221 of Subpart G, and § 284.243 of Subpart H of Part 284 and § 157.105 of Subpart E of Part 157. Representative levels shall reflect either volumes that have been: (1) Credited in arriving at a test period cost of service, or (2) included in billing determinants for the purpose of establishing rates.

Section 284.104 Terms and Conditions. This section sets forth the terms and conditions required in contracts for interstate pipeline transportation under section 311.

The proposed rule would change paragraph (b) which now simply provides that the transportation arrangement be subject to the provisions of Subpart B, and inserts a new non-discriminatory access provision. The new paragraph (b) reads as follows:

> An interstate pipeline that provides any transportation service pursuant to § 284.102 shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

This new provision will ensure that this transportation authorization is available to all shippers without any discrimination.

This non-discriminatory access provision is identical in effect to the conditions required under new §§ 284.124(b), 284.221(c), 284.245(d) and 157.103(f). The Commission proposes that this nondiscriminatory access condition apply to all self-implementing transportation for others authorized under the Natural Gas Act or the NGPA. By this condition, the Commission proposes that all natural gas companies under the jurisdiction of the Commission who hold themselves out generally as transporters of natural gas for others in interstate commerce will do so subject to the general and specific condition that access to such transportation be provided to all shippers on a non-discriminatory basis.

The Commission requests comments on whether all transportation certificates issued under section 7 of the NGA after the effective date of this proposed rule should be conditioned on non-discriminatory access of all shippers to transportation service. The Commission also requests comments on whether such a non-discriminatory access condition should be applied where a pipeline is not choosing to hold itself out generally as a transporter of gas, but is transporting under the requirements of law, such as a pipeline obligated to transport Outer Continental Shelf gas under the Outer Continental Shelf Lands Act of 1978. In addition, we request comments on whether such a non-discriminatory access condition should apply to certain transactions which are now defined as transportation under our regulations, such as exchanges of gas, but which may not involve a pipeline holding itself out generally as a transporter of natural gas.

We are also proposing that acceptance of a certificate with the non-discriminatory access provision will be a condition on the availability of the take-or-pay payment presumption in new Part 161, the optional expedited transportation certificate presumption in new § 157.104(b), and the just and reasonable rate presumption under the billing procedure for purchased gas in new § 154.38(d)(4)(xi) described elsewhere in this proposed rule. Finally, the Commission elsewhere in this NOPR is proposing that transportation under this proposed new § 284.104, under a blanket transportation certificate issued under new § 284.221 pursuant to section 7 of the NGPA, or under an optional, expedited transportation certificate issued pursuant to new § 157.105, as also proposed by this NOPR, would trigger the availability under new § 157.21 of certain contract adjustment rights to the firm sales customers of that certificateholder.

By so conditioning the transportation programs available to pipelines and their customers under the NGA and NGPA, the Commission believes that this proposed rule will assist the gas transmission segment of the industry in accurately transmitting the competitive pressures and price signals which now exist at the wellhead and the burner-tip. In so doing, the Commission believes that it will be carrying out its statutory responsibilities consistent with the Natural Gas Act and the Natural Gas Policy Act.

Three new paragraphs will be added to § 284.104 that set forth the firm transportation requirement, a limited qualification to that condition and to the non-discriminatory access condition, and the customer contract adjustment rights. Paragraph (c) provides that the certificate holder transporting gas under the authority in § 284.102 is required to offer firm transportation service to all customers receiving such service and to all other shippers requesting such transportation, provided they are willing to pay the applicable tariff rate. This will assure that this transportation authorization is available to all shippers who request it. An interstate pipeline will not be required, but may at its discretion, provide interruptible transportation service.

Paragraph (d) qualifies the non-discriminatory access and firm transportation conditions set forth in paragraphs (b) and (c), respectively, providing that they will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

New paragraph (e) provides that the transportation service provided under this section is subject to the customer contract demand adjustment rights in new § 157.21.

Section 284.105 Extensions. This section, which sets forth the requirements for filing for extensions of transportation arrangements, is being eliminated. The revisions to § 284.102 eliminate the two year limitation on transportation arrangements. Therefore, transportation arrangements under Subpart B may be for any term agreed to by the parties. The new paragraph permits extensions for any period of time unless the Commission orders otherwise.

Section 284.106 Reporting Requirements. This section sets forth the reporting requirements for interstate pipelines transporting gas under section 311. Briefly stated, it currently requires an initial report, subsequent reports for

any significant changes, extension reports for interstate pipelines seeking to extend the transportation arrangement beyond the initial two-year period or any period of extension, a final report within 30 days after the period of the extension or termination of any transportation arrangement, and the filing fees.

Since § 284.102 is being revised to eliminate any restriction on the term of transportation arrangements, the provision for extension reports is being eliminated. However, the Commission is proposing to require annual reports by March 1 of each year under a new § 284.106(c) that would state the actual volumes of natural gas transported under Subpart B during the preceding calendar year and the revenues received.

The Commission requests comment on how these requirements should be further modified or reduced to accommodate the regulatory changes proposed herein.

Section 284.107 Applications. This subsection permits interstate pipelines to file applications for transportation arrangements under section 311(a)(1) of the NGPA which otherwise would be excluded by § 284.102(b)(1) of the Commission regulations. The new § 284.102, however, eliminates the system supply test and the two-year limitation on transportation, the two restrictions from which an applicant might have sought an exception. Therefore, this subsection would be eliminated.

Section 284.122 Transportation by Intrastate Pipelines. Subpart C deals with certain transportation by intrastate pipelines under NGPA section 311 and begins with § 284.121 dealing with applicability. Section 284.122 is the first substantive section of that subpart and sets forth the general rule and limitations on such transportation. Paragraph (b)(1)(ii) of that section currently imposes the system supply limitation and is identical to current § 284.102(b)(1)(ii). This subparagraph would be eliminated since the system supply test is eliminated. In addition, as under § 284.102, the two-year limitation on transportation authorization would be removed. As discussed under § 284.102, the transaction must still comply with the "on behalf of" test set forth in the statute and more fully explained in Order No. 46, *supra.*

Section 284.123 Rates and Charges. This section establishes the rates and charges for gas transported under § 284.122. Paragraph (b) sets forth certain elections that the intrastate pipeline may choose in establishing its rates for transportation. These options are retained in the current regulations, but new paragraph (e) makes them subject to the volumetric conditions in new § 284.7.

Section 284.124 Terms and Conditions. This section sets forth the terms and conditions for intrastate pipelines transporting under section 311 and requires that contracts for such transportation provide that the transportation arrangement is subject to the provisions of Subpart C. The new § 284.124 retains this requirement in a new paragraph (a).

A new paragraph (b) containing a non-discriminatory access provision similar to that inserted in § 284.104(b) is inserted.

It provides as follows:

> An intrastate pipeline that provides any transportation service pursuant to § 284.122 shall provide transportation service for all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

A new paragraph (c) is also added imposing a firm transportation requirement on intrastate pipelines. This provision is identical to the provision for interstate pipelines discussed above and set forth in new § 284.104(c).

Section 284.125 Extensions. This section permits intrastate pipelines to file for an extension of their transportation arrangement for a period of up to two years. Since the two-year limitation on transportation agreements in current § 284.122(c) would be eliminated under the proposals, the parties to a transportation agreement will be able to obtain authorization for any length of term. Therefore, there will be no need to provide for extensions. Accordingly, § 284.125 will be eliminated in its entirety.

Section 284.126 Reporting Requirements. This section sets forth the reporting requirements for intrastate pipelines transporting gas under section 311. These requirements are similar to those for interstate pipelines in § 284.106 and require an initial report, certain subsequent reports, extension reports, a final report, and reference the filing fee provisions.

With one exception, the initial full report, subsequent report, and final report requirements remain substantively unchanged and are set forth in §§ 284.126 (a), (b), and (d), respectively. The subsequent report requirement is revised to specify 30 days as time within which significant changes must be reported. Since § 284.122 is being revised to eliminate any limitation on the term of transportation arrangements, the extension reports requirement under § 284.126(c) would be eliminated. A new § 284.126(c) would be added to require annual reports by March 1, of each year stating the actual volumes transported during the preceding calendar year and the revenues received.

Section 284.127 Applications. This section permits intrastate pipelines to file applications for transportation arrangements under section 311(a)(2) of the NGPA which otherwise would be excluded by current § 284.122 of the Commission's regulations. The new § 284.122, however, eliminates the system supply test, thereby permitting natural gas to be delivered to any person, and the two-year limitation on transportation. These are the only restrictions from which an applicant may seek exception under current § 284.122(b). Therefore, this section would be eliminated.

Part 284—Subpart F, Section 311 Transportation for the Displacement of Oil (Order No. 30)

Under Subpart F of Part 284 (§§ 284.200–284.208), interstate pipelines were authorized to transport gas to end-users for the displacement of fuel oil during a "fuel oil emergency period," as defined in § 284.201(e). When we issued Phase II of our blanket certificate regulations, we terminated this program since a separate, fuel-oil displacement program was unnecessary in view of the new generic transportation program. This program is therefore no longer in existence and these regulations will be removed.

Part 284—Subpart G, Section 7(c) Blanket Certificates, General Descriptions of Revisions to Subpart G

Existing § 284.221 authorizes interstate pipelines to apply for a blanket certificate under section 7(c) of the Natural Gas Act to transport natural gas for the system supply of any other interstate pipeline. This section was intended to permit interstate pipelines to perform for other interstate pipelines the same activities that section 311 authorizes interstate pipelines to perform on behalf of intrastate pipelines and local distribution companies. Under the proposed rule this section would be substantially revised to consolidate this blanket certificate with the blanket transportation authorization now available to interstate pipelines under §§ 157.201 and 157.209. Section 284.221 would be revised, as indicated below, to set forth the general terms and conditions of both blanket certificates.

Section 284.222, which now deals with the transportation, sale, and assignment of gas by local distribution companies, would be renumbered as § 284.224 and revised as discussed below. The new § 284.222 provides for essentially the same authority as current § 284.221. A new § 284.223 would be added which would provide transportation authorization similar to, but less restrictive than that set forth in the Commission's blanket interstate pipeline transportation program in § 157.209.

Section 284.221 General Transportation by Interstate Pipelines on Behalf of Others. New paragraph (a) of the new section will generally set forth the applicability of the blanket certificate, *i.e.*, permit any interstate pipeline to apply for a blanket certificate. This certificate will be different from that for which interstate pipelines may now apply under § 157.201. Upon receipt of such application, the Commission will conduct a hearing under section 7(c) of the Natural Gas Act. If required by the present or future public convenience and necessity, the Commission or its delegate will issue the pipeline a blanket certificate authorizing the pipeline to transport gas as provided in the new § 284.222 (for any other interstate pipeline) and § 284.223 (for any person other than an interstate pipeline).

New paragraph (b) would set forth the application procedures and would be virtually identical to the procedures now set forth in the current § 284.221(c). That section provides that the application shall contain the name of the interstate pipeline and a statement by the interstate pipeline that it intends to comply with the conditions in the certificate.

New paragraph (c) would set forth the general conditions of the certificate. A new subparagraph (1) would be inserted which would contain the non-discriminatory access condition described above:

> An interstate pipeline that provides any transportation service pursuant to a certificate issued under this section shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for the service requested without discrimination in the quality of service provided, the categories, prices, volumes of natural gas transported, customer classification, or discrimination of any kind.

New paragraph (c)(2) would establish the firm transportation requirement described above and set forth in § 284.104(c) and § 284.124(c). Thus, certificate holders would be required to offer firm transportation service to all customers receiving firm sales service and all other shippers requesting transportation provided they are willing to pay the applicable tariff rate on file with the Commission.

New paragraph (c)(3) would qualify the non-discriminatory access and firm transportation conditions set forth in subparagraph (c)(1) and (2), respectively, by providing that they will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any facilities.

New paragraph (c)(4) of § 284.221 requires that the rates for all self-implementing transportation be based on representative levels. Specifically, new § 284.221(c)(4) provides that the rates for transportation shall separately identify cost components for transportation, storage, and gathering and will be based on representative levels of volumes of natural gas transported under § 284.102 of Subpart B, § 284.221 of Subpart G, and § 284.243 of Subpart H of Part 284 and § 157.105 of Subpart E of Part 157. Representative levels shall reflect either volumes that have been (1) credited in arriving at a test period cost of service, or (2) included in billing determinants for the purpose of establishing rates.

Paragraph (c)(5) would contain the condition that each filing made with the Commission and reporting individual transactions should reference the appropriate docket number in which the blanket certificate was granted. This is the same condition now contained in the current § 284.221(d)(2).

Paragraph (d) of the new § 284.221 will contain a pre-grant of abandonment identical to that which is currently set forth in § 284.221(e). That section provides that abandonment of transportation services under section 7(b) of the Natural Gas Act is authorized when the contractual term of the individual transportation arrangement expires.

New paragraph (e) will set forth the availability of a regular certificate. This paragraph would be similar to that which is now contained in § 284.221(f) of our current regulations which provides that nothing precludes an interstate pipeline from applying for individual certificates of public convenience and necessity for particular transportation services provided to another interstate pipeline or from proceeding under section 311(a)(1) of the NGPA. It is worth noting that the conditional contract demand adjustment rights of a pipeline's firm sales customers under § 157.21 are triggered equally by any new transactions in which the pipeline transports natural gas for others. See Part V.B.1.(a). The new subparagraph would be applicable to transportation to any person. The reference to section 311(a)(1) would be deleted since it would no longer be applicable.

The new paragraph (f) would cross reference a number of related sections, such as blanket certificates for local distribution companies served by interstate pipelines under new § 284.224 and blanket certificates for interstate pipelines to construct and operate certain facilities under Subpart F of Part 157.

Any interstate pipeline may apply under Subpart F of Part 157 for a blanket certificate to construct or acquire and operate certain natural gas facilities under Subpart F of Part 157 of this chapter that are necessary to provide transportation under § 284.222 or 284.223. Section 157.208 of Subpart F provides automatic authorization not subject to prior notice for the construction, acquisition, operation, and miscellaneous rearrangement of eligible facilities, as defined in § 157.202, if the associated costs do not exceed the limits specified in § 157.208(d). Other facilities may be constructed, acquired, rearranged, and operated subject to the prior notice requirements of § 157.205. Eligible facilities include pipeline receipt points and pipeline interconnections, where more than one transporter is involved. The construction and operation of sales taps, explicitly excluded from the § 157.202 definition of eligible facilities, are subject to the conditions set forth in § 157.211 and the prior notice conditions of §157.205.

Two new paragraphs (g) and (h) would be added to provide for flexible authority for establishing receipt and delivery points of transported gas.

Subparagraph (g)(1) would permit interstate pipelines transporting gas under new § 284.221 to reduce or discontinue receipts of gas at a particular delivery point, and commence or increase receipts of gas at another delivery point from the same supplier or a different supplier. Such changes must be made at the request of the shipper and are not subject to prior notice. However, the total gas volumes received by the interstate pipeline after such reassignment are not permitted to exceed the total volume that the interstate pipeline is authorized to transport on behalf of the shipper. New paragraph (g)(2) also clarifies that the receipt points to which gas may be reassigned under paragraph (g)(1) may be constructed and operated without prior notice under a blanket certificate issued under Subpart F of Part 157.

Similarly, paragraph (h) provides for flexible delivery points. New paragraph (h)(1) permits interstate pipelines transporting gas pursuant a certificate issued under § 284.221 to reduce or discontinue deliveries of gas to a particular delivery point. The pipeline may also commence or increase deliveries to another delivery point. Such changes must be requested by the shipper and are not subject to the prior notice procedures. As with paragraph (g) above, the total delivered volumes following the reassignment under paragraph (h)(1) are not permitted to exceed the total volumes that the interstate pipeline is authorized to transport for that shipper under this certificate. Paragraph (h)(2) also clarifies that the delivery points to which the gas may be reassigned may be constructed and operated under a blanket certificate issued pursuant to Subpart F of Part 157. The construction and operation of such facility, however, will be subject to the prior notice procedures in § 157.205.

The Commission considers that flexibility in the construction and operation of delivery and receipt points is necessary in order to assure to gas markets the competitive benefits of transportation services. However, the Commission recognizes that flexibility in such services may affect similar services now provided by local distribution companies primarily regulated by the states and local governments; thus, construction of facilities by pipelines to provide delivery points is subject to prior notice and protest procedures. When the Commission reviews such protests, it will expect such protestors to demonstrate, with specific facts and particularity, why construction of such facilities should not be authorized in the public interest. The Commission recognizes that the same state and local jurisdictional concerns which apply to elimination of the system supply test also relate to the construction of facilities for flexible delivery points.

New paragraph (i) provides that the conditions set forth in § 157.21 of Subpart A of Part 157 relating to a customer's right to adjust contract demand will apply to any interstate pipeline that transports natural gas under § 284.221.

Section 284.222 Transportation on Behalf of Other Interstate Pipelines. As mentioned above, this new section would be similar to the authorization in current § 284.221, authorizing transportation for other interstate pipelines. It provides that an interstate pipeline with a certificate issued under new § 284.221 is subject to the same terms and conditions, rates and charges, and reporting requirements as if the transaction were authorized under Subpart B of this part (Certain Transportation by Interstate Pipelines), including the proposed new and revised conditions.

Section 284.233 Transportation on Behalf of Persons Other Than Interstate Pipelines. This new section would apply to interstate pipelines transporting gas on behalf of all persons other than interstate pipelines and would describe the scope and special terms and conditions of such transportation. It would contain several of the provisions now set forth in § 157.209 of the Commission's blanket certificate transportation program.

New subparagraph (a)(1) of this section would continue to permit automatic authorization now authorized under the interstate blanket certificate program. Interstate pipelines would be authorized to transport gas to anyone for a period of 120 days for any gas. Thus, any restrictions on qualifying gas would be eliminated and any gas, including imported gas, gas from the Outer Continental Shelf, and gas committed or dedicated to interstate commerce on November 8, 1978, could be transported.

New paragraph (a)(2) has been added to "grandfather" 120-day transportation terms commenced under authority of current § 157.209(e) that are still continuing as of November 1, 1985. Accordingly, an interstate pipeline that commenced transportation on behalf of an end-user prior to November 1, 1985, under authority of current § 157.209(e)(1), may continue to transport under the certificate issued pursuant to that section after October 31, 1985, provided the term of that particular transportation arrangement does not exceed 120 days, including periods both prior to and subsequent to November 1, 1985.

We recognize that in some instances, depending largely on when the transportation begins, there might not be sufficient time prior to expiration of the 120-day term for the filing of the application on or after November 1, 1985, for the processing of the application, for the 45-day prior notice period under § 157.205, and, assuming final authorization under § 157.205(g), for the filing of rates. In view of these considerations, the Commission is requesting comments to help it determine whether additional time should be permitted for the 120-day transportation arrangements affected by this proposal, and, if so, how much additional time.

Paragraph (2) also clarifies, however, that regardless of any expired portion of the transportation term authorized under current § 157.209(e)(1), if, prior to the expiration of a 120-day transportation term, but after November 1, 1985, the interstate pipeline obtains a certificate issued pursuant to § 284.221 automatically authorizing a transportation arrangement under § 284.223(a) involving the same interstate pipeline and shipper, the transportation term authorized under § 284.223(a) shall not continue for more than 120 days after the date of final authorization under § 157.205(g).

New subparagraph (a)(3) clarifies that additional 120-day transportation terms may be automatically authorized under subparagraph (a)(1), subject to certain conditions. Subsequent 120-day terms are automatically authorized, provided: (i) The gas is transported by the same pipeline for the same shipper and (ii), after the commencement of the last 120-day transportation term, the transportation arrangement between that transporter and that shipper was authorized under the prior notice procedures of § 157.205. Thus, any time the pipeline and shipper have obtained prior notice authorization under paragraph (b) for an arrangement which has since terminated, whether or not it was preceded by a 120-day term under paragraph (a), they may rely on paragraph (a) for automatic authorization to transport for a new maximum 120 days, during which time they may apply under the prior notice procedures for authorization that would cover the duration of the reinstated transportation arrangement.

We recognize that the transportation authority as provided for in these proposed rules is broader than existing producer abandonment and certification requirements currently allow. The Commission requests comments on exactly what procedural changes to the producer abandonment and certification regulations are needed to allow efficient implementation of transportation arrangements under new § 284.223.

Two provisions currently in § 157.209 regarding 5-year and 10-year automatic transportation authorization would be eliminated prospectively for transactions commenced after October 31, 1985, under new § 284.223. Those provisions are as follows: § 157.209(a)(1)(i) currently automatically authorizes transportation on behalf of high-priority end-users for 5 years if the gas was purchased from: (1) A producer or seller and the gas was not committed or dedicated to interstate commerce on November 8, 1978, and was not

produced by an interstate pipeline; (2) an intrastate pipeline; or (3) a local distribution company and the volumes purchased are attributable to the local distribution company's local supply. Current § 157.209(a)(1)(ii) automatically authorizes transportation for a high-priority user for a 10-year period or the life of reserves, whichever is less, if the natural gas was produced from reserves owned and developed by the high priority user, provided that the reserves were not proven reserves purchased in place by the end-user. Longer terms for all of these types of transactions may be authorized subject to the prior notice provisions of current § 157.209(b) and § 157.205. Section 157.209 will be removed in its entirety. Transportation authorized thereunder, prior to the effective date of these proposals, may continue in accordance with certificate conditions.

New paragraph (b) would set forth the prior notice procedures which are now set forth in § 157.209(b). As indicated below, these procedures would be similar to those set forth in the current procedures, and would authorize the holder of the blanket certificate issued pursuant to new § 284.221 to transport, on behalf of any person, natural gas for any end-use by that person or any other person. The person, or his agent, for whom the interstate pipeline would be transporting would be permitted to make the necessary filing in an application on behalf of the interstate pipeline.

New paragraph (c) sets forth the contents of the prior notice request. It would contain the same requirements as those currently reflected in § 157.209(c), except that the following information, which would continue to be required for non-transportation related applications under Subpart F of Part 157, would *not* be required under new § 284.223: (1) The proposed end-use and a statement that it is a qualified end-use (§ 157.209(c)(1)(vi)); (2) the total end-use requirements profile for natural gas at the location where the transported gas will be used (§ 157.209(c)(i)(vii)); (3) a copy of the gas purchase contract with the seller underlying the proposed transaction (§ 147.209(c)(1)(viii)); (4) if an intermediary participates in the transaction between end-user and the seller and charges a fee, the amount of the fee and terms of payments and the intermediary's affiliation, if any, with the producer, pipeline, and/or distributor (§ 157.209(c)(1)(ix)); and (5) if the end-user assumes the costs of the construction of any facilities in order to consummate the purchase, the cost terms of payment, ownership, and date of construction of the facilities.

The applicant need not state the type of gas which would be transported since any gas is eligible for transportation.

New paragraph (d) would also include the requirement of current § 157.209(d)(i) that the rates and charges shall be subject to the requirements of § 284.7 and of § 284.103 of Subpart B and shall be stated in a generally applicable transportation tariff. In addition, new § 284.223(d) would not include the requirement of § 157.209(d)(7)(ii) that the contract for the transportation shall provide that service under the contract shall be subject to the availability of capacity sufficient to provide the service without detriment or disadvantage to the certificate holder's existing customers who are dependent upon the certificate holder's general system supply. The system supply test in current § 157.209(d)(2) would not be reflected in new § 284.223(d). Section 284.223 would include the requirement of § 157.209(d)(iv) that each initial report be accompanied by the fee set forth in § 381.404 or a petition for waiver pursuant to § 381.106 of the Commission's regulations.

New paragraph (e) would set forth the reporting requirements which would be similar to those set forth in § 157.209(g) of the current regulations. A new subparagraph (e)(1)(vii) would be added to require the identity of other pipelines involved in transporting the gas from the source to the shipper to be reported. References to the additional incentive charge are also deleted since this program expired on February 1, 1985.

The Commission requests comment on how these reporting requirements should be further modified to accommodate the proposed regulatory changes.

A new paragraph (f) is added to coordinate transportation authorization under this section with that currently provided under § 157.209(b). New paragraph (f) provides that certificate authority under § 284.22 shall not provide for continued transportation under § 157.209 beyond the date authorized by the certificate issued under § 157.209. At the expiration of that authorization, however, new authorization could already be in place under proposed new § 284.223(b).

Section 157.209 (e) and (g) in our current regulations would not be incorporated in the program because they deal with the current experimental transportation program and the added incentive charge which was allowed to expire February 1, 1985.

4. Order No. 63—Limited Blanket Certificate Authorization for Local Distribution Companies

Section 284.222 of our current regulations was implemented by Order No. 63 and permits any local distribution company served by an interstate pipeline or any Hinshaw pipeline to apply for a blanket certificate under section 7(c) of the Natural Gas Act. This section would be renumbered as § 284.224 and would be amended to include the access and rate design conditions discussed above that are also proposed to be made applicable to transportation under §§ 284.102, 284.122, 284.221, 284.243, and 157.105.

5. Order No. 92 Regarding Local Distribution Access to Offshore Gas

Sections 284.241 through 284.246 implement section 603 of the Outer Continental Shelf Lands Act Amendment of 1978 and apply to certain transportation of gas produced from OCS leases owned by an eligible distributor for general system supply. These sections will essentially be retained in their current form. However, references to the system supply test are deleted since this test would be eliminated. Transportation under § 284.245 by interstate pipelines would be subject to the proposed access provision, firm transportation conditions, and volumetric rate conditions of § 284.7. Interstate pipelines would be subject to customers' rights to adjust contract demands and establish representative levels.

6. New § 157.21, Condition Permitting Pipelines' Customers to Adjust Certain Firm Sales Rights

This Commission's proposed § 157.21 sets forth a condition that applies when, after the effective date of this rule, the pipeline: (1) Accepts a certificate issued under § 284.221 or § 157.105 pursuant to section 7 of the Natural Gas Act that authorizes the pipeline to transport natural gas for any other person, or (2) operates under authority of §§ 284.102 or 284.243. The condition provides that any existing firm sales customer of the pipeline may reduce its contract demand by up to 25 percent in any calendar year. Thus, if on the effective date of this rule the contract demand in the customer's firm sales agreement is 1,000 MMcf per day, the customer may reduce its contract demand by 250 MMcf per day in the first calendar year after this rule becomes effective, 250 MMcf per day in the second year, 250 MMcf per day in the third year, and 250 MMcf in the fourth year.

When the customer exercises the right to reduce its contract demand, the pipeline may, but need not, abandon service to the extent of the reduction. If the pipeline elects to abandon service, the customer may subsequently increase its contract demand after the Commission issues an order pursuant to either section 7(a) or 7(c) of the Natural Gas Act permitting the customer to increase the contract demand. The pipeline may file tariff sheets setting forth the general terms and conditions under which it will agree to an increase in its customer's contract demands.

Whenever a customer reduces its contract demand or the pipeline agrees to allow the customer to increase its contract demand, the pipeline must file appropriate adjustments to its firm sales tariffs.

The Commission requests comments on whether firm sales customers who reduce their contract demand for sales should have the right to convert that reduction into an equivalent amount of reserved firm peak transportation capacity by paying a reservation charge equal to the demand charge formerly paid for the reservation of capacity for sales. The customer would have to specify the receipt and delivery points for the capacity being reserved and there would have to be rate adjustments of this reservation charge in any future rate cases. Under this approach, then, a pipeline might sell three types of firm service: contract sales, contract transportation for former sales customers, and self-implementing transportation.[47] The Commission requests comment on whether such a conversion should be allowed or whether it is necessary where customers can buy spot firm transportation.

7. Existing Subpart E of Part 157, Transportation Certificate Under Section 7(c)(2) of the Natural Gas Act and § 2.79 Policy With Respect to Certification of Pipeline Transportation Agreement

Section 157.100 through 157.105 apply to transportation certificates for direct sales of gas to certain high priority users. Section 2.79 covers the transportation of natural gas for high priority industrial and commercial uses during pipeline curtailment. They establish regulations for transporting gas to essential agricultual users, schools, hospitals, or similar institutions and curtailed high priority industrial and commercial users. Given the expansion of the blanket certificate program to all persons, these sections will not be necessary and would be deleted.

8. Subpart F of Part 157, Interstate Pipeline Blanket Certificates

Section 157.209 sets out the existing blanket certificate transportation program. This section will be eliminated since the relevant substantive portions will be included in new § 284.223. However, automatically authorized 120-day transportation arrangements that already have commenced prior to the effective date of the proposed amendments could continue for the full 120 days. Further, transportation undertaken under Subpart F pursuant to the prior notice provisions of § 157.205 may continue for the term specified in the Subpart F certificate subject to the conditions thereof.

Other editorial changes have been made to accommodate the revisions discussed above. A new paragraph (c) is added to § 157.211 to provide for flexible deliveries as discussed above under Part 284.

B. Take-or-Pay

Part 161—Payment in Lieu of Take-or-Pay Obligations

The proposed "safe harbor" presumption is available only to pipelines that agree to offer transportation on a non-discriminatory basis as discussed in Part I of this Notice. Under the proposed rule, a pipeline making qualifying payments to extinguish all minimum payment or purchase obligations under a qualifying contract shall be presumed to have acted prudently, subject to rebuttal, for purposes of sections 4 and 5 of the Natural Gas Act. In brief, the rule requires that a pipeline identify its qualifying contracts, divide them into two groups depending on whether or not the primary term extends for more than five years after December 31, 1985, and calculate the minimum payment or purchase obligation under each such contract in the group. The pipeline then determines how much of this minimum payment or purchase obligation under each qualifying contract is reasonably estimated to obtain in 1986 and 1987, and of that amount, how much the pipeline reasonably estimates that it will not be able to recoup under the terms of the qualifying contract. The total of the amounts reasonably estimated to be unrecoupable is the pipeline's 1986–1987 unrecoupable obligation. The total qualifying payments that may be presumed prudent may not exceed a certain percentage of the 1986–1987 unrecoupable obligation, depending on the length of the remaining primary term.

The Commission is proposing that the safe harbor presumption apply only to future payment or purchase obligations under qualifying contracts. Since the regulatory changes proposed in the Notice are prospective, it appears appropriate that take-or-pay relief should also be prospective. However, the Commission recognizes the possibility that past and/or current take-or-pay prepayments may affect a pipeline's current and future business decisions. For example, a pipeline already may have made prepayments for past take-or-pay obligations, but has yet to take the make-up volumes. If a pipeline decides to offer non-discriminatory transportation, those transportation volumes may displace its own sales. To some degree then, the pipeline may be unable to recoup the prior prepayments.

The Commission seeks comments on whether the safe harbor presumption should be expanded also to include previously incurred and outstanding liabilities. To the extent that past prepayments do not affect current business decisions, the level which might be determined to be prudent would presumably be a lesser amount.

Section 161.1 Safe Harbor Applicability. Section 161.1 defines the applicability of the safe harbor presumption. The presumption is available only to pipelines that offer transportation services on a non-discriminatory basis. To meet this requirement, an interstate pipeline must do one of the following:

(1) Accept a certificate issued pursuant to section 7 of the Natural Gas Act that authorizes the pipeline under § 284.243 or proposed § 157.105 to transport natural gas for any other person; or

(2) Operate under authority of § 284.102; or

(3) Accept a blanket certificate issued under proposed § 284.221.

These sections are discussed in more detail in Parts I and III of this Notice.

The Commission does not believe that there should be any Commission exceptions to this requirement. The Commission intends that the safe harbor presumption remove artificial constraints on pipelines to enable them to engage in more competitive market practices.

Section 161.2 Definitions. The proposed "safe harbor" rule defines four particular terms. They are: (1) Qualifying contract; (2) minimum payment or

[47] A pipeline would, of course, still be allowed to apply for a traditional section 7(c) certificate to provide contract transportation service where a customer pays a reservation charge and a transportation rate instead of only a volumetric rate.

purchase obligation; (3) 1986–1987 unrecoupable obligation; and (4) qualifying payment.

Section 161.2(a) Qualifying Contract. "Qualifying contract" is defined as a contract for the "first sale" of natural gas which was entered into before January 1, 1982, and the primary term of which will continue beyond January 1, 1986.

The Commission proposes that a pipeline wishing to avail itself of the safe harbor presumption must be a party [48] to a qualifying contract. A "first sale" of natural gas is defined in section (2)21 of the NGPA.

"Primary term" means the initial term of service specified in the contract. The Commission proposes that if a "qualifying contract" was amended to extend the primary term, that amendment must also have been entered into prior to January 1, 1982.

The Commission proposes a cut-off date of January 1, 1982, based on market conditions at that time. The Commission proposes this date because in 1982 pipelines that had contracted for large supplies of gas at NGPA prices experienced difficulty in marketing this gas. Moreover, it appears that by 1982, most wellhead contracts contained some type of "market-out" provisions ensuring a more market-responsive contract.[49] The Commission welcomes comments on whether January 1, 1982, or another date is an appropriate date for defining qualifying contracts.

The Commission is not proposing to require that the primary term of the qualifying contract extend beyond January 1, 1986, for any particular length of time. For example, the contract remainder may be only one month, *i.e.*, a contract whose primary term expires February 1986. However, the length of the primary term in a pipeline's qualifying contract will determine the level of payments that qualify for the safe harbor presumption.

Under the proposed regulations, a pipeline would divide its qualifying contracts into two groups: (1) Contracts that, on December 31, 1985, have five years, or fewer than five years, remaining in the primary term, and (2) contracts that, on December 31, 1985, have more than five years remaining in the primary term.

Section 161.2(b) Minimum Payment or Purchase Obligation. Section 161.2(b) defines "minimum payment or purchase obligations" as:

> The minimum take-or-pay quantities specified in a qualifying contract for the time period remaining in the primary term of such contract after January 1, 1986, multiplied by the contract price for such quantities.

The proposed regulation requires that a pipeline first determine the length of time remaining in each qualifying contract's primary term after January 1, 1986. Then, the pipeline determines the minimum take-or-pay quantities which could be incurred over that length of time according to the terms of the contract. For example, suppose that a qualifying contract's primary term extended until June 30, 1988. The remainder period would be two and one half years. If the minimum annual take-or-pay quantity specified in the qualifying contract is 100 MMcf, then the pipeline would have minimum take-or-pay quantities of 250 MMcf. The minimum take-or-pay quantity having been determined, that quantity is multiplied by the contract price applicable to such quantities. The result is the pipeline's minimum payment or purchase obligation for that qualifying contract. Thus, if the contract price is $7.00, then the minimum payment or purchase obligation is $1,750,000.

The pipeline must calculate the minimum payment or purchase obligation for *each* qualifying contract separately.

The Commission's Statement of Policy [50] addressed payments made by jurisdictional pipelines to first sellers of natural gas for the purpose of waiving or revising purchase obligations under natural gas sales contracts. The safe harbor presumption the Commission is proposing is intended to apply to these types of payments only if such payments completely cancel all of a pipeline's obligation under the qualifying contract to take any minimum amount of gas or to pay for any minimum amount of gas. Payments which revise, but do not cancel, such obligations are not eligible for the safe habor presumption.

Section 161.2(c) "1986–1987 Unrecoupable Obligation". Section 161.2(c) defines the 1986–1987 unrecoupable obligation. Under the provision, a pipeline estimates the extent of its sales for this two-year period and whether it will incur a take-or-pay obligation under each of its qualifying contracts. Then, the pipeline estimates how much of this amount it does not expect to recoup under the terms of the contract. In order to determine the total 1986–1987 unrecoupable obligation, the pipeline aggregates the non-recoupable amounts for each group of contracts.

The pipeline's estimate will presumably be based on such considerations as its individual sales and transportation experience, projected sales and transportation, projected growth in its markets, degree of competition of the system, and customer buying patterns. The Commission recognizes that circumstances may vary greatly from pipeline to pipeline, and that a set of facts that would cause pipeline A to incur an unrecoupable obligation may not affect pipeline B. Also, the Commission is not proposing to require a pipeline to demonstrate that any particular event or events has occurred or that specified circumstances exist on its system in support of its estimates. Since a pipeline must provide a detailed explanation of how it arrived at the amount of its 1986–1987 unrecoupable obligation in order to meet the presumption of prudence standard, a mere recitation that pipeline X believes it will not be able to recoup a stated amount will not suffice. The Commission invites comment on what facts and circumstances may influence a pipeline's estimate of its 1986–1987 unrecoupable obligation.

Section 161.2(a) and section 161.2(b) "Qualifying Payments". Section 161.2(a) and section 161.2(b) define what amounts of payments made in lieu of take-or-pay obligations may be considered qualifying payments and, thus, presumed prudent. The amount of qualifying payments will vary depending on the amount of time remaining in the primary term of the contract as of December 31, 1985. If, on that date, five years, or fewer than five years remain qualifying payments may be any amount not in excess of a specific percentage (X percent) of the total 1986–1987 unrecoupable obligation. If more than five years remain, the qualifying payment may be no more than Y percent.

The Commission is not proposing at this time to specify numbers for X or Y percent. Instead, the Commission is requesting comments on what these percentages should be. The Commission expects many factors will enter into the determination of these percentages. Foremost among these is the relationship of the safe harbor presumption to the other proposed rules in this Notice. The Commission recognizes that if a pipeline operates

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[48] There may be qualifying contracts where the original pipeline purchaser has been succeeded by another pipeline, as a result of, among other things, assignment or corporate reorganization. In that event, the Commission proposes that the current party in interest be eligible for the safe harbor presumption.

[49] *See*, U.S. Energy Information Administration, (p. xi, 44 Table ES4 (Summary of Major Provisions in Recent Contracts Filed at the Commission (Based on Percentage of Number of Contracts)) shows that whereas in 1981, only 36 percent of gas purchase contracts had market-out pricing provisions, by 1982, 85 percent of such contracts had them.

[50] *See, supra* note 4.

under the proposed transportation program, it will be carrying gas that may displace its own sales. The Commission believes that the rate changes it is proposing in this Notice, however, will enable a pipeline to be economically indifferent to whether it sells or transports gas, *assuming it is acting on a clean slate*. The Commission's intent in proposing the "safe harbor" presumption is to provide pipelines with the opportunity to "clean the slate" by buying-out their so-called "problem contracts," thereby removing the distorting effects these contracts have in today's marketplace. In order to provide that opportunity, the Commission is proposing regulatory predictability to enable pipelines to deal with those problems, particularly the question whether such payments will be considered prudent in the future.

The Commission believes that, in the era of increased competition, which a pipeline would be accepting by agreeing to operate under the proposed transportation rules, the Commission should provide guidelines in advance as to what types of action it considers in the public interest.

The proposed percent limitations are ceilings only on the amounts eligible for the safe harbor presumption. Any payments made in excess of these percentages are not presumed prudent and are subject to a full review for prudence as contemplated in § 2.76 of the regulations.

For example, assume that a pipeline has determined that its total 1986–1987 unrecoupable obligation for qualifying contracts in Group A (five years or less) is $100 million. Under the rule, a pipeline could make payments up to X percent of $100 million and have these payments be eligible for the presumption of prudence. Total payments to *all* suppliers may not exceed the X percent if the pipeline wishes the payments to be eligible for the presumption. (In other words, the rule does not permit a payment to *each* producer which does not exceed X or Y percent.) The monies up to the X percent level are available to the pipeline to make payments in whatever amounts it chooses. There is no restriction on what amounts must be paid to each supplier. The Commission believes this matter should be resolved between pipelines and their suppliers.

Section 161.3 "Safe-Harbor" Presumption of Prudence. Section 161.3(a) of the proposed rule defines what pipeline action is eligible for the rebuttable presumption of prudence. A pipeline that makes a qualifying payment up to the ceiling defined in either § 161.2(d)(1) or (d)(2) to extinguish *all* minimum payments or purchase obligations as defined in § 161.2(b) under a qualifying contract as defined in § 161.2(a) shall be deemed to have acted prudently, subject to challenge, for purposes of sections 4 and 5 of the Natural Gas Act. The qualifying payments must be made in return for a total cancellation of all minimum payments or purchase obligations under the qualifying contract. The intended end result after the pipeline makes the qualifying payment is that the pipeline will have no take-or-pay obligations of any kind for the remainder of the contract. Qualifying payments made in return for partial cancellation or postponement of such obligations, or extended make-up periods, and the like are not eligible for the presumption of prudence and will be treated on a case specific basis as provided in § 2.76 of the regulations.

Of course, a pipeline and its suppliers are free to execute a new contract for the same supplies of gas. Particularly in view of the other provisions of this proposed rule, any new contract executed by the parties will presumably be sufficiently market-responsive so as to avoid similar problems arising in future years.

Section 161.3(a) also identifies the burden of proof on the pipeline that seeks to invoke the presumption. The pipeline has the initial burden of proof that it has in other section 4 filings. A pipeline must prove that its payments meet all the requirements of this rule. There must be a qualifying contract, which specifies the amount of minimum take-or-pay quantities and the price applicable to such quantities. Also, the pipeline must provide a clear and detailed explanation of how it estimated its 1986–1987 unrecoupable obligation.

If a pipeline can show that its payments come within the scope of the rule, the burden shifts to any persons challenging the prudence of the payments. Section 161.3(b) provides that such persons must demonstrate that the payments were imprudent. (Of course, if a person challenging the prudence of the payments can show that a pipeline did *not* comply with the requirement of this section, the presumption fails.) The Commission contemplates that any interested person and the Commission Litigation Staff may challenge the prudence of said payments.

The Commission is not proposing precise facts that need be shown since circumstances are likely to vary from system to system. However, alleging that the pipeline was imprudent in having executed the contracts in question, *i.e.*, having "put us all in the pickle," [51] may not be enough to overcome the presumption of prudence. In establishing the appropriate values for "X" and "Y" percent, the Commission intends to take into account the peculiar circumstances prevailing in the natural gas field markets during the 1970's and early 1980's, and the pervasive distorting impacts of the various schemes of federal wellhead price controls which existed during this period. The Commission seeks to build a regulatory framework for interstate pipelines in a world where price controls have been progressively removed by the Congress.

Section 161.4 Procedures; and Section 161.4(a) Accounting and Cost Recovery. Section 161.4(a) describes the proposed accounting treatment for these qualifying payments. The pipeline must record the amount of the qualifying payments in a separately-identified subaccount to Account No. 186 (Miscellaneous Deferred Debits), and must record amortization of the payments in Account No. 813 (Other Gas Supply Expenses). The Commission proposes that such amounts be amortized over a period of five years. Because of the potentially large sums involved, a five-year amortization period will have a less disruptive impact on rates.

The Commission believes that no carrying charges should be collected on the unamortized balances, nor should the Commission permit unamortized balances to be included as a rate base item. This means that no rate of return may be earned on these amounts. The Commission believes this approach will effect an equitable sharing of these costs between the ratepayers and the pipeline's shareholders. To permit the pipeline also to recover carrying charges would effectively relieve the shareholders of any of the burden of these take-or-pay buy-outs.

In prohibiting a pipeline to earn a return, an analogy may be drawn to the Commission's policy in electric rate cases [52] where a company is prohibited from earning a return on the unamortized portion of an investment in a prudently-abandoned or cancelled project. Under this proposal, the pipeline is granted recovery of, but not on, part of the investment it made to acquire gas supplies. The 1986–1987 unrecoupable obligation in effect reflects cancellation

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[51] Monsanto Co. v. FPC, 463 F.2d 799, 808 (D.C. Cir. 1972).

[52] *See*, New England Power Co., 8 FERC ¶ 61,054 (1979), *aff'd sub nom.* NEPCO Municipal Rate Committee v. FERC, 668 F.2d 1327 (D.C. Cir. 1981), *cert. den'd* 457 U.S. 1117 (1982); Jersey Cent. Power & Light Co. v. FERC, 730 F.2d 816 (D.C. Cir. 1984).

of a pipeline's investment in gas supply. Since the ratepayers will never have the benefit of this gas, nor recoup the monies expended, they should not be expected to provide the pipeline with return dollars. As the Commission stated in New England Power Co. [8 FERC ¶ 61,054 at 61,175–76 (1979)]:

> Ratepayers are not required to ensure that a utility receive a return on all monies invested in the enterprise; ratepayers are required to pay a return on only those investments in properties that are used and useful in the public service.

Section 161.4(b) Filing Requirements. Section 161.4(b) establishes the filing requirements for recovery of qualifying payments. To be eligible for the presumption of prudence, a pipeline must make, by January 1, 1987, all qualifying payments and an appropriate Natural Gas Act section 4 filing. The pipeline may only file to claim only qualifying payments, or, file as part of a general section 4 rate increase filing. Additionally, the pipeline may include an estimated surcharge as part of the section 4(e) filing it makes to obtain a new blanket transportation certificate. The Commission invites comments on which types of filing may be appropriate and when the amortization period should begin. The Commission previously determined in its Statement of Policy and Interpretive Rule that these types of payments are not purchased gas costs and may not be claimed in a PGA filing.

The Commission is proposing January 1, 1987, because under the rules proposed elsewhere in this Notice, the pipeline would already have made its decision on whether to offer non-discriminatory transportation prior to January 1, 1986. Having made that decision, the pipeline would have a year to finalize an agreement with its suppliers.

The Commission is proposing that filings made to recover qualifying payments contain, at a minimum, certain information. This information is necessary if the Commission is to apply the presumption of prudence proposed in § 161.3.

First, a pipeline must identify the qualifying contracts for which it has made payments. At a minimum, the pipeline must provide the date the contract was entered into, the primary term remaining, and the NGPA vintage or vintages covered by the contract.

Second, a pipeline must show, in sufficient detail, how it derived the amount of its minimum payment or purchase obligations. This would entail a listing, per qualifying contract, of the minimum take-or-pay quantities specified in each qualifying contract, the remainder of the primary term, the applicable contract price, and the actual calculations.

Third, the pipeline must provide an explanation of how it determined the amount of its 1986–1987 unrecoupable obligation.

The Commission requests comments on how "qualifying payments" under this proposal should be allocated. For example, allocation should be between transportation and sales customers; on a pro rata basis, in effect, a surcharge on each pipeline's assets; or on some other basis. The Commission invites comments on whether additional information should be required with the initial filing.

Section 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations. The Commission also proposes to amend § 2.76 of the regulations to reflect the availability of the proposed safe harbor presumption. Section 2.76 was promulgated in the Commission's Statement of Policy and Interpretive Rule which addressed pipeline payments to first sellers for the purpose of waiving or revising purchase obligations under natural gas sales contracts. At that time, the Commission stated that a pipeline's method of recovering these costs and its apportionment of them among its customers would be addressed on a case-by-case basis in the context of individual rate case filings. We are amending the rule to make clear that a pipeline may seek to recover some of these costs, if eligible, under the terms of the safe harbor presumption.

C. Optional Expedited Certificates

Section 157.100 Applicability. The proposal would establish a new Subpart E to Part 157, Optional Procedures for Applications for Certificates of Public Convenience and Necessity Authorizing Activities to Provide New Service and Providing Pre-Granted Approval of Activities and Facilities Used to Provide New Service. New Subpart E would provide, pursuant to a new § 157.100, optional procedures whereby any eligible applicant may obtain a certificate authorizing "new service" under which the applicant would sell and/or transport natural gas, the construction or acquisition of natural gas facilities necessary to provide the new service and the operation of those facilities, and pre-granted abandonment of such activities and facilities upon termination of its underlying contractual obligations.

The proposed new Subpart E would replace the existing Subpart E, "Transportation Certificates under Section 7(c)(2) of the Natural Gas Act." The Commission is proposing to delete the existing Subpart E in its entirety, as the regulations set forth therein, which pertain to the transportation of natural gas on behalf of certain high-priority end users, are no longer necessary. Any transactions already authorized under existing Subpart E would be allowed to continue until expiration. Such transportation arrangements presently may be authorized under Subpart F of Part 157 and will be eligible for certification under proposed § 284.221 of Subpart G of Part 284.

Section 157.101 Definitions. The definitions of terms for purposes of proposed Subpart E are set forth in § 157.101. Terms defined in the Natural Gas Policy Act of 1978 have the same meaning for purposes of Subpart E as they have under that Act.

"Eligible applicant" is defined in § 157.101(b)(1) as a natural-gas company or person who will be a natural gas company upon completion of any proposed construction or extension of natural gas facilities. "Natural gas company," defined in § 157.101(b)(2), has the same meaning as under the Natural Gas Act. Section 2 of the Act defines "natural-gas company" as a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

"New service," the only activities for which certification would be available under the optional procedures of Subpart E, is defined in § 157.101(b)(3) as a service that the applicant has not previously provided. In cases where service was already being provided under certificate issued pursuant to Subpart E or the regular procedures of Subpart A of Part 157, the optional Subpart E procedures could be used to obtain certification for an increase in the existing service or an additional kind of service that might be needed pursuant to renegotiation of the contract underlying the service. Certification of any service other than the incremental service or the different service would continue to require that an application be filed in accordance with the regular Subpart A procedures. Further, certification may be obtained under Subpart E only if all facilities that are to be constructed and operated satisfy the definition of "qualifying facilities" in § 157.101(b)(4), which limits certification to facilities that will be used solely to provide new service. Qualifying facilities include facilities authorized under a related application under Subpart F or Part 157.

Section 157.102 Contents of Application. Applications under Subpart E will be subject to the conditions set forth in § 157.102, which requires that applicants provide all information necessary to fully describe the proposed transportation, sales, and other services to be provided and the facilities needed to provide such service. The application must also state whether pre-granted abandonment authorization is requested and, if so, to what extent.

Pursuant to § 157.102(b), most of the requirements of Subpart A, which apply to applications for certification under the regular procedures of that Subpart, also would apply to applications under Subpart E. The exceptions, described below, are set forth in subparagraphs (1)–(5) of § 157.102(b).

Since applicants under Subpart E would be required to furnish information described under § 157.6(b), they should plainly state that they are requesting consideration under the optional procedures of Subpart E and that they agree to comply with all terms and conditions specified in Subpart E. Any person wishing to intervene in the proceeding on an application or protest an application under Subpart E must include in its filing, in addition to the information required under § 157.10, which sets forth the requirements generally applicable to interventions and protests, a statement of any issues of fact that the intervenor wishes to raise. The intervenor's statement should include only those issues material to a determination as to whether the applicant's proposal is in the public convenience and necessity.

The provisions of § 157.7 of Subpart A permitting abbreviated applications, do not apply to applications under Subpart E. Further, the provisions of § 157.11 of Subpart A relating to hearings will not apply to applications for certificates under Subpart E. Hearing procedures for Subpart E are set forth in § 157.103, discussed below.

With one exception, Subpart E applications will be subject to the provisions of § 157.14, which require the filing of information necessary to determine a pipeline's cost of service, compliance with relevant non-federal requirements, and other matters to be considered by the Commission in determining whether proposed services, under the proposed terms, would be in the public convenience and necessity. The provision of § 157.14 of Subpart A that will not apply to applications under Subpart E is the requirement under § 157.14(a)(18) that applicants submit proposed rates. In lieu of, but similar to the information required under § 157.14(a)(18), proposed § 157.202 requires that an applicant provide a statement of the rates to be charged for the proposed sales or service, including: (a) *pro forma* copies of appropriate changes in or additions to the effective tariff or a *pro forma* copy of the new gas tariff proposed, or (b), when a new rate is proposed, a statement explaining fully how the proposed rate was derived. Such statement must clearly show whether the proposed rate results from negotiation, cost-of-service determination, competitive factors or others, and explain the bases for the findings and conclusions of any studies which have been made in connection therewith. Section 157.202 further requires that proposed rates conform to the rate conditions set forth in proposed § 157.103(c), discussed below.

Section 157.103 Terms and Conditions. Special terms and conditions applicable to services provided under Subpart E are set forth in proposed § 157.103. The only conditions therein that are applicable to only Subpart E are set forth in paragraphs (a) and (b) of § 157.103. Paragraph (a) provides that a certificate issued pursuant to Subpart E will be non-exclusive and non-prejudicial to any application for any other certificate under Subpart E or elsewhere under the Commission's regulations for authorization to serve any customers that are already being provided new service under a Subpart E certificate or any other customers in the same area.

Paragraph (b) of § 157.103 provides that a certificate issued under Subpart E provides only for authorization to construct or acquire and operate qualifying facilities and to provide new service, as those terms are defined in § 157.101(b).

The other conditions, described below, set forth in proposed § 157.103 are also being proposed for application to self-implementing transactions under Subparts B, C, G, and H of Part 284 for interstate pipelines, intrastate pipelines, and local distribution companies.

Paragraphs (c)(1) of § 157.103 provides that any rate charged for any new service shall comply with the rate conditions set forth in proposed § 284.7 of Subpart A of Part 284. As discussed above, this proposed new section sets forth a number of requirements applicable to any rate proposed for transportation service performed under new §§ 284.102, 284.122, 284.221, 284.243, or any service under § 157.105 of Subpart E. The conditions also would become applicable to a rate already in effect if a customer's adjustment rights under § 157.20(h) are triggered, and the customer exercises its right to stop its purchase from a pipeline and demand instead that the pipeline transport natural gas purchased elsewhere by the customer. The conditions require the rate to be a volumetric rate with no provision to guarantee revenue. The rate also must reflect any variation in the cost of service due to time-of-service and geographic area. The rates may be downwardly flexible, in which case the "ceiling rate" would be the off-peak incremental cost of such service and the "rate floor" would be the short-run average variable costs incurred in providing such service. The above-described conditions apply. However, the customer may specifically agree to services under other terms and conditions.

Paragraph (c)(2) of § 157.103 provides that rates will not be certificated for an applicant proposing to sell or transport natural gas under Subpart E prior to the pipeline filing a rate case under section 4 of the Natural Gas Act wherein the applicant establishes representative levels of volumes of natural gas to be transported under Subpart E and Subparts B, G, and H of Part 284. Further, retention of revenues will be permitted in the same way as for self-implementing transportation services under Part 284.

Paragraph (d) of § 157.103 provides that, upon request by the applicant, any order issuing a certificate under Subpart E shall provide conditional pre-granted authority to abandon the proposed new service and qualifying facilities at the expiration of the contracts underlying the new service. Section 157.103(d) provides that, under certain conditions any pre-granted abandonment authorization shall be subject, however, to protest under proposed § 157.106 by any customer currently receiving any service that would be abandoned. In this regard, § 157.103(d) requires that an interstate pipeline provide at least forty-five days written notice to a customer, if it intends to abandon any new service being provided to the customer upon expiration of their contract.

Paragraph (e) of § 157.103 requires that an interstate pipeline providing any transportation service under a certificate issued pursuant to Subpart E offer firm transportation service to all existing customers and all other shippers that request firm transportation service and that are willing to pay the applicable tariff rate on file with the Commission. The applicant would not be required to offer interruptible service.

Paragraph (f) of § 157.103 prohibits any certificate holder transporting under Subpart E from discriminating against any shipper, whether it be in the quality of service offered, the categories, prices,

or volumes of natural gas that the pipeline agrees to transport, or by customer classification or discrimination of any other kind.

As indicated above, any transportation service provided under a Subpart E certificate will be subject, pursuant to paragraph (i) of § 157.103, to the customer's rights to adjust contract demand, as set forth in proposed § 157.21 of Subpart A.

Authority providing flexibility in changing receipt and delivery points is provided by paragraphs (g) and (h) of § 157.103, respectively. Under these provisions, a certificate holder may, at the request of the shipper and without prior notice, reduce or discontinue receipts or deliveries of natural gas or deliveries at a particular point and commence or increase receipts or deliveries at another point. This flexibility would be subject only to the condition that the total natural gas volumes received or delivered by the interstate pipeline following any such reassignment may not exceed the total volume of natural gas that the certificate holder is authorized under its Subpart E certificate to transport on behalf of the shipper. The points of receipt or delivery to which natural gas volumes may be reassigned under § 157.103 (g) or (h) include sales taps and other facilities authorized to be constructed and operated pursuant to a related certificate issued under Subpart F.

Subpart E incorporates the provisions of Subpart F relating to environmental safeguards. Accordingly, pursuant to paragraph (j) of § 157.103, any certificate holder providing new service under Subpart E is required to adopt the environmental compliance guidelines set forth in § 2.69 of the Commission's regulations and to provide the relevant portions thereof to construction personnel with instructions to adhere to the guidelines. Further, all new service must be consistent with all applicable law, including but not limited, to the statutes, regulations, and compliance plans specified in paragraph (j).

Paragraph (k) of § 157.103 requires that the interstate pipeline complete any authorized construction, extension, or acquisition of qualifying facilities, place such facilities in actual operation, and commence all authorized services within one year of the date its certificate is issued, unless an extension is received from the Director of the Office of Pipeline and Producer Regulation.

The reporting requirements for Subpart E are set forth in paragraph (*l*) of § 157.103. On or before May 1, of each year, the certificate holder must file an annual report, under oath, and signed by a senior official of the company, containing the information required under items (i) through (viii) of § 157.103(*l*). These items reference the corresponding reporting provisions of Subpart F for all services and activities other than transportation, since the services and activities for which certification would be available under Subpart E are the same, with the exception of transportation services which are proposed herein to be removed from the scope of Subpart F, as those for which authorization may be obtained under Subpart F.

The information to be required under § 157.103(*l*) regarding transportation under Subpart E is specified in proposed § 284.221(e)(2) of Subpart G.

In the event that a certificate holder fails to undertake any activity certificated under Subpart E, § 157.103(*l*) requires that the certificate holder include a statement to that effect in its annual report.

In addition to the annual report, supplemental reports would be required by paragraph (*l*)(2) of § 157.103 within 30 days of any significant change with respect to the information filed in the last annual report. Such supplemental reports also must be under oath and signed by a senior official of the company.

Section 157.103(m) provides that a Subpart E certificate holder may permit an existing customer, at the customer's request, to change from one rate schedule to another for new service, if the changes are consistent with the terms of effective tariffs on file with the Commission and the combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, for either annual or peak day limitations.

Section 157.104 Hearings. Section 157.104 sets forth the hearing procedures for Subpart E. Paragraph (a) states that the Commission will give notice of and schedule each application for public hearing at the earliest possible date, giving due consideration to statutory requirements and other pending matters.

As provided in § 157.104(b), if an application by any person for the issuance of a certificate under Subpart E fully complies with the requirements of §§ 157.102 and 157.103, thereby demonstrating the applicant's willingness to assume all economic risks of the proposed activities, the Commission shall presume that the provisions of section 7(e) of the Natural Gas Act have been satisfied and that the proposed new service is in the public convenience and necessity. Paragraph (c) of § 157.104 provides for rebuttal of this presumption by any protestor complying with the requirements applicable to interventions and protests under § 385.211 and § 385.214 of the Commission's regulations and under proposed § 157.106. The protestor shall carry the burden of proof in demonstrating that certification of the proposed activities would not be in the public convenience and necessity.

Section 157.105 Issuance of Certificate. As provided in § 157.105, in the event any intervenors protest an application in accordance with the procedures set forth in § 157.106 but fail to rebut the Commission's presumption, based on the applicant's full compliance with all applicable requirements of §§ 157.102 and 157.103—including the applicant's assumption of all economic risks of the proposed activities—that the proposed new service activities are in the public convenience and necessity, the Commission will issue the requested certificate.

Section 157.106 Protests to Abandonment of New Service. Section 157.106 provides that, if a customer has received notice from a certificate holder in accordance with § 157.103(e) that it intends to abandon any part of new service being provided to the customer under Subpart E upon expiration of their contract, the customer may, within thirty days prior to such expiration date, file a petition under § 385.207 of this chapter protesting the abandonment and requesting issuance of an order by the Commission directing the certificate holder to continue the new service in accordance with the expired contractual agreement. The customer must state under oath that it is willing to pay the just and reasonable rate for continuation of the new service and that continuation is necessary because it has been unable, after having made all reasonable efforts, to arrange for alternative service. If such a filing is made by the customer, the certificate holder shall be required to continue the new service until the date established by any order issued by the Commission on the customer's petition.

D. Billing Procedure for Purchased Gas

This section of the proposed rule establishes a three-part billing procedure which provides an incentive for pipelines to reduce their gas acquisition costs applicable to new markets by eliminating the rolled-in pricing of the pipeline's gas supplies prices under NGPA sections 104, 106(a) and gas") with gas priced under any other NGPA category and comparable costs of imported gas ("new gas").

The Commission believes that existing customers of the pipeline are entitled to be billed on the basis of the reserves of

"old gas" the pipeline has. The Commission reasons that the pipeline entered into a long-term contract with a producer in the 1960's or 1970's based on its projected sales to its existing customers. It would be inequitable to permit new customers that come onto the pipeline's system as a result of these proposed rules to benefit from the pipeline's reserve of old gas. The Commission is proposing a new billing procedure so that the pipeline and the customer can determine the amount of old gas the customer is entitled to be billed for by the pipeline.

The Commission is concerned that rolled-in pricing under current Commission policy may distort the accuracy of price signals being transmitted from new customers to producers, especially for gas supplies incentively priced under the NGPA. In previous orders, the Commission has expressed similar concern over the allocation of rolled-in priced gas supplies as between on-system and off-system customers.[53] The Commission requests comments on whether the proposed billing procedures achieve more accurate and efficient pricing of gas to new and marginal pipeline markets consistent with the Natural Gas Act.[54]

This new billing procedure, along with the new revenue retention and volumetric rate proposals in this Notice, would require changes to rates and tariffs on file with the Commission. For this reason, the Commission requests comments on what changes in Commission procedures and administration may be needed; especially in rate cases under section 4 of the Natural Gas Act, in order to ensure the Commission is able to meet the needs of the industry for timely review of rates and tariffs filed in response to the proposed rule.

If transportation customers are provided non-discriminatory access to transportation services, a pipeline and such customers would appear to be placed in comparable bargaining positions. Similarly, existing firm sales customers who are provided a right to adjust their contract demands with their pipeline suppliers would also appear to be in comparable bargaining positions with their suppliers. In both cases, the customer and the pipeline enjoy the fruits of competition between transportation and sales services made available on the same pipeline. Thus, if the firm sales customer does not choose to pay the costs of "new" gas billed by the pipeline in the second block under this proposed billing procedure, it may reduce its contract demand and seek gas supplies elsewhere and have them transported by the same pipeline or, if a partial requirements customer, seek sales or transportation services by another pipeline. Similarly, a firm transportation customer that chooses not to reserve firm pipeline capacity may purchase gas on the spot market and have it transported under the non-discriminatory self-implementing transportation services made available by this proposal. For these reasons, the Commission is proposing that any sales prices for gas described in block 2 will be presumed to be just and reasonable under the Natural Gas Act if non-discriminatory transportation services are available to a pipelines's customers. The Commission requests comments on whether negotiated rates available to one or some of a pipeline's customers should also be made available to all customers, consistent with the Natural Gas Act. The Commission also requests comments on whether the four-year delay before the just and reasonable rate presumption for block 2 may be applied is too long or too short. Would such a phase-in period have beneficial or adverse effects on competition?

Section 154.38 (d)(4)(xi) Billing Procedure for Purchased Gas, and Section 154.43 Billing Procedures for Purchased Gas On or After October 1, 1985. The Commission is proposing to establish new billing procedures for natural gas pipeline companies. For companies that file purchased gas adjustments (PGAs) under 18 CFR 154.38, the Commission is proposing to add a new § 154.38(d)(4)(xi). For companies that do not, the Commission is proposing to add a new § 154.43. Since both of the billing procedures are the same, only the proposed PGA regulation is reviewed.

Paragraph (A)(1). Paragraph (A)(*1*) requires that beginning October 1, 1985, each natural gas pipeline separate, in its PGA filing, its gas purchase costs into three parts, regardless of whether such purchases were obtained directly or indirectly from a producer.

The first part will include the volumes, on a Btu basis, of purchases of gas under sections 104, 106(a) and 109 of the NGPA (block 1). The second part will include the volumes on a Btu basis of purchases of gas under all other sections of the NGPA and all comparable costs of imported gas at the border or at the tailgate of the regasification plant (block 2). The third part includes all other demand and commodity costs not included in the first two paragraphs, as billed to the pipeline. The Commission requests comments on whether to include all costs of imported gas in block 2.

Paragraph (A)(2). The Commission is proposing to establish new subaccounts to Account Nos. 800–803 of the Uniform System of Accounts to reflect the three categories. The Commission is also proposing to establish separate sets of subaccounts to Account No. 191 to reflect deferred gas costs of the above gas purchase categories. The proposed revisons to the Uniform System of Accounts and Account No. 191 do not appear in the regulatory text. The Commission requests comments on how appropriate storage costs should be allocated among the categories proposed to be established.

Paragraph (A)(3). The Commission is proposing to require a pipeline to provide certain natural gas sales information to its customers so that each customer would be able to determine what percentage of block 1 gas it would be entitled to purchase. In paragraph (A)(*3*)(*iv*) the Commission proposes the following methodology to permit the customer to calculate the percentage of its entitlement. Unless a pipeline and its customers reach an alternative agreement in an uncontested settlement, each customer's percentage entitlement to purchase block 1 gas is derived by dividing the amount of each customer's total firm purchases for calendar years 1982, 1983 and 1984 by the pipeline's corresponding total firm sales.

In addition, the proposed regulation provides that beginning October 1, 1985, and every year thereafter, in sufficient time to permit timely preparation of PGA filings, each pipeline will notify its customers of the estimated annual contract quantity of block 1 gas available to it and the pipeline for sales for that year. Each of the above procedures will be done on a Btu basis

Paragraph (B)(1). Proposed paragraph (B)(*1*) requires a pipeline to begin to bill its customers using this three-tier procedure as soon as its first PGA after the effective date of these regulations becomes effective. Also, it requires it to file a revised tariff to conform to paragraph (A).

Paragraph (B)(2). The proposed regulations also provide that pipelines must bill their customers using both a gas and a non-gas rate structure. For each customer the bill will separately state: (1) The units of gas purchased under block 1 multiplied by the weighted average cost of gas in block 1,

[53] Statement of Policy, "Off-system Sales", Docket No. PL83-2-000 April 26, 1983, 23 FERC ¶ 61,140 (1983).

[54] United Gas Pipe Line v. FERC, 649 F.2d 1,110 (5th Cir. 1981), and Battle Creek Gas Co. v. FPC, 281 F.2d 42 (D.C. Cir. 1960).

and (2) the units of gas purchased under block 2 multiplied by the weighted average cost of gas described in block 2, and (3) the non-gas rate currently in effect consisting of the pipeline's other costs including, among other things, the pipeline's demand and commodity charges, as billed to the pipeline, under paragraph (D) applies.

Paragraph (C). The Commission is proposing to require the pipeline, beginning with its first PGA filing under the proposed regulation, to prorate its total balance in Account No. 191 to sets of subaccounts of Account No. 191 as follows: (1) Purchases of block 1 gas for calendar years 1982, 1983 and 1984 over its total purchases in those years; and (2) purchases of block 2 gas for calendar years 1982, 1983 and 1984 over its total purchases for these years.

Paragraph (D). The Commission is proposing that if a pipeline offers firm transportation on a non-discriminatory basis to all customers and offers to reduce firm sales contract demands by 100 percent under § 157.21, over a four-year transition period, the sales for gas described in block 2 will be presumed to be just and reasonable under the Natural Gas Act.

Refunds. In order to clarify application of the proposed billing procedure, a new sentence is added to the PGA regulations that deal with the refund obligations. The Commission proposes that a pipeline shall pay, in cash, any refund it owes to its customers for periods prior to October 1, 1985, or until the date a PGA becomes effective. For future periods, any refund a pipeline owes will be distributed through the appropriate subaccount of Account No. 191 and will be apportioned to the newly effective gas and non-gas rates.

VI. Regulatory Flexibility Act

When the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), to prepare and make available for public comment an initial regulatory flexibility analysis unless the Commission certifies pursuant to section 605(b) of the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities.[55]

The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

In this case, the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. This rule would only apply to natural gas companies whose services, rates, or facilities are regulated under the Natural Gas Act or the NGPA. Most jurisdictional natural gas companies that would comply with this rule do not fall within the RFA's definition of small entity because: (1) The jurisdictional natural gas company is too large to be considered a "small-entity", or (2) the regulated natural gas company hold exclusive selling rights within its respective fields of operation and is therefore dominant in that field of operation. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VII. Paperwork Reduction Act Statement

The information collection provisions in this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act[56] and OMB's regulations.[57] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Ellen Brown (202) 357–5250). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission.)

VIII. Environmental Issues

An environmental assessment of the proposed rulemaking will be prepared by the Commission's environmental staff. This assessment will identify the significance of any potential environmental impact that might result from transactions that would be authorized under the blanket certificate. The environmental assessment will provide the basis for determining the need to prepare an environmental impact statement (EIS) prior to the issuance of the final rule.

Full consideration will be given to the type of projects and actions allowed under the self-implementing and notice procedure authorizations and to the proposed standard environmental compliance conditions and environmental reporting requirements proposed in this rulemaking. The assessment will evaluate direct environmental effects that may occur from authorizing transactions such as construction of facilities and secondary effects that might arise from non-construction transactions.

Any person who wishes to submit comments on environmental issues should provide a detailed explanation that addresses specific environmental concern why that concern is significant. This information will be helpful to the staff in developing an environmental record in this rulemaking, and will be incorporated in the Commission's scoping process should an EIS be prepared.

IX. Comment Procedures

A. Written Comments

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

To facilitate the Commission's review of the comments, commenters are requested to provide a 2–4 page executive summary of their position on the issues raised in this NOPR. Commenters are requested to identify the page or section of the NOPR that their discussion addresses and to use as many headings as possible. Additionally, commenters should double-space their comments, use elite type, and only use white, 8½" by 11" paper.

The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., Monday, July 15, 1985. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426 and should refer to Docket No. RM85–1–000 (Parts A–D).

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, Washington, D.C. 20426 during regular business hours.

B. Public Conference

The Commission has determined to also provide an opportunity for the oral presentation of data, views, and arguments on the matters discussed in

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[55] 5 U.S.C. 601(3) citing section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[56] 44 U.S.C. 3501–3520 (1982).

[57] 5 CFR 1320.13 (1983).

this notice. A public conference will be held in Washington, D.C., on Tuesday, July 30, 1985. The conference will be held at the Office of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and will begin at 10:00 a.m., local time. The number of the room in which the conference will be held will be available in the Commission's Office of Public Information prior to the conference on the morning of the conference.

Requests to participate in the conference must be received by July 22, 1985, and should be directed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Requests should refer to Docket No. RM85-1-000 (Parts A-D) and should indicate the name of the person who will be making the presentation and a telephone number at which that person may be contacted.

The conference will not be a judicial or evidentiary-type hearing. Persons requesting to speak will be divided into participant panels and will be permitted time to present prepared remarks. There will be no cross-examination of persons presenting statements. However, the members participating in the panel may ask questions. In addition, anyone may submit to the presiding officer questions to be asked of the participating panels. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented.

Other procedural rules relating to the conference will be announced at the beginning of the proceeding. A transcript of the conference will be made, and a copy of that transcript will be placed in the public file for Docket No. RM85-1-000 (Parts A-D) and made available for inspection at the Commission's Office of Public Information in Room 1000, 825 North Capitol Street, NE., Washington, D.C.

X. List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 161

Natural gas, pipelines.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107-7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

2. The table of contents for Part 284 is amended by adding under Subpart A a new § 284.7, removing §§ 284.105, 284.107, 284.125, and 284.127, removing and reserving Subpart F, and by revising the title of Subpart G and the sections in Subpart G to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

Subpart A—General Provisions

Sec.

* * * * *

284.7 Rate conditions.

* * * * *

Subpart F—[Reserved]

* * * * *

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

Sec.

284.221 General provision. Transportation by interstate pipelines on behalf of others.

284.222 Transportation by interstate pipelines on behalf of other interstate pipelines.

284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

284.224 Certain transportation, sales, and assignments by local distribution companies.

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§ 284.4 [Amended]

3. In § 284.4, the designation "(a)" is removed from the the first paragraph and paragraph (b) is removed.

4. Part 284 is amended by adding a new § 284.7 to Subpart A to read as follows:

§ 284.7 Rate conditions.

(a) A person providing transportation service under §§ 284.102, 284.122, 284.221, 284.224 or 284.243 of this part, or transportation or sales service under § 157.105 of Part 157 of this chapter, shall have on file with the Commission, prior to commencing such service, an appropriate rate schedule as required under this section.

(b) Any rate schedule required under this section:

(1) Must include a rate that is designed to recover on a volumetric basis all costs properly allocable to such service, based solely on a representative level of projected volumes ("volumetric rate"); and

(2) May not include a minimum-bill provision, a minimum-take provision, a demand charge, or any other provision that has the effect of guaranteeing revenue;

(3) Must reasonably reflect any material variation in the cost of providing service due to:

(i) When the service is provided; or

(ii) The geographic area in which the service is provided; and

(4) Must include:

(i) A maximum rate, which

(A) In the case of a service provided at a time other than during the peak period, is based on the incremental cost of providing that service; and

(B) In the case of a service provided during the peak period, is based on fully allocated costs of providing that service, less any fixed costs recovered in the ceiling rate for off-peak service; and

(ii) A minimum rate, which is based on the short-run average variable costs the pipeline incurs in providing that service.

(c) The pipeline may charge any rate between the maximum and minimum rate. The pipeline may not file revised rates to recover any revenues lost, during the period the rates were in effect, as a result of charging less than the maximum rate.

(d) If a pipeline has offered a volumetric rate in compliance with paragraph (a) of this section, nothing in this section precludes the Commission from approving a rate form other than a volumetric rate that is filed by a pipeline and specifically agreed to by a customer who will pay the alternative rate, such as a rate which includes a reservation

charge for the reservation of capacity for firm transportation service.

5. Section 284.102 is revised to read as follows:

§ 284.102 Transportation by interstate pipelines.

(a) Subject to the provisions of this subpart, any interstate pipeline is authorized, without prior Commission approval, to transport and deliver natural gas to any person on behalf of:

(1) Any intrastate pipeline; or

(2) Any local distribution company.

(b) Rates charged for transportation under this paragraph may not exceed the just and reasonable rates established under § 284.103.

(c) Interstate pipelines engaging in transportation arrangements authorized under this paragraph must file reports in accordance with § 284.106.

6. Section 284.103 is revised to read as follows:

§ 284.103 Rates and charges.

(a) *General rule.* Rates and charges for transportation authorized under § 284.102 shall be determined as provided in paragraphs (b) and (c) of this section.

(b) *Rate schedules on file.* If an interstate pipeline has on file with the Commission a transportation rate schedule applicable to transportation arrangements authorized under § 284.102 and in conformance with the conditions set forth in § 284.7 and paragraph (d) of this section, the interstate pipeline shall use the rates contained in that schedule.

(c) *Election.* Subject to the conditions of § 284.7 and paragraph (d) of this section, if an interstate pipeline does not have on file with the Commission a transportation rate schedule applicable to transportation arrangements authorized under § 284.102, the interstate pipeline may elect either:

(1) To base its rates upon the methodology used in designing rates to recover the transmission and related storage costs included in one of its then effective sales rate schedules; or

(2) To use the rates contained in one of its transportation rate schedules on file with the Commission which the interstate pipeline determines covers service comparable to transportation service authorized under § 284.102; or

(3) To use new rates established in conformance with § 284.7 and paragraph (d) of this section.

(d) *Retention of revenues.* The rates charged by any interstate pipeline transporting under this subpart shall be appropriate rates, and shall:

(1) Be based on:

(i) Representative levels of revenues attributable to such services that have been credited in arriving at a test period cost of service; or

(ii) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(2) Separately identify the cost components attributable to transportation, storage, and gathering costs.

7. Section 284.104 is revised to read as follows:

§ 284.104 Terms and conditions.

(a) *Contracts.* Any contracts for the transportation of natural gas authorized under § 284.102 must provide that the transportation arrangement is subject to the provisions of this subpart.

(b) *Non-discriminatory access.* An interstate pipeline that provides any transportation service pursuant to § 284.102 shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

(c) *Firm transportation requirement.* (1) An interstate pipeline providing any transportation service pursuant to § 284.102 must offer firm transportation service to all existing customers and all other shippers requesting firm transportation service that are willing to pay the applicable tariff rate on file with the Commission.

(2) An interstate pipeline subject to this paragraph may also offer interruptible transportation service.

(d) *Qualification to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraphs (b) and (c) respectively, will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

(e) *Customer right to adjust contract demand.* The conditions set forth in § 157.21 of Subpart A of Part 157 relating to a customer's right to adjust contract demand, shall apply to any interstate pipeline that transports natural gas pursuant to § 284.102.

§ 284.105 [Removed]

8. Section 284.105 is removed.

9. Section 284.106 is revised to read as follows:

§ 284.106 Reporting requirements.

(a) *Initial full report.* Within thirty days after commencing transportation authorized by § 284.102, an interstate pipeline shall file with the Commission an initial full report, under oath, signed by a senior official of the company, containing the following information:

(1) The identity of the interstate pipeline and its affiliation, if any, with the other entities involved in the transaction and the identity, title and mailing address of the person or persons to whom communications concerning the transportation arrangement authorized under this subpart should be addressed;

(2) A general description of the interstate pipeline's existing operations;

(3) A description of the transportation service including:

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) The points between which the natural gas is to be transported; and

(v) The rate to be charged, and with respect to the rate:

(A) If the interstate pipeline is charging a rate pursuant to § 284.103(b) that is currently on file with the Commission, the identity of the rate schedule;

(B) If the interstate pipeline is charging a rate computed pursuant to § 284.103(c)(1), an explanation of how the rate is computed;

(C) If the interstate pipeline is charging a rate contained in one of its rate schedules under § 284.103(c)(2), a statement of the basis upon which the interstate pipeline determined that the rate schedule used was for comparable service; or

(D) If the interstate pipeline is charging a rate pursuant to § 284.103(c)(3), an explanation of how the rate is computed, the date on which such rate was filed, and the docket number in which such rate was filed; and

(4) A statement that the contract provides that the transportation arrangement is subject to the provisions of this subpart.

(b) *Subsequent reports.* If any significant change occurs with respect to the information filed under paragraph (a) of this section, the interstate pipeline shall file with the Commission, under oath, within thirty days of the change, appropriate amendments to its initial full report, signed by a senior official of the company.

(c) *Annual report.* By March 1, of each year, an annual report shall be filed by an interstate pipeline containing, for all transportation provided during the preceding calendar year under authority of § 284.102, the following information:

(1) Total volumes transported and the source of such volumes;

(2) Total revenues received; and

(3) Any changes in the points of receipt and delivery of natural gas from those points identified in the initial full report.

(d) *Final report.* Within thirty days after the termination of any transportation arrangement authorized under § 284.102, the interstate pipeline shall file with the Commission a report, under oath, signed by a senior official of the company, stating:

(1) Current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) Actual total and maximum daily volumes of natural gas transported pursuant to the arrangement; and

(3) Total revenues received and a complete statement of the manner in which the revenues were treated.

(e) *Filing fees.* Each initial full report required by paragraph (a) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver pursuant to § 381.106 of this chapter.

§ 284.107 [Removed]

10. Section 284.107 is removed.

11. Section 284.122 is revised to read as follows:

§ 284.122 Transportation by intrastate pipelines.

(a) Subject to the provisions of this subpart, any intrastate pipeline is authorized, without prior Commission approval, to transport and deliver natural gas to any person on behalf of:

(1) Any interstate pipeline; or

(2) Any local distribution company served by an interstate pipeline.

(b) Rates charged for transportation authorized under this subpart may not exceed fair and equitable rates as provided in § 284.123.

(c) Intrastate pipelines engaging in transportation arrangements authorized under this paragraph shall file reports as required by § 284.126.

12. Section 284.123 is revised to read as follows:

§ 284.123 Rates and charges.

(a) *General rule.* Rates and charges for transportation of natural gas authorized under § 284.122 shall be fair and equitable as determined in accordance with paragraph (b) of this section.

(b) *Elections.* (1) The intrastate pipeline may, subject to the conditions set forth in paragraph (e) of this section, elect to:

(i) Base its rates upon the methodology used:

(A) In designing rates to recover the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage service) included in any of the pipeline's effective firm sales rate schedules for city-gate service on file with the appropriate state regulatory agency; or

(B) In determining the allowance permitted by the appropriate state regulatory agency to be included in a natural gas distributor's rates for city-gate natural gas service; or

(ii) Use the rates contained in any of the pipeline's effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under this subpart.

(2) (i) If an intrastate pipeline does not choose to make any election under paragraph (b)(1) of this section, it shall apply for Commission approval, by order, of the proposed rates and charges by filing with the Commission the proposed rates and charges. Each petition for approval filed under this paragraph must be accompanied by the fee set forth in § 381.403 or by a petition for waiver pursuant to § 384.106 of this chapter.

(ii) Subject to compliance by the intrastate pipeline with the conditions set forth in paragraph (e) of this section, 150 days after the date on which the Commission receives an application filed pursuant to paragraph (b)(2)(i) of this section, the rates proposed in the application will be deemed to be fair and equitable and not in excess of amounts which interstate pipelines would be permitted to charge for providing similar transportation, unless within the 150 day period, the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data, and arguments. In such proceeding, the Commission either will approve the rates or disapprove the rates and order refunds, with interest, of any amounts which have been determined to be in excess of those shown to be fair and equitable or in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation services.

(iii) Transportation rates approved or disapproved under this subparagraph pursuant to a Commission order supersede rates determined in accordance with paragraph (b)(1) of this section.

(c) *Treatment of Revenues.* The Commission presumes that all revenues received by an intrastate pipeline in connection with transportation authorized under § 284.122 and computed in accordance with paragraph (b)(1) of this section, subject to the conditions set forth in § 284.7 and paragraph (g) of this section, have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation charges by the intrastate pipeline for service to intrastate customers.

(d) *Presumptions.* If the intrastate pipeline is charging a rate computed in conformance with § 284.123(b)(1) and paragraph (e) of this section the rate charged is presumed to be:

(1) Fair and equitable; and

(2) Not in excess of the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service.

(e) *Applicability of § 284.7 conditions.* The rate for any service provided under § 284.122 shall be subject to the conditions of § 284.7.

13. Section 284.124 is revised to read as follows:

§ 284.124 Terms and conditions.

(a) *Contracts.* Contracts for the transportation of natural gas by an intrastate pipeline under authority of this subpart shall provide that the transportation arrangement is subject to the provisions of this subpart.

(b) *Non-discriminatory access.* An intrastate pipeline that provides any transportation service pursuant to § 284.122 shall provide transportation service for all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any other kind.

(c) *Firm transportation requirement.* (1) An intrastate pipeline providing any transportation service pursuant to § 284.122 shall offer firm transportation service to all existing customers and all other shippers that request firm transportation service and that are willing to pay the applicable rate on file with the Commission.

(2) An intrastate pipeline subject to this paragraph may also offer interruptible transportation service.

(d) *Qualification to access and firm transportation conditions.* The non-

discriminatory access and firm transportation conditions set forth in paragraphs (b) and (c), respectively, will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction of acquisition of any facilities.

§ 284.125 [Removed]

14. Section 284.125 is removed.

15. Section 284.126 is revised to read as follows:

§ 284.126 Reporting requirements.

(a) *Initial full report.* Within thirty days after commencing transportation authorized by this subpart, an intrastate pipeline shall file with the Commission and the appropriate state regulatory agency an initial full report, under oath, signed by a senior official of the company, containing the following information:

(1) The identity of the intrastate pipeline; and the identity, title and mailing address of the person or persons to whom communications concerning the transportation arrangement pursuant to this subpart should be addressed;

(2) A general description of the intrastate pipeline's existing operations;

(3) A description of the transportation service, including

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the services;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) The points between which the gas is to be transported; and

(v) The rate to be charged.

(vi) With respect to rate described in paragraph (a)(3)(v), a statement of the basis upon which the intrastate pipeline determined that the service provided is comparable to service provided for under that rate schedule, if the intrastate pipeline is charging a rate computed pursuant to § 284.123(b)(1)(ii).

(4) A statement that:

(i) The appropriate state regulatory agency has been notified that the Commission has presumed that all revenues received by an intrastate pipeline in connection with the transportation arrangement authorized under § 284.122 and computed in accordance with § 284.123(b)(1), have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates charged by the intrastate pipeline for service to intrastate customers; and

(ii) The transportation arrangement is subject to the provision of this subpart.

(b) *Subsequent reports.* If a significant change occurs with respect to the information filed under paragraph (a) of this section, the intrastate pipeline shall file with the Commission and the appropriate state regulatory agency, under oath, within 30 days of the significant change, appropriate amendments to its initial report, signed by a senior official of the company.

(c) *Annual report.* By March 1 of each year, an annual report shall be filed by an intrastate pipeline containing, for all transportation provided during the preceding calendar year under authority of § 284.122, the following information:

(1) Actual volumes transported and the source of such volumes;

(2) Total revenues received; and

(3) Any changes in the points of receipt and delivery of natural gas from those points identified in the initial full report.

(d) *Final report.* Within thirty days after the termination of any transportation arrangement authorized under § 284.122, the intrastate pipeline shall file with the Commission and with the appropriate state regulatory agency a report, under oath, signed by a senior official of the company, stating:

(1) Current information with respect to the matters required to be reported under paragraph (a) of this section;

(2) Actual total and maximum daily quantities of natural gas transported; and

(3) Total revenues received.

(e) *Filing fees.* Each initial report required by paragraph (a) of this section must be accompanied by the fee set forth in § 381.404 of this chapter, or a petition for waiver pursuant to § 381.106 of this chapter.

§ 284.127 [Removed]

16. Section 284.127 is removed.

Subpart F (§§ 284.200–284.208)—[Removed]

17. Subpart F (§§ 284.200–284.208) is removed and reserved.

18. The title of Subpart G of Part 284 is revised to read as follows:

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

19. Section 284.221 is revised to read as follows:

§ 284.221 General transportation by interstate pipelines on behalf of others.

(a) *Blanket certificate.* Any interstate pipeline may apply for a blanket certificate under this section. Upon application therefor, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 of this chapter and, if required by the public convenience and necessity, will issue to the interstate pipeline a blanket certificate authorizing such pipeline company to transport natural gas, as provided under this subpart.

(b) *Application procedure.* Applications for blanket certificates shall state:

(1) The name of the interstate pipeline; and

(2) A statement by the interstate pipeline that it will comply with the conditions in paragraph (c) of this section.

(c) *General conditions.* Any blanket certificate under this section shall be issued subject to the following condition:

(1) *Non-discriminatory access.* An interstate pipeline that provides any transportation service pursuant to a certificate issued under this section shall provide transportation service for all shippers willing to pay the applicable tariff rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, and volumes of natural gas transported, customer classification, or discrimination of any kind.

(2) *Firm transportation requirement.* (i) Except as provided in paragraph (b)(3), an interstate pipeline providing any transportation service under a certificate issued pursuant to this section shall offer firm transportation service to all existing customers and to all other shippers that request firm transportation service and that are willing to pay the applicable tariff rate on file with the Commission.

(ii) An interstate pipeline subject to this paragraph may also offer interruptible transportation service.

(3) *Qualification to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraphs (c)(1) and (2) of this section, respectively, will apply, subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any facilities.

(4) *Retention of revenues.* The rates charged by any interstate pipeline transporting under this subpart shall be appropriate rates, and shall:

(i) Be based on:

(A) Representative levels of revenues attributable to such services that have

been credited in arriving at a test period cost of service; or

(B) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(ii) Separately identify the cost components attributable to transportation, storage, and gathering.

(5) *Related docket numbers.* Any filings made with the Commission reporting individual transactions under § 284.222 or § 284.223 pursuant to a certificate issued under this section shall reference the docket number of the proceeding in which the blanket certificate was granted.

(d) *Pre-grant of abandonment.* Abandonment of transportation services pursuant to section 7(b) of the Natural Gas Act is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate issued pursuant to this section.

(e) *Availability of regular certificates.* Nothing in this subpart shall preclude an interstate pipeline with regard to a particular transportation service from applying for an individual certificate of public convenience and necessity for that service.

(f) *Cross references.* (1) Any local distribution company served by an interstate pipeline may apply for a blanket certificate to perform certain services under § 284.224.

(2) Any interstate pipeline may apply under Subpart F of Part 157 of this chapter for a blanket certificate to construct or acquire and operate certain natural gas facilities under Subpart F of Part 157 of this chapter that are necessary to provide transportation under § 284.222 or § 284.223. Section § 157.208 of this chapter provides automatic authorization not subject to prior notice for the construction, acquisition, operation, and miscellaneous rearrangement of eligible facilities, as defined in § 157.202 of this chapter, if the associated costs do not exceed the limits specified in § 157.208(d) of this chapter. Other eligible facilities may be constructed, acquired, rearranged, and operated subject to the prior notice requirements of § 157.205 of this chapter. Eligible facilities include pipeline receipt points and pipeline interconnections, where more than one transporter is involved. The construction and operation of sales taps, explicitly excluded from the § 157.202 of this chapter definition of eligible facilities, are subject to the conditions set forth in § 157.211 of this chapter and the prior notice conditions of § 157.205 of this chapter.

(g) *Flexible receipt point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this section may at the request of the shipper and without prior notice:

(i) Reduce or discontinue receipts of natural gas at a particular receipt point from a supplier; and

(ii) Commence or increase receipts at another receipt point from that supplier or any other supplier. The total natual gas volumes received by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(2) The receipt points to which natural gas volumes may be reassigned under paragraph (g)(1) for receipt by an interstate pipeline transporting under a certificate issued pursuant to this section include facilities authorized to be constructed or acquired and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(h) *Flexible delivery point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this section may at the request of the shipper and without prior notice:

(i) Reduce or discontinue deliveries of natural gas at a particular delivery point; and

(ii) Commence or increase deliveries at another delivery point. The total natural gas volumes delivered by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(2) The delivery points to which natural gas volumes may be reassigned under paragraph (h)(1) of this section for delivery by an interstate pipeline transporting under authority of this section include sale taps authorized to be constructed and operated pursuant to § 157.211 and the prior notice conditions of § 157.205 of Subpart F of Part 157 of this chapter.

(i) *Customer right to adjust contract demand.* The conditions set forth in § 157.21 of this chapter relating to a customer's right to adjust contract demand shall apply to any interstate pipeline that transports natural gas under § 284.221.

§ 284.222 [Redesignated as § 284.224 and Amended]

20. Part 284 is amended in subpart G by redesignating § 284.222 as new § 284.224, adding new § 284.222 and new § 284.223 and revising paragraphs (b), (d)(1), (e)(1), and (g) of redesignated § 284.224 to read as follows:

§ 284.222 Transportation by interstate pipelines on behalf of other interstate pipelines.

An interstate pipeline issued a certificate pursuant to § 284.221 may transport natural gas on behalf of another interstate pipeline subject to the same terms and conditions, rates and charges, and reporting requirements that would apply if the transaction were authorized by Subpart B of this Part (as such subpart may be amended from time to time).

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

(a) *Automatic authorization.* (1) An interstate pipeline may transport any natural gas for any shipper for any end-use by the shipper or any other person for a single term that shall not exceed 120 days.

(2) Any interstate pipeline that began transportation on behalf of an end-user prior to November 1, 1985, under authority of previously effective § 157.209(e)(1) of this chapter, may under the certificate issued pursuant to that section after October 31, 1985, provided the term of that particular transportation transaction does not exceed a total of 120 days, including periods both prior to and subsequent to November 1, 1985. Regardless of any unexpired portion of the transportation term authorized under previously effective § 157.209(e)(1) of this chapter, if, between November 1, 1985, and the expiration of the 120-day authority to transport, the interstate pipeline obtains a certificate under § 284.221 automatically authorizing a transportation arrangement under § 284.223(a) involving the same interstate pipeline and shipper, the transportation term authorized under § 284.223(a) shall not continue for more than 120 days after the date of final authorization under § 157.205(g) of this chapter.

(3) Additional 120-day transportation terms are authorized under this paragraph for a transportation arrangement between the same interstate pipeline and shipper under which natural gas has been transported previously under the automatic authority of this paragraph, *provided that,* (i) the gas transported by the same

pipeline for the same shipper and (ii), after the commencement of the last 120-day transportation term authorized under this paragraph but prior to the commencement of the next 120-day transportation term, the transportation arrangement between that transporter and that shipper was authorized under the prior notice procedures of § 157.205 of this chapter.

(b) *Prior notice.* Subject to the prior notice requirements of § 157.205 of this chapter, an interstate pipeline is authorized under this paragraph of this section to transport any natural gas pursuant to a certificate issued under § 284.221 for any shipper for any end-use by the shipper or any other person. Necessary filings under § 157.205 of this chapter may be made by the interstate pipeline, the shipper, or an agent acting on their behalf.

(c) *Contents of prior notice application under § 284.221.* In addition to the requirements of § 157.205(b) of this chapter, applications under § 284.221 for issuance of a certificate authorizing transportation under paragraph (b) of this section shall contain:

(1) The name of the shipper;

(2) The volumes of gas to be transported on a peak day, on an average day, and on an annual basis;

(3) A copy of the executed transportation agreement indicating the interstate pipeline's proposed transportation rate, together with a breakdown and justification of the proposed rate level to the extent indicated in § 284.103;

(4) A clear description of any agency relationship under which a local distribution company or affiliate of the shipper will receive natural gas on behalf of the shipper. If any such agency relationship is clearly described in the executed transportation agreement, another separate statement is not necessary;

(5) If the interstate pipeline will deliver the natural gas to a local distribution company on behalf of another shipper, a statement by the distributor or that it has capacity sufficient to perform the transportation service without detriment or disadvandage to its other customers;

(6) A description of projected costs, and location of any facilities that will be constructed in order to provide the transportation service, as well as any other facilities that will be utilized; and

(7) If the interstate pipeline has transported for the same shipper under Subpart B of this part or the 120-day automatic authorization provisions of paragraph (a) of this section, the docket numbers under which the pipeline or any person acting on its behalf made any filings required with respect to such transportation.

(d) *Special conditions.* In addition to the conditions set forth in § 284.221, any transportation authorized under either paragraph (a) or (b) of this section shall be subject to the following conditions:

(1) The rates and charges shall be subject to the requirements of § 284.103 and shall be stated in a generally applicable transportation tariff; and

(2) Each initial report required by paragraph (g)(1) of this section must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

(e) *Reporting requirements*—(1) *Initial report.* Within thirty days after commencing transportation authorized by § 284.223(a) or (b), an interstate pipeline shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing a description of the transportation service which includes:

(i) The identities of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) A justification of the basis for its eligibility for transportation under this subpart;

(v) The points between which the natural gas is to be transported;

(vi) The rate to be charged, together with a breakdown and justification of the rate level;

(vii) The identities of any transportation other than the certificate holder involved in transporting the natural gas from its source to the shipper; and

(viii) Each initial report must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.406 of this chapter.

(2) *Annual report.* By March 1 of each year, an annual report shall be filed by an interstate pipeline containing, for all transportation provided during the preceding calendar year under authority of §§ 284.223(a) and (b), the following information:

(i) Total volumes transported and the source of such volumes;

(ii) Total revenues received;

(iii) The total cost and completion dates for any facilities constructed by the interstate pipeline pursuant to a certificate issued under Subpart F of part 157 of this chapter in order to provide transportation service under § 284.223(b) during the preceding calendar year; and

(iv) Any changes under authority of §§ 284.221(g) and (h) in the points of receipt and delivery of natural gas by the interstate pipeline identified, in the case of the first annual report, in its initial report or, in the case of subsequent annual reports, in its preceding annual report and the quantities of natural gas by which receipts or deliveries at each point were decreased or increased.

(f) *Coordination with transportation services authorized prior to November 1, 1985, under Subpart F of Part 157.* No certificate issued under this section shall provide any authority for the continuation of transportation authorized under § 157.209 of this chapter prior to November 1, 1985, beyond the date authorized by the certificate issued pursuant to that section.

§ 284.224 Certain transportation, sales and assignments by local distribution companies.

* * * * *

(b) *Blanket certificate.* Any local distribution company served by an interstate pipeline or any Hinshaw pipeline may apply for a blanket certificate under this section. Upon application therefor, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 and Subpart H of Part 385 of this chapter and, if required by the present or future public convenience and necessity, the Commission will issue a blanket certificate to such local distribution company or Hinshaw pipeline. Such certificate will authorize the local distribution company to engage in the sale, transportation, or assignment of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E of this part (as amended from time to time), except as otherwise provided in paragraph (e)(2) of this section.

* * * * *

(d) *Effect of certificate.* (1) A certificate issued pursuant to this section will authorize the certificate holder to engage in transactions of the type authorized by Subparts C, D, and E of this part.

* * * * *

(e) *General conditions.* (1) Except as provided in paragraph (e)(2) of this section, any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms and conditions, and reporting requirements that would apply if the

transaction were authorized for an intrastate pipeline under Subparts C, D, and E of this part (as amended from time to time).

* * * * *

(g) *Hinshaw pipeline without blanket certificate.* A Hinshaw pipeline which does not obtain a blanket certificate under this section is not authorized to sell, assign, or transport natural gas as an intrastate pipeline authorized to engage in such transactions by Subparts C, D, and E of this part.

* * * * *

20. Section 284.241 is revised to read as follows:

§ 284.241 Applicability.

This subpart implements section 603 of the Outer Continental Shelf Lands Act Amendments of 1978 43 U.S.C. 1862 and applies to certain transportation of natural gas produced from OCS leases owned in whole or in part by an eligible distributor to its service area for its general system supply.

21. In § 284.242, paragraph (e) is revised to read as follows:

§ 284.242 Definitions.

For purposes of this subpart:

* * * * *

(e) "Covered transportation" means any transportation of natural gas produced from an eligible OCS lease by an interstate pipeline for ultimate delivery to the service area of the eligible distributor participating in the lease.

22. In § 284.244, the introductory text and paragraphs (a) and (b) are revised to read as follows:

§ 284.244 Application requirements.

An application by an interstate pipeline for covered transportation shall include the following:

(a) A stated preference for authorization under either section 7(c) of the Natural Gas Act or section 311(a)(1) of the NGPA. If section 7(c) authorization is preferred, the application shall also meet the prior requirements of Part 157. If section 311(a)(1) authorization is preferred, the application shall also meet the requirements of Subpart B of this part.

(b) A statement that all of the natural gas transported pursuant to this subpart (other than normal compressor fuel and loss allowance) shall enter the eligible distributor's service area.

* * * * *

23. In § 284.245, paragraph (a) is revised and new paragraphs (d) through (h) are added to read as follows:

§ 284.245 Terms and conditions.

(a) *General.* Covered transportation by an interstate pipeline authorized under section 7(c) of the Natural Gas Act, or under section 311(a)(1) of the NGPA, shall be subject to the notice requirements of § 157.205 of Part 157 of this chapter and the same terms and conditions, rates and charges, and reporting requirements that would apply if the transportation were authorized under Subparts A and B of this part (as such subparts may be amended from time to time).

* * * * *

(d) *Non-discriminatory access.* An interstate pipeline that provides any transportation service under a certificate issued pursuant to this subpart shall provide transportation service to all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

(e) *Firm transportation requirement.* (1) An interstate pipeline providing any transportation service under a certificate issued under this subpart shall offer firm transportation service to all existing customers and all other shippers that request firm transportation service and that are willing to pay the applicable rate on file with the Commission.

(2) An interstate pipeline subject to this paragraph may also offer interruptible service.

(f) *Qualifications to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraph (d)(1) and (e), respectively, will apply subject only to the limited qualification that the interstate pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

(g) *Customer right to adjust contract demand under § 157.21.*

The conditions set forth in § 157.21 of this chapter relating to a customer's rights to adjust contract demand shall apply to any interstate pipeline that transports natural gas under § 284.243.

(h) *Retention of revenues.* The rates charged by any interstate pipeline transporting under this subpart shall be appropriate rates, and shall:

(1) Be based on

(i) Representative levels of revenues attributable to such services that have been credited in arriving at a test period cost of service; or

(ii) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(2) Separately identify the cost components attributable to transportation, storage, and gathering costs.

24. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009 3 CFR 142 (1978).

25. The table of contents for Part 157 is amended by adding a new § 157.21 to Subpart A, by revising Subpart E, and by removing § 157.209 from Subpart F to read as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Subpart A—Applications for Certificates of Public Convenience and Necessity and for Orders Permitting and Approving Abandonment Under Section 7 of the Natural Gas Act, As Amended, Concerning any Operation, Sales, Service, Construction, Extension, Acquisition or Abandonment

Sec.

* * * * *

157.21 Condition permitting firm sales customers of interstate pipelines to adjust firm sales purchase obligations.

* * * * *

Subpart E—Optional Procedures for Applications for Certificates of Public Convenience and Necessity Authorizing Activities To Provide New Service and Providing Pre-Granted Approval of Abandonment of Activities and Facilities Used To Provide New Service Under Section 7 of the Natural Gas Act.

157.100 Applicability.
157.101 Definitions.
157.102 Contents of application.
157.103 Terms and conditions.
157.104 Hearings.
157.105 Issuance of certificate.
157.106 Protests to abandonment of new service.

* * * * *

26. Part 157 is amended by adding a new § 157.21 to read as follows:

§ 157.21 Condition permitting firm sales customers of interstate pipelines to adjust certain firm sales purchase obligations.

(a) *General rule.* Except as provided in paragraph (b) of this section, any firm

sales customer of an interstate pipeline as of the effective date of this rule may reduce the contract demand in its firm sales service agreements with that pipeline if:

(1) The pipeline, after the effective date of this rule:

(i) Accepts a certificate issued pursuant to section 7 of the Natural Gas Act that authorizes the pipeline pursuant to § 284.221 of this chapter or § 157.105 to transport natural gas for any other person; or

(ii) Operates under authority of §§ 284.102 or 284.243 of this chapter; and

(2) The customer gives the pipeline written notice, at least 30 days in advance, of the extent of the firm sales service agreement to be reduced.

(b) *Exception.* In any calendar year, a customer may reduce up to 25 percent of the contract demand in its firm sales service agreements existing as of the effective date of this rule. At any time, the pipeline may permit a firm sales customer to reduce its contract demand by more than 25 percent. No adjustment may occur prior to November 1, 1985.

(c) *Abandonment.* (1) If a firm sales customer exercises its right under paragraph (a) of this section to reduce its contract demand, the pipeline may, pursuant to § 157.18, apply to abandon the service to the extent of the reduction.

(2) The abandonment of service authorized by this subparagraph shall be deemed to be permitted by the present or future public convenience and necessity.

(3) By exercising its right under paragraph (a) of this section to reduce its contract demand, the customer shall be deemed to have consented to the abandonment.

(d) *Rate adjustments.* Whenever a customer's contract demand in its firm sales service agreements is adjusted pursuant to this section, the pipeline shall file appropriate adjustments to its rates for firm sales service.

27. In Part 157, Subpart E is revised to read as follows:

Subpart E—Optional Procedures for Applications for Certificates of Public Convenience and Necessity Authorizing Activities To Provide New Service and Providing Pre-Granted Approval of Abandonment of Activities and Facilities Used To Provide New Service Under Section 7 of the Natural Gas Act

§ 157.100 Applicability.

This subpart establishes optional procedures whereby any eligible applicant, as defined in § 157.101, may obtain, for the purpose of providing new service, a certificate authorizing the following activities subject to the Commission's jurisdiction:

(a) The transportation of natural gas;

(b) Sales of natural gas;

(c) The construction and operation of natural gas facilities;

(d) The acquisition and operation of natural gas facilities; and

(e) Pre-granted abandonment of such activities and facilities upon termination of its contractual obligations to provide the services.

§ 157.101 Definitions.

(a) *General rule.* Terms defined in the Natural Gas Policy Act of 1978 shall have the same meaning for the purposes of this subpart as they have under that Act.

(b) *Subpart E definitions.* For purposes of this Subpart:

(1) "Eligible applicant" means any natural gas company, as defined in section 2 of the Natural Gas Act, or person who will be a natural-gas company upon completion of any proposed construction or extension of natural gas facilities.

(2) "Natural-gas company" has the same meaning as under section 2 of the Natural Gas Act, which provides that natural-gas company means a person engaged in transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(3) "New service" means a service that the applicant for a certificate under this Subpart has not previously provided. If a contract pursuant to which service is being provided under a certificate issued pursuant to this Subpart or Subpart A of this Part is renegotiated to provide for an increase in existing service or an additional kind of service, only the incremental service or the different service qualifies as "new service."

(4) "Qualifying facility" means a facility that will be used solely to provide new service, including facilities authorized under Subpart F of this part.

(5) "Sensitive environmental area" means:

(i) The habitats of species which have been identified as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended);

(ii) National or state forests or parks;

(iii) Properties listed on, or eligible for inclusion in, the National Register of Historic Places, or the National Register of Natural Landmarks;

(iv) Floodplains and wetlands;

(v) Designated or proposed wilderness areas, national or state wild and scenic rivers, wildlife refuges, management areas, and sanctuaries;

(vi) Prime agricultural lands, designated by the Department of Agriculture; or

(vii) Sites which are subject to use by American Indians and other Native Americans for religious purposes.

§ 157.102 Contents of application.

(a) *General.* Applications under this subpart shall set forth all information necessary to advise the Commission fully concerning the transportation, sales, and other services, and facilities construction, extension, or acquisition, and operation for which a certificate is requested and the pre-granted abandonment authorization requested.

(b) *Additional conditions and applicability of Subpart A.* The requirements of Subpart A of this part shall apply to applications under this subpart, in addition to or except as provided in paragraph (b) (1)–(5) of the section.

(1) In addition to the information required under § 157.6(b), *General content of application; filing fee,* an application under this subpart shall contain a statement plainly requesting that the application be considered under the optional procedures of this Subpart and a statement that the applicant agrees to comply with all terms and conditions specified in § 157.103.

(2) The provisions of § 157.7, *Abbreviated applications,* shall not apply or be available to applications under this subpart.

(3) Any person filing a petition to intervene, notice of intervention, or protest in a proceeding on an application for a certificate under this subpart shall include in its filing, in addition to the information required under § 157.10, *Interventions and Protests,* a statement of any issues of fact that the intervernor wishes to raise and which the intervenor believes to be material to a determination of whether the applicant's requested certificate is or will be required by the present or future public convenience and necessity.

(4) Section 157.11, *Hearings,* shall not apply to applications for certificates under this subpart. Procedures applicable to the conduct of hearings on applications under this subpart are set forth in § 157.103, *Hearings.*

(5) The requirements of § 157.14, *Exhibits,* shall apply to applications under this subpart, except for subsection 157.14(a)(18), *Exhibit P–Tariff.* In lieu of the information required under subsection 157.14(a)(18), the applicant shall provide a statement of the rates to be charged for the proposed sales or

service, including: (i) *pro forma* copies of appropriate changes in or additions to the effective tariff or a *pro forma* copy of the new gas tariff proposed, or (ii), when a new rate is proposed, a statement explaining fully how the proposed rate was derived. Such statement shall clearly show whether the proposed rate results from negotiation, cost-of-service determination, competitive factors or others, and explain the bases for the findings and conclusions of any studies which have been made in connection therewith. The rates filed pursuant to this paragraph for application to transportation services provided pursuant to a certificate issued under this subpart shall comply with the conditions set forth in § 157.103(c).

§ 157.103 Terms and conditions.

(a) *Non-exclusivity of certificates issued under this subpart.* A certificate issued pursuant to this subpart shall be non-exclusive and shall provide that it in no way prejudices any application for any other certificate under this subpart or any other subpart of this part or Part 284 for authorization to serve any customers that are already being provided new service under a certificate issued under this subpart or any other customers in the same area.

(b) *Certificate limited to qualifying facilities and new service.* A certificate issued under this subpart provides only for authorization to construct or acquire and operate qualifying facilities and to provide new service, as those terms are defined in § 157.101(b).

(c) *Rate conditions*— (1) *Applicability of § 284.7.* Any rate charged for any new service authorized by a certificate issued pursuant to this subpart shall comply with the rate conditions set forth in with § 284.7 of this chapter.

(2) The rates charged by any certificate holder transporting under this subpart shall be appropriate rates, and shall:

(i) Be based on:

(A) Representative levels of revenues attributable to such services that have been credited in arriving at a test period cost of service; or

(B) Representative levels of volumes transported that have been included in billing determinants for the purpose of establishing rates; and

(ii) Separately identify the cost components attributable to transportation, storage, and gathering costs.

(d) *Conditional pre-granted abandonment authority.* Upon request by the applicant in its application, any order issuing a certificate under this subpart shall provide pre-granted authority to abandon the proposed new service and qualifying facilities at the expiration of the contracts underlying the new service; *provided, however,* That any pre-granted abandonment authorization shall be conditional and subject:

(1) To the requirement that the certificate holder provide written notice to any customers at least forty-five days prior to the expiration of any contractual agreement with that customer to provide new service, if it intends to abandon any part of the new service upon expiration of the contractual agreement for that service, and

(2) To protest under § 157.106 by that customer following receipt of such notice.

(e) *Firm transportation requirment.* (1) A certificate holder providing any transportation service under a certificate issued pursuant to this subpart shall provide firm transportation service to all existing customers and all other shippers that request transportation service and that are willing to pay the applicable rate on file with the Commission.

(2) A certificate holder may also offer interruptible service.

(f) *Non-discriminatory access.* A certificate holder that provides any transportation service under a certificate issued pursuant to this subpart shall provide transportation service for all shippers willing to pay the applicable rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

(g) *Qualification to access and firm transportation conditions.* The non-discriminatory access and firm transportation conditions set forth in paragraphs (e) and (f) of this section, respectively, will apply subject only to the limited qualification that the pipeline will not be required to provide any requested service that would require the construction or acquisition of any new facilities.

(h) *Flexible receipt point authority.* (1) A certificate holder authorized to transport gas under a certificate issued pursuant to this Subpart may at the request of the shipper and without prior notice

(i) Reduce or discontinue receipts of natural gas at a particular point from a supplier, and

(ii) Commence or increase receipts at another delivery point from that supplier or any other supplier. The total natural gas volumes received by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this subpart to transport on behalf of the shipper.

(2) The receipt points to which natural gas volumes may be reassigned under paragraph (h)(1) of this section for receipt by an interstate pipeline transporting under a certificate issued pursuant to this subpart include sale taps authorized to be constructed and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(i) *Flexible delivery point authority.* (1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this subpart may at the request of the shipper and without prior notice

(i) Reduce or discontinue deliveries of natural gas to a particular delivery point, and

(ii) Commence or increase deliveries at another delivery point. The total natural gas volumes delivered by the interstate pipeline following any such reassignment shall not exceed the total amount of natural gas that the interstate pipeline is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(2) The delivery points to which natural gas volumes may be reassigned under paragraph (h)(1) of this section for delivery by an interstate pipeline transporting under authority of this subpart include sale taps authorized to be constructed and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(j) *Customer rights to adjust contract demand under § 157.21.* The conditions of § 157.21 relating to a customer's rights to adjust contract demands shall apply to any person transporting natural gas under a certificate issued pursuant to § 157.105.

(k) *Environmental compliance.* (1) The holder of a certificate issued pursuant to this subpart shall adopt the guidelines set forth in § 2.69 of this chapter for all activities authorized by the certificate and shall issue the relevant portions thereof to construction personnel, instructing them to use these guidelines.

(2) All activities shall be consistent with all applicable law including the provisions of the following statutes and regulations or compliance plans developed to implement these statutes:

(i) Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*) and the National Pollution Discharge Elimination System Program, 40 CFR Part 122 *et seq.*;

(ii) Clean Water Act, as amended (42 U.S.C. 1801 *et seq.*) and air quality regulations and state implementation plans adopted pursuant to 40 CFR Parts 50–99;

(iii) National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*);

(iv) Archaeological and Historic Preservation Act of 1974 (Pub. L. 93–291);

(v) Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*);

(vi) Endangered Species Act of 1973, Pub. L. 93–205, as amended (16 U.S.C. 1531 *et seq.*);

(vii) Executive Order 11, 1988, May 24, 1977 requiring Federal agencies to evaluate the potential effects of any actions it may take on a floodplain;

(viii) Executive Order 11,990, May 1977 requiring an evaluation of the potential effects of construction on wetland;

(ix) Wild and Scenic Rivers Act (16 U.S.C. 1274 *et seq.*);

(x) National Wilderness Act (16 U.S.C. 1133 *et seq.*);

(xi) National Parks and Recreation Act of 1978 (16 U.S.C. 1 and 230 *et seq.*).

(3) The certificate holder shall be deemed in compliance with:

(i) Paragraph (e)(2)(vi) of this section only if it adheres to the procedures in Appendix I to Subpart F of Part 157 of this chapter in which case the Commission finds that endangered species and their critical habitats are protected in accordance with 16 U.S.C. 1536;

(ii) Paragraph (e)(2)(iii) of this section only if it adheres to the procedures in Appendix II to Subpart F of Part 157 of this chapter in which case the Commission finds that there is no effect on any property protected by 16 U.S.C. 470f;

(iii) Paragraph (e)(2)(v) of this section only if the appropriate state agency designated to administer the state's coastal zone management plan, prior to construction of the project, waives its right of review or determines that the project complies with the state's coastal zone management plan.

(4) Any transaction authorized under certificate issued pursuant to this subpart shall not have a significant adverse impact on a sensitive environmental area.

(5) The noise attributable to any compressor facility installed pursuant to the blanket certificate shall not exceed a day-night sound level (L_{dn}) of 55 dB (A) at any noise sensitive area unless the noise-sensitive areas (such as schools, hospitals, or residences) are established after facility construction.

(6) Any activity to construct, acquire, or operate eligible facilities shall not be authorized if the activity is located within 2.0 miles of a nuclear power plant which is either operating or under construction, or for which a construction permit has been filed with the Nuclear Regulatory Commission.

(7) The certificate holder shall act as the Commission's non-Federal representative upon acceptance of the certificate for purposes of complying with the Endangered Species Act of 1973.

(l) *Commencement of new service.* The certificate holder shall complete any authorized construction, extension, or acquisition of qualifying facilities and place such facilities in actual operation and commence all authorized services within one year of the date its certificate is issued. The certificate holder may apply to the Director of the Office of Pipeline and Producer Regulation for an extension of this deadline.

(m) *Reporting requirements.*—(1) *Annual reports.* On or before May 1, or each year, the certificate holder shall file an annual report, under oath, and signed by a senior official of the company, listing for the previous calendar year;

(i) For each new facility or expansion thereof authorized pursuant to this Subpart, the information specified by § 157.208(e) of Subpart F of Part 157 of this chapter;

(ii) For each transportation arrangement authorized pursuant to this Subpart, the information specified in § 284.221(e)(2) of this chapter;

(iii) For each new sales tap or expansion thereof authorized pursuant to this Subpart, the information required by § 157.211(d);

(iv) For each new or increased storage service authorized pursuant to this Subpart, the information specified by § 157.215(b)(1);

(v) For each storage project tested or developed pursuant to this Subpart, the information specified by § 157.215(b)(1);

(vi) For each abandonment authorized pursuant to this Subpart, the information specified by § 157.216(d);

(vii) For each change in rate schedule authorized pursuant to this Subpart, the information specified by § 157.217(b);

(viii) If any activity required to be reported under paragraphs (m)(1)(i) through (vii) of this section was not undertaken, a statement to that effect.

(2) *Subsequent reports.* If any significant change occurs with respect to the information filed under this section, the certificate holder shall file with the Commission, within 30 days, under oath, appropriate amendments to its annual report, signed by a senior official of the company.

(n) *Automatic authorization for changes in rate schedules.* The certificate holder is authorized to permit an existing customer, at the customer's request, to change from one rate schedule to another for new service, if:

(1) The combined volumetric limitations on deliveries to the customer under both rate schedules are not increased, for either annual or peak day limitations; and

(2) The changes are consistent with the terms of effective tariffs on file with the Commission.

§ 157.104 Hearings.

(a) *General.* The Commission will schedule each application for public hearing at the earliest possible date giving due consideration to statutory requirements and other matters pending, with notice thereof as provided by § 157.9 and § 1.19(b) of this chapter.

(b) *Presumption.* If an application by any person for the issuance of a certificate under § 157.105 fully complies with the requirements of §§ 157.102 and § 157.103, thereby demonstrating the applicant's willingness to assume all economic risks of the proposed activities, the Commission shall presume, in satisfaction of the provisions of section 7(e) of the Natural Gas Act, that the applicant is qualified to perform all the activities for which certificate authorization is requested, that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition is or will be required by the present or future public convenience and necessity.

(c) *Rebuttal of presumption.* A presumption arising under paragraph (b) that the proposed activities set forth in an interstate pipeline's application for issuance of a certificate under § 157.105 are or will be in the public convenience and necessity will be subject to rebuttal by any protestor complying with the requirements of § 157.102(d) and § 385.214 of this chapter. The protestor shall carry the burden of proof in demonstrating that certification of the proposed activities would not be in the public convenience and necessity.

§ 157.105 Issuance of certificate.

If an application for issuance of a certificate under this section fully complies with the requirements of §§ 157.102 and 157.103, demonstrating

that the applicant assumes all economic risks of the proposed activities, and the presumption thereby arising under paragraph (b) of § 157.104 that the proposed activities are in the public convenience and necessity is not rebutted, the Commission will issue the requested certificate.

§ 157.106 Protests to abandonment of new service.

Pursuant to § 157.103(e), any pre-granted authority to an interstate pipeline to abandon any new service or qualifying facilities authorized by a certificate issued under this subpart upon the expiration of the contracts underlying the new service is conditional and subject to protest by any customer to which the new service is provided. If such a customer has received notice from an interstate pipeline in accordance with § 157.103(e) that it intends to abandon any part of new service certificated under this subpart upon expiration of the contractual agreement with the customer for such service, the customer may, within thirty days prior to such expiration date, file a petition under § 385.207 of this chapter protesting the abandonment and requesting issuance of an order by the Commission directing the certificate holder to continue the new service in accordance with the expired contractual agreement. The customer must state under oath (a) that continuation of the new service is necessary because it has been unable, after having made all reasonable efforts, to arrange for alternative service and (b) that it is willing to pay the just and reasonable rate for the new service. Following the filing of the customer's petition, the certificate holder shall be required to continue that part of the new service with respect to which it gave abandonment notice under § 157.103(e) until the effective date of any order issued by the Commission on the customer's petition.

28. Section 157.201 is amended by removing the word "transportation," from paragraph (a) and by revising paragraph (c) to read as follows:

§ 157.201 Applicability.

* * * * *

(c) *Cross-reference.* The procedures applicable to transportation by interstate pipelines under blanket certificates are set forth in Subpart G of Part 284 of this chapter.

* * * * *

29. In § 157.202, paragraph (b)(2)(i) is revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) *Subpart F definitions.* For purposes of this subpart:

* * * * *

(2)(i) "Eligible facility" means, except as provided in paragraph (b)(2)(ii) of this section, a facility subject to the Natural Gas Act jurisdiction of the Commission necessary to provide service within existing certificated volumes, or a gas supply facility. "Eligible facility" includes a facility needed by the certificate holder to receive gas from a supplier and interconnecting points between transporters transporting natural gas under § 284.223 of this chapter.

* * * * *

§ 157.203 [Amended]

30. In § 157.203, paragraph (b) is amended by removing the word "157.209(a)," and paragraph (c) is amended by removing the word "157.209(b),".

§ 157.204 [Amended]

31. In § 157.204, paragraph (d)(4) is amended by removing the word "157.209,".

32. In § 157.205, paragraph (a) introductory text and paragraph (h) are revised to read as follows:

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.211(b), 157.212, 157.312(b), 157.214, or 157.216(b) is authorized by a blanket certificate issued under this subpart unless, prior to undertaking such activity:

* * * * *

(h) *Final authorization.* (1) If no protest is filed within the deadline prescribed by the Secretary, the certificate holder shall be deemed to be authorized to conduct the activity under its blanket certificate, effective upon the day after the deadline for the filing of protests and interventions established by the Secretary, unless prior to that date the certificate holder has withdrawn its application under § 385.216 of this chapter.

(2) If one or more protests are filed within the deadline but subsequently withdrawn pursuant to paragraph (g) of this section, the certificate holder shall be deemed to be authorized to conduct the activity under its blanket certificate, effective upon the day after the withdrawal of all protests, unless prior to that date the certificate holder has withdrawn its application under § 385.216 of this chapter.

33. In § 157.206, the introductory text and paragraph (h) are revised to read as follows:

§ 157.206 Standard conditions.

Any activity authorized under a blanket certificate issued pursuant to this subpart shall be subject to the following conditions:

* * * * *

(h) *Treatment of revenues.* (1) Except as provided in paragraph (h) (2) and (3) of this section, all revenues received for storage services authorized under § 157.213 or for sales for resale authorized under § 157.210 in excess of an allowance of one cent per MMBtu shall be credited to Account No. 191 and flowed back to the certificate holder's customers.

(2) A certificate holder is not required to credit revenues to Account No. 191 pursuant to paragraph (h)(1) of this section:

(i) If representative levels of revenues attributable to such services have been credited in arriving at a test period cost of service; or

(ii) If representative levels of volumes transported have been included in billing determinants for the purpose of establishing rates.

(3) The certificate holder may elect to forego the one cent per MMBtu allowance provided in paragraph (h)(1) of this section. In such a case the certificate holder is not required to credit to Account No. 191 any amount which, upon application, the Commission finds to have been demonstrated as representing the out-of-pocket expenses of the certificate holder in connection with a transaction authorized under this Subpart.

* * * * *

34. Section 157.207 is revised to read as follows:

§ 157.207 General reporting requirements.

On or before May 1, of each year, the certificate holder shall file an annual report under oath, and signed by a senior official of the company, listing for the previous calendar year:

(a) For each new facility authorized as by § 157.208, the information specified by § 157.208(e);

(b) For each sales tap authorized pursuant to § 157.211(a), the information required by § 157.211(d);

(c) For each storage service authorized pursuant to § 157.213(1), the information specified in § 157.213(c);

(d) For each storage project tested or developed pursuant to § 157.215, the information specified in § 157.215(b)(1);

(e) For each abandonment authorized pursuant to § 157.216(a), the information specified by § 157.216(d);

(f) For each change in rate schedule authorized pursuant to § 157.217, the information specified by § 157.217(b);

(g) For each change in customer name authorized pursuant to § 157.218, the information specified by § 157.218(b); and

(h) If any activity required to be reported under paragraphs (a) through (h) of this paragraph was not undertaken, a statement to that effect.

35. Section 157.211 revised to read as follows:

§ 157.211 Sales taps.

(a) *Construction and operation*—(1) *Automatic authorization.* The certificate holder is authorized to construct and operate sales taps for the delivery of gas to an end user if:

(i) The natural gas is ultimately delivered to and consumed by a right-of-way grantor; and

(ii) No more than 200 MMBtu of natural gas per day are to be delivered to the right-of-way grantor.

(2) *Prior notice.* Subject to the notice procedure of § 157.205, the certificate holder is authorized to construct and operate sales taps for service to other end-users if:

(i) The natural gas is ultimately consumed by an end-user who is, or will be, served directly or indirectly from the general system supply of the certificate holder;

(ii) The volumes delivered are within the certificated entitlements of the customer; and

(iii) The certificate holder's tariffs do not prohibit the addition of new delivery points.

(3) *Contents of request.* In addition to the requirements of § 157.205(b), requests for activities described under paragraph (b) shall contain:

(i) The name of the distributor and/or the end-user and the location of all proposed sales taps;

(ii) The authority for the current sale to the distributor and end-user;

(iii) The quantity of gas to be sold through the proposed facility and its end-use;

(iv) The rate or rate schedules applicable to the sale made through the proposed tap; and

(v) A description, with supporting data, of the impact of the service rendered through the proposed sales tap upon the certificate holder's peak day and annual deliveries.

(4) *Reporting requirements.* As part of the certificate holder's annual report of projects authorized under paragraph (a) of this section, the certificate holder shall report;

(i) The name of the end-user;

(ii) The maximum daily volumes to be sold; and

(iii) The actual cost of the sales tap and date placed in service.

(b) *Indirect customers.* The authorization in paragraphs (a) and (b) of this section shall apply irrespective of whether the certificate holder sells the natural gas directly to the end-user or the natural gas is delivered to the end-user for the account of a local distribution company.

(c) *Flexible delivery point authority.* An interstate pipeline authorized to transport gas under a certificate issued pursuant to previously effective § 157.209 prior to November 1, 1985, or §284.221 of this chapter may at the request of the shipper and without prior notice (1) reduce or discontinue deliveries of natural gas at a particular delivery point constructed and operated under a related certificate issued under this subpart; *provided, that,* the total natural gas volumes delivered by the interstate pipeline following any such reassignment shall not exceed the total volume of natural gas that the interstate pipeline is authorized to transport on behalf of the shipper under the certificate issued pursuant to previously effective § 157.209 or § 284.221.

36. Subchapter E is amended by adding a new Part 161 to read as follows:

SUBCHAPTER E—REGULATIONS UNDER THE NATURAL GAS ACT

* * * * *

PART 161—PAYMENTS IN LIEU OF TAKE OR PAY OBLIGATIONS

Sec.

161.1 Applicability.
161.2 Definitions.
161.3 "Safe Harbor" presumption of prudence.
161.4 Procedures.

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Exec. Order No. 12009, 3 CFR 142 (1978).

§ 161.1 Applicability.

This section applies only to a natural gas pipeline that, on or after the effective date of this section:

(a) Accepts a certificate issued under section 7 of the Natural Gas Act that authorizes the pipeline pursuant to § 284.243 or § 157.105 of this chapter to transport natural gas for any other person; or

(b) Operates under authority of § 284.102 of this chapter; or

(c) Accepts a blanket certificate under § 284.221 of this chapter.

§ 161.2 Definitions.

For the purposes of this part—

(a) "Qualifying contract" means a contract for a first sale of natural gas entered into before January 1, 1982, the primary term of which will continue beyond January 1, 1986.

(b) "Minimum payment or purchase obligations" means the mathematical product of:

(1) The minimum take-or-pay quantities specifies in a qualifying contract for the time period remaining in the primary term of such contract after January 1, 1986, multiplied by

(2) The contract price for such quantities.

(c) "1986–1987 unrecoupable obligation" means the minimum payment or purchase obligations of a pipeline which are reasonably estimated to:

(1) Obtain under all of a pipeline's qualifying contracts for a two-year period commencing January 1, 1986; and

(2) Not be recouped under the terms of the contract.

(d) "Qualifying payment" means:

(1) For qualifying contracts with no more than five years of the primary term remaining as of December 31, 1985, any amount not in excess of x percent of the 1986-1987 unrecoupable obligation; or

(2) For qualifying contracts with more than five years of the primary term remaining as of December 31, 1985, any amount not in excess of Y percent of the 1986-1987 unrecoupable obligation.

§ 161.3 "Safe Harbor" presumption of prudence.

(a) *Presumption.* Any pipeline making qualifying payments to extinguish all minimum payment or purchase obligations under qualifying contracts is presumed, subject to rebuttal, to be acting prudently for purposes of sections 4 and 5 of the Natural Gas Act. A pipeline that seeks to invoke the presumption of prudence has the burden of demonstrating that its payments are within the scope of this part.

(b) *Rebuttal of presumption.* Any participant or interested person challenging the prudence of payments made by a pipeline in accordance with § 161.3(a) has the burden of demonstrating that the pipeline's payments were imprudent.

§ 161.4 Procedures.

(a) *Accounting and cost recovery.* (1) Qualifying payments must be recorded in a separately identified subaccount to Account No. 186.

(2) Amortization of qualifying payments must be recorded in Account No. 813. Only the amortization of the

amounts under this section may be included in any filing under section 4 of the Natural Gas Act. Unamortized balances may not be included as a rate base item.

(3) Qualifying payments must be amortized over a period of 5 years.

(4) A pipeline may not recover any carrying charges on the unamortized balances.

(b) *Filing requirements.* (1) A pipeline must make all qualifying payments and all appropriate section 4 rate filings under this section before January 1, 1987.

(2) In order to recover qualifying payments, a pipeline's filing must:

(i) Identify the qualifying contracts;

(ii) Show the calculations underlying the minimum payment or purchase obligation; and

(iii) Explain how the pipeline has estimated the amount of its 1986–1987 unrecoupable obligation.

PART 2—[AMENDED]

36a. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 432–4361 (1978), unless otherwise indicated.

37. In § 2.76, paragraph (c) is revised to read as follows:

§ 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations.

* * * * *

(c) *Case-specific review.* A pipeline's method of recovering these costs and how it should apportion them among customers will be addressed on a case-by-case basis in the context of individual rate case filings, except that if any of these costs are eligible for the "safe harbor" presumption in § 161.3, such costs may be recovered in accordance with the provisions of that section.

* * * * *

PART 154—[AMENDED]

37a. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

38. Section 154.38 is amended by adding a new paragraph (d)(4)(xi) to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(4) * * *

(xi) *Billing Procedure for Purchased Gas.* (A)(*1*) Beginning October 1, 1985, each natural gas pipeline company must provide in its PGA filing its gas purchase costs, relating to both direct and indirect purchases from suppliers, separated into the following categories:

(*i*) The volumes on a Btu basis of purchases of natural gas priced under sections 104, 106(a), and 109 of the NGPA;

(*ii*) The volumes on a Btu basis of purchases of natural gas priced under all other sections of the NGPA and all comparable costs of imported gas at the United States border or at the tailgate of the regasification plant; and

(*iii*) All other demand and commodity costs not included in paragraphs (d)(4)(xi)(A)(*1*) (*i*) or (*ii*), of this section, as billed to the natural gas pipeline from its supplier(s).

(*2*) Any gas purchase costs listed under paragraph (d)(4)(xi)(A)(*1*) of this section must be recorded in subaccounts of Account Nos. 800–803 of the Uniform System of Accounts. Separate sets of subaccounts of Account No. 191 must be established to reflect deferred gas costs for each gas purchase category in paragraph (d)(4)(xi)(A)(*1*) of this section.

(*3*) Within 30 days of [the effective date of this rule] each natural gas pipeline must notify its customers of:

(*i*) The pipeline's total firm sales to all customers for calendar years 1982, 1983, and 1984 on a Btu basis;

(*ii*) The customer's total firm purchases for calendar years 1982, 1983, and 1984, on a Btu basis;

(*iii*) Unless the pipeline and its customers agree otherwise in an uncontested settlement, the customer's percentage entitlement to purchase gas priced under NGPA sections 104, 106(a), and 109 is the quotient of the firm purchases reported in paragraph (d)(4)(xi)(A)(*3*)(*ii*) of this section divided by the firm sales reported in paragraph (d)(4)(xi)(A)(*3*)(*i*) of this section; and

(*4*) Beginning October 1, 1985, and in every subsequent year, the natural gas pipeline must notify its customers, in sufficient time to permit timely preparation of the PGA adjustment filing, of the estimated annual contract quantity of gas volumes priced under NGPA sections 104, 106(a), and 109, a Btu basis, which is available to the pipeline for sale for that year.

(B)(*1*) A natural gas pipeline must bill its customers under paragraph (d)(4)(xi), beginning on the date that its first PGA filing becomes effective, and must file a revised tariff that conforms to the provisions of paragraph (d)(4)(xi)(A) of this section.

(*2*) Such natural gas pipeline must bill its customers using both a gas and a non-gas rate structure and, for each customer, the bill must separately show:

(*i*) The units of gas purchased under paragraph (d)(4)(xi)(A)(*1*)(*i*) of this section, multiplied by the weighted average cost of gas described in that clause and each customer's entitlement percentage as determined in paragraph (d)(4)(xi)(A)(*3*) of this section;

(*ii*) The units of gas purchased under paragraph (d)(4)(xi)(A)(*1*)(*ii*) of this section multiplied by the weighted average cost of gas described in that paragraph unless paragraph (d)(4)(xi)(D) of this section applies; and

(iii) The non-gas rate currently in effect consisting of the pipeline's other costs, including, among others, the costs under paragraph (d)(4)(xi)(A)(*1*)(*iii*) of this section.

(C) Beginning with its first PGA filing under paragraph (d)(4)(xi) of this section, each natural gas pipeline must prorate over its total purchases, computed on a Btu basis, for calendar years 1982, 1983, and 1984, the total balance in Account No. 191 to sets of subaccounts of Account No. 191, in accordance with the following categories:

(*1*) Purchases under paragraph (d)(4)(xi)(A)(*1*)(*i*) of this section for the calendar years 1982, 1983, and 1984, computed on a Btu basis; and

(*2*) Purchases under paragraph (d)(4)(xi)(A)(*1*)(*ii*) of this section for calendar years 1982, 1983, and 1984, computed on a Btu basis.

(D) Beginning no earlier than four years after [the effective date of this rule], if a natural gas pipeline offers firm transportation to all customers on a non-discriminatory basis and offers an opportunity to reduce firm sales contract demands by 100 percent under § 157.21 of this chapter, the sales price for gas described in paragraph (d)(4)(xi)(A)(*1*)(*ii*) of this section will be presumed to be just and reasonable under the Natural Gas Act.

* * * * *

39. In § 154.38(d)(4), paragraph (d)(4)(vii) is amended by adding at the end a sentence to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(4) * * *

(vii) * * * If a pipeline owes its customers refunds attributable to periods prior to October 1, 1985, or prior to the date upon which a new PGA filing becomes effective, whichever is later, the pipeline must refund such amounts on a cash basis applicable to the pertinent period involved. For future periods, refunds must be distributed through the appropriate subaccount of Account No. 191 attributable to any newly effective gas and non-gas rate requirement prescribed in this section.

* * * * *

40. Part 154, is amended by adding a new § 154.43 to read as follows:

§ 154.43 Billing procedure for purchased gas on or after October 1, 1985.

(a) This section applies to natural gas pipeline company that elects not to file a purchased gas adjustment clause under § 154.38, for the purposes of billing purchased gas components of its rate beginning October 1, 1985.

(b) Beginning October 1, 1985, each natural gas pipeline company shall file with the Commission its gas purchase costs, relating to both direct or indirect purchases from suppliers separated into the following categories:

(1) The volumes on a Btu basis of purchases of natural gas priced under sections 104, 106(a), and 109 of the NGPA;

(2) The volumes on a Btu basis of purchases of natural gas priced under all other sections of the NGPA and all costs of imported gas at the United States border or at the tailgate of the regasification plant; and

(3) All other demand and commodity costs not included in paragraphs (b) (1) and (2) of this section as billed to the natural gas pipeline from its supplier(s).

(c) Absent an alternative agreement by a pipeline and its customers in an uncontested settlement, each customer shall be billed under paragraph (b) of this section based on its relative share of the pipeline's firm sales volumes using actual sales on a Btu basis and averaged for calendar years 1982, 1983, and 1984.

(d) Beginning on October 1, 1985, and every subsequent year, the natural gas pipeline must notify its customers of the estimated annual contract quantity of gas volumes, priced under NGPA sections 104, 106(a), and 109, on a Btu basis, which is available to the pipeline for sale that year.

(e) Each pipeline to which this section applies shall file a revised tariff to conform to the requirements of this section.

(f) Beginning no earlier than four years after [the effective date of this rule], if a natural gas pipeline offers firm transportation to all customers on a non-discriminatory basis and offers an opportunity to reduce firm sales contract demands by 100 percent under § 157.21 of this chapter, the sales price for gas described in paragraph (b)(2) of this section will be presumed to be just and reasonable under the Natural Gas Act.

[FR Doc. 85-13630 Filed 6-6-85; 8:45 am]

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federal register

Friday
June 7, 1985

Part VI

Department of Agriculture

Agricutural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Limitation of Handling

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 519; Lemon Reg. 518, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 375,000 cartons during the period June 9–15, 1985, and increases the quantity of lemons that may be shipped to 340,000 cartons during the period June 2–8, 1985. Such action is needed to privide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.819) becomes effective June 9, 1985, and the amendment (§ 910.818) is effective for the period June 2–8, 1985.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 4, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good.

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

PART 910—[AMENDED]

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. New § 910.819 is added to read as follows:

§ 910.819 Lemon Regulation 519.

The quantity of lemons grown in California and Arizona which may be handled during the period June 9, 1985, through June 15, 1985, is established at 375,000 cartons.

3. Section 910.818 Lemon Regulation 518 is revised to read as follows:

§ 910.818 Lemon Regulation 518.

The quantity of lemons grown in California and Arizona which may be handled during the period June 2, 1985, through June 8, 1985, is established at 340,000 cartons.

Dated: June 5, 1985.

Thomas R. Clark,

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

[FR Doc. 85–13996 Filed 6–6–85; 11:36 am]

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